

**REQUEST FOR PROPOSAL  
LED LIGHTING CONVERSION FOR  
PALO VERDE COLLEGE**

**Request for Proposal must be received no later than  
May 16, 2014 at 4:00 PM  
(California Time)**

**Stephanie Slagan**  
Administrative Services Technician  
**Palo Verde Community College District**  
1 College Drive  
Blythe, CA 92225

**PALO VERDE COMMUNITY COLLEGE DISTRICT**  
ONE COLLEGE DRIVE, BLYTHE, CA 92225

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**REQUEST FOR PROPOSAL**  
**LED LIGHTING CONVERSION FOR PALO VERDE COLLEGE**

**I. INTRODUCTION AND PROJECT BACKGROUND**

Palo Verde Community College District (PVCCD) desires to engage a qualified electrical contractor for the replacement of fluorescent lamps and HPS lamps with a new LED light in the exterior parking lots and walls at the Palo Verde College. This project has been identified as energy efficiency improvements to the District with any contract(s) to be procured under the authority of California Government Code Section 4217.10 through 4217.18.

The District's goal is to improve the energy efficiency performance of the exterior lighting systems and to improve maintenance costs through the use of various utility incentives and the Prop 39 program.

**II. SCOPE OF WORK**

**Project Implementation**

1. Purchase and install qualified luminaires as per the performance criteria outlined in the graph below and in the quantities and locations identified in the contract documents.

| Fixture Code | Lamp Code | Description                    | Proposed Fixture code | Proposed lamp Code | Description   | QTY |
|--------------|-----------|--------------------------------|-----------------------|--------------------|---|-----|
| MH 70/1      | MH70PS    | METAL HALIDE 70W               | CFQ26W/1              | CFQ26W             | REPLACE LAMP WITH PLUG IN COMPACT FLUORESCENT, QUAD, (1) 26W LAMP | 16  |
| MH150/1      | MH150PS   | METAL HALIDE 150W (1) WALLPACK | LED75/1               | LED75              | REPLACE WITH LED 75W FIXTURE WALL PACK                            | 54  |
| HPS400/1     | MH400PS   | HIGH PRESSURE SODIUM 400W (1)  | LED206/1              | LED206             | REPLACE WITH LED 206W POLE FIXTURE                                | 67  |
| MH400/1      | MH400PS   | METAL HALIDE 400W (1)          | LED206/1              | LED206             | REPLACE WITH LED 26W POLE FIXTURE                                 | 14  |

2. Provide all necessary equipment, hardware, adapters, and any other materials necessary for a quality installation. Ensure installation quality, compliance with project schedule and proper disposal and/or recycling of old luminaires.
3. Contractor shall warrant all labor and replace defective LED luminaires and parts thereof for a period of one year from the date of project completion. The warranty for the luminaires shall be no less than ten (10) years.
4. Manage deliveries and staging of material to site including any secured storage considerations.
5. Prepare and manage appropriate waste disposal facility and facilitate proper disposal of waste material including old luminaires. All excess property for this job shall be coordinated with the campus for either disposal or salvaging.

6. The District shall meet on a weekly basis with contractor to review installation, work safety, public safety and waste material handling procedures and requirements.
7. Inspect final work and correct any “punch list” items.
8. The Contractor shall test and commission all LED lights outlined in the plans to ensure that they work as per the performance specifications.
9. Train District personnel in all aspects of routine operation, maintenance, and safety of the LED lighting luminaires installed.
10. Where Bi-Level switching is required a 2nd LED driver will need to be installed.
11. The contractor will be responsible cleaning of all prismatic lenses where applicable.
12. For all parabolic troffers it is required that a new acrylic lens will be placed over the existing grid to defuse the LED Strip lighting.
13. Where an Emergency lighting fixture exists the inclusion of an LED battery backup system is required.
14. All work shall be performed under written contract, which shall be in a form provided by and acceptable to the District.

### **Post Installation Activities Including Administration**

15. Following District acceptance, produce final project reporting to the District including a final as-build of the all the LED lighting luminaries in PDF and hardcopy.
16. Assist the District and it’s consultant in the preparation of all documentation including validation of the cost associated with the project as part of the final CCC/IOU Partnership auditing.
17. Coordinate with the CCC/IOU Partnership for a final review of all energy savings and construction cost estimates to ensure accuracy and compliance.
18. Complete Proposition 39 Job Tracking Report.

### **III. CONTRACTOR QUALIFICATIONS & BID REQUIREMENTS**

#### **A. General Proposal Requirements.**

1. Proposals shall be submitted in accordance with the instructions outlined in this RFP.
2. Proposals received by the District that omit any portion of these submittal requirements may be deemed non-responsive.
3. Respondent warrants upon submission of Proposal that the Respondent has visited and observed the site conditions to provide a complete and operational system in accordance with referenced specifications in this RFP.

#### **B. Respondent Qualifications**

1. The Respondent shall be a licensed contractor, in good standing, pursuant to the California Business and Professions Code, and licensed to perform the work called for in the contract documents. The successful Respondent must possess a valid active Class C-10 License at time of award of contract. The Contractor’s State License number shall be clearly stated on the Respondent’s proposal.

2. The Respondent shall show credentials related to sustainable construction and/or energy efficiency standards (e.g. Coalition for High Performance Schools and Leadership in Energy and Environmental Design).
3. The Respondent shall show experience related to sustainable construction and/or energy efficiency standards, including a list of specific projects the firm has completed in the past five years (This should include the project name, owner, dates of the period of service, and dollar value of the services performed by the firm.).
4. The Respondent shall show experience related to Community College Districts administration including a list of specific projects the firm has completed in the past five years (This should include the project name, owner, dates of the period of service, and dollar value of the services performed by the firm).
5. The Respondent shall show experience on projects involving LED parking lot and roadway light retrofit projects including all electrical systems and electrical distribution throughout a campus or building complex, including a list of specific projects the firm has completed in the past five years (This should include the project name, owner, dates of the period of service, and dollar value of the services performed by the firm).
6. The Respondent shall show experience on projects involving interior lighting retrofit projects including all electrical systems and electrical distribution throughout a campus or building complex, including a list of specific projects the firm has completed in the past five years (This should include the project name, owner, dates of the period of service, and dollar value of the services performed by the firm).
7. Experience and knowledge working with the CCC/IOU Partnership in project auditing and measuring energy savings

V. SCHEDULE OF EVENTS:

|                |  |
|----------------|--|
| April 23, 2014 | Distribute RFP                             |
| May 7, 2014    | Proposal Conference and Site Walk 11:30 am |
| May 16, 2014   | Proposals due at 4 p.m. (California Time)  |
| May 27, 2014   | Proposal Award/ Board Approval             |
| May 28, 2014   | Notice to Proceed                          |
| June 30, 2014  | Contract Completion                        |

VI. **AWARD OF CONTRACT:**

The District reserves the right to reject any or all proposals, or to waive irregularities or informalities in any proposals. The award of the contract will be by action of the governing board and will be based on the determination, made in the good description of the District, as to which Proposal offers the best value for the District and meets the requirements of Government Code sections 4217.10 through 4217.18. Each proposal must conform and be responsive to the contract documents as defined in the General Conditions.

**VII. EVALUATION OF SUBMITTALS:**

The following criteria will be considered, although not exclusively, in determining which firm is hired.

1. Contractor's demonstrated experience in completing projects of a similar type.
2. Costs of providing the entire scope of work.
3. Ability of proposed luminaires to meet the required performance specifications.
4. Ability to achieve reductions in energy consumption and maintenance costs.
5. Ability to complete the project within the stated schedule.

**VII. MANDATORY JOB WALK:**

There will be a mandatory job walk and conference Monday **May 7, 2014 at 4:00 P.M.** starting at Palo Verde College, One College Drive. Meeting will be held by the flag pole in front of the Administration Building.

**VIII. SUBMISSION**

Submit the Response to this RFP. Responses failing to address the listed requirements will be deemed non-responsive.

**Submit responses in sealed envelopes to:**

Stephanie Slagan  
Administrative Services Technician  
**LED LIGHTING CONVERSION PALO VERDE COLLEGE**  
  
**Palo Verde Community College District**  
**One College Drive**  
**Blythe, CA 92225**

**Submittals must be received not later than 4:00 p.m. (California Time) on May 16, 2014.**

## **INFORMATION FOR SERVICE PROVIDERS**

1. Preparation of RFP Form. Proposals under these specifications shall be submitted on the blank forms furnished herewith at the time and place stated in the RFP. All blanks in the Proposal form must be appropriately filled in, and all proposed prices must be stated clearly and legibly in both words and numerals. All Proposals must be signed by the Respondent in permanent blue ink and submitted in sealed envelopes, bearing on the outside, the Respondent's name, address, telephone number, and California Contractor's License number, and the name of the project for which the Proposal is submitted. The DISTRICT reserves the right to reject any Proposal if all of the above information is not furnished. Any Proposal received after the scheduled closing time for receipt of Proposals will be returned to the Respondent unopened. It is each Respondent's sole responsibility to ensure its Proposal is timely delivered and received at the location designated as specified above. Any Proposal received at the designated location after the scheduled closing time for receipt of Proposals shall be returned to the Respondent unopened.

2. Signature. The Proposal form, all bonds, all designations of subcontractors, the Contractor's Certificate, the Agreement, and all Guarantees must be signed in permanent blue ink in the name of the Respondent and must bear the signature of the person or persons duly authorized to sign the Proposal.

If Respondent is a corporation, the legal name of the corporation shall first be set forth, together with two signatures: one from the President and one from the Secretary or Assistant Secretary. Alternatively, the signature of other authorized officers or agents may be affixed, if a certified copy of the resolution of the corporate board of directors authorizing them to do so is provided to the DISTRICT. Such documents shall include the title of such signatories below the signature and shall bear the corporate seal.

If Respondent is a partnership, the true name of the firm shall first be set forth, together with the names of all persons comprising the partnership or co-partnership. The Proposal must be signed by all partners comprising the partnership unless proof in the form of a certified copy of a statement of partnership acknowledging the signer to be a general partner is presented to the DISTRICT, in which case the general partner may sign.

Proposals submitted as joint ventures must so state and be signed by each joint venturer.

Proposals submitted by individuals must be signed by the Respondent unless an up to date power- of-attorney is on file in the DISTRICT office, in which case, said person may sign for the individual.

The above rules also apply in the case of the use of a fictitious firm name. In addition, however, where a fictitious name is used, it must be so indicated in the signature.

3. Modifications. Changes in or additions to the Proposal form, recapitulations of the work Proposal upon, alternative proposals, or any other modification of the Proposal form which is not specifically called for in the contract documents may result in the DISTRICT's rejection of the Proposal as not being responsive to the Notice Inviting Proposals. **No oral or telephonic modification of any Proposal submitted will be considered.**

4. Erasures, Inconsistent or Illegible Proposals. The Proposal submitted must not contain any erasures, interlineations, or other corrections unless each such correction creates no inconsistency and is suitably authenticated by affixing in the margin immediately opposite the correction the signature or signatures of the person or persons signing the Proposal. In the event of inconsistency between words and figures in the Proposal price, words shall control figures. In the event that the DISTRICT determines that any Proposal is unintelligible, inconsistent, or ambiguous, the DISTRICT may reject such Proposal as not being responsive to the Notice Inviting Proposals.

5. Examination of Site and RFP Documents. Each Respondent shall visit the site of the proposed work and become fully acquainted with the conditions relating to the construction and labor so that the facilities, difficulties, and restrictions attending the execution of the work under the contract are fully understood. Respondents shall thoroughly examine and be familiar with the drawings and specifications. The failure or omission of any Respondent to receive or examine any contract documents, form, instrument, addendum, or other document or to visit the site and become acquainted with conditions there existing shall not relieve any Respondent from obligations with respect to the Proposal or to the contract. The submission of a Proposal shall be taken as prima facie evidence of compliance with this section. Respondents shall not, at any time after submission of the Proposal, dispute, complain, or assert that there were any misunderstandings with regard to the nature or amount of work to be done.

6. Withdrawal of Proposals. Any Proposal may be withdrawn, either personally or by written request, at any time prior to the scheduled closing time for receipt of Proposals. The Proposal security for Proposals withdrawn prior to the scheduled closing time for receipt of Proposals, in accordance with this paragraph, shall be returned upon demand therefor.

**No Respondent may withdraw any Proposal for a period of one hundred twenty (120) calendar days after the date set for the opening of Proposals.**

7. Agreements, Insurance, and Bonds. The Agreement from which the successful Respondent, as CONTRACTOR, will be required to execute, and the form of the bonds and insurance endorsements which such CONTRACTOR will be required to furnish, are included in the contract documents and should be carefully examined by the Respondent. Payment bond and

performance bonds in the amount of one hundred percent (100%) of the amount of the contract and insurance endorsements must be furnished as required in the contract, all prior to execution of the contract.

8. Interpretation of Plans and Documents. If any prospective Respondent is in doubt as to the true meaning of any part of the contract documents, or finds discrepancies in, or omissions from the drawings and specifications, a written request for an interpretation or correction thereof may be submitted to the Architect. The Respondent submitting the request shall be responsible for its prompt delivery. **Any interpretation or correction of the contract documents will only be made by addendum duly issued, and a copy of such addendum will be mailed or delivered to each contractor receiving a set of the contract documents.** No person is authorized to make any oral interpretation of any provision in the contract documents, nor shall any oral interpretation be binding on the DISTRICT. If discrepancies on drawings, or in specifications, or conflicts between drawings and specifications are not covered by addenda, Respondent shall include in the Proposal methods of construction and materials resulting in the higher Proposal.

9. Respondents Interested in More Than One Proposal. No person, firm, or corporation shall be allowed to make, or file, or be interested in more than one prime Proposal for the same work unless alternate Proposals are specifically called for. A person, firm, or corporation that has submitted a proposal to a Respondent, or that has quoted prices of materials to a Respondent, is not thereby disqualified from submitting a proposal or quoting prices to other Respondents or making a prime proposal.

10. Award of Contract. The DISTRICT reserves the right to reject any or all Proposals, or to waive any irregularities or informalities in any Proposals or in the bidding. The award of the contract, if made by the DISTRICT, will be by action of the governing board and based on the "Best Value Criteria". **Each Proposal must conform and be responsive to the contract documents as defined in the General Conditions.**

10.1 Alternate Proposals. The Governing Board of the District is not calling for alternate Proposals for this project.

10.2 RFP Evaluation and Clarification. The District reserves the right to obtain clarification of any point in a Service Provider's submittal or to obtain additional information. The District reserves the right to conduct on District site, telephone or email, conversations with the Service Provider to clarify proposals and other documents, ask questions or obtain additional information. The Service Provider's inability to respond to this request may be cause of disqualification of their proposal.

11. Alternates. If alternate Proposals are called for, the contract may be awarded at the election of the governing board to the lowest responsible and responsive Respondent using the method and procedures outlined in the Notice Inviting Proposals.

12. Evidence of Responsibility. Upon the request of the DISTRICT, a Respondent whose Proposal is under consideration for the award of the contract shall submit promptly to the DISTRICT satisfactory evidence showing the Respondent's financial resources, surety and



insurance claims experience, construction experience, completion ability, workload, organization available for the performance of the contract, and other factors pertinent to a project of the scope involved.

13. Listing Subcontractors. Each Respondent shall submit with his Proposal, on the form furnished with the contract documents, a list of the names, license numbers and locations of the places of business of each subcontractor who will perform work or labor or render service to the Respondent in or about the Project, or a subcontractor who under subcontract to the Respondent, specially fabricates and installs a portion of the work, in an amount in excess of one-half of 1 percent of the Respondent's total Proposal as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100, et seq.). If alternate Proposals are called for and the Respondent intends to use different or additional subcontractors, a separate list of subcontractors must be submitted for each such alternate.

14. Workers' Compensation. In accordance with the provisions of Labor Code Section 3700, the successful Respondent as the CONTRACTOR shall secure payment of compensation to all employees. The CONTRACTOR shall sign and file with the DISTRICT the following certificate prior to performing the work under this contract: "I am aware of the provisions of Section 3700 of the Labor Code, which requires 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 the work of this contract." The form of such certificate is included as a part of the contract documents.

15. Contractor's License. To perform the work required by this notice, the CONTRACTOR must possess a Class C-10 Contractor's License, and the CONTRACTOR must maintain the license throughout the duration of the contract. If, at the time of award of the contract, Respondent is not licensed to perform the Project in accordance with Division 3, Chapter 9, of the Business and Professions Code for the State of California and the Notice to Contractors calling for Proposals, such Proposal will not be considered and the CONTRACTOR will forfeit its Proposal security to the DISTRICT.

16. Anti-Discrimination. It is the policy of the DISTRICT that in connection with all work performed under contracts, there be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, or marital status. The CONTRACTOR agrees to comply with applicable federal and California laws, including, but not limited to, the California Fair Employment and Housing Act, beginning with Government Code section 12900 and Labor Code section 1735. In addition, the CONTRACTOR agrees to require like compliance by any subcontractors employed on the work by such CONTRACTOR.

17. Disqualification of Respondents and Proposals. More than one proposal for the same work from any individual, firm, partnership, corporation, or association under the same or different names will not be accepted; and reasonable grounds for believing that any Respondent is interested in more than one proposal for the work will be cause for rejecting all proposals in which such Respondent is interested and the Respondent will forfeit their Proposal security to the DISTRICT.

18. Unbalanced or Altered Proposals. Proposals in which the prices are obviously unbalanced, and those which are incomplete or show any alteration of form, or contain any additions or conditional or alternate Proposals that are not called for or otherwise permitted, may be rejected. A proposal on which the signature of the Respondent has been omitted may be rejected.

19. Employment of Apprentices. The CONTRACTOR and all Subcontractors shall comply with all applicable provisions of the California Labor Code including, but not limited to sections 1777.5, 1777.6, and 1777.7 concerning the employment of apprentices. The CONTRACTOR and any Subcontractor under him shall comply with the requirements of said sections, including applicable portions of all subsequent amendments in the employment of apprentices; however, the CONTRACTOR shall have full responsibility for compliance with said Labor Code sections, for all apprenticeable occupations, regardless of any other contractual or employment relationships alleged to exist.

20. Non-Collusion Declaration. Public Contract Code Section 7106 requires Respondents to submit a declaration of non-collusion with their Proposals. This form is included with the Proposal package and must be signed and dated by the Respondent under penalty of perjury.

21. Wage Rates, Travel and Subsistence.

(a) Pursuant to Labor Code Sections 1770 et seq., the DISTRICT has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this work is to be performed for each craft, classification or type of worker needed to execute the contract. Copies are available from the DISTRICT to any interested party on request and are also available from the Director of the Department of Industrial Relations. The CONTRACTOR shall obtain copies of the above-referenced prevailing wage sheets and post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

(b) Any worker employed to perform work on the Project and such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

(c) Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by law.

(d) These per diem rates, including holiday and overtime work, and employer

payments for health and welfare, pension, vacation, and similar purposes, are on file at the administrative office of the DISTRICT, located as noted above and are also available from the Director of the Department of Industrial Relations. It is the CONTRACTOR's responsibility to ensure the appropriate prevailing rates of per diem wages are paid for each classification. It shall be mandatory upon the CONTRACTOR to whom the contract is awarded, and upon any subcontractor under such CONTRACTOR, to pay not less than the said specified rates to all workers employed by them in the execution of the contract.

22. Failure to Provide Requested Information. Failure of a Service Provider to provide any required documentation or information requested in this package may result in the rejection of their proposal.

23. No Telephone or Facsimile Availability. No telephone or facsimile machine will be available to Respondents on the DISTRICT premises at any time.

# Part 1

## Qualification Criteria

Each respondent shall provide the information indicated below:

1. **Description of Firm.** Provide a statement of experience regarding the company's experience in providing services for energy savings projects. This should include the following:
  - a. Credentials related to energy efficiency analysis and life cycle cost analysis.
  - b. Experience related to energy efficiency analysis and life cycle cost analysis. Please include a list of specific projects the firm has completed in the past five years (This should include the project name, owner, dates of the period of service, and dollar value of the services performed by the firm.).
  - c. Credentials related to sustainable construction and/or energy efficiency standards (e.g. Coalition for High Performance Schools and Leadership in Energy and Environmental Design).
  - d. Experience related to sustainable construction and/or energy efficiency standards, including a list of specific projects the firm has completed in the past five years (This should include the project name, owner, dates of the period of service, and dollar value of the services performed by the firm.).
  - e. Experience related to Community College Districts administration including a list of specific projects the firm has completed in the past five years (This should include the project name, owner, dates of the period of service, and dollar value of the services performed by the firm).
  - f. Experience on projects involving LED parking lot and roadway light retrofit projects including all electrical systems and electrical distribution throughout a campus or building complex, including a list of specific projects the firm has completed in the past five years (This should include the project name, owner, dates of the period of service, and dollar value of the services performed by the firm).
  - g. Evidence and description of Financial & Operational Capacity to support the services required by the District.
2. **Description of Key Personnel.** Provide the specific descriptions of the background, experience and qualifications of all key personnel who will have an active part in providing the services requested. All professionals should be experienced, and if required, licensed, certified, or registered in their areas of expertise. The same specific information as to credentials and experience of the firm.
3. **Identification of Sub-consultants.** Each respondent shall identify any sub-consultant(s) and/or sub-contractor(s) it intends to utilize in the performance of its services.
4. **Additional Information.** Provide any additional information pertinent to the services that can be provided. The District encourages the inclusion of letters of reference and/or testimonials.
5. **Qualification Form.** Provide a completed copy of the attached Qualification Form in the submittal package.
6. **Required Forms.** Provide completed copies of the Non-Collusive Bidding Declaration, Workers' Compensation Certification, Qualification Certification and the Payee Data Record.

# Qualification Form

## Section 1 - Firm Information

\_\_\_\_\_  
Proper Name of Respondent

\_\_\_\_\_  
Address

\_\_\_\_\_  
Authorized Agent Name and Title

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Authorized Agent Signature

\_\_\_\_\_  
Phone

\_\_\_\_\_  
E-mail address

\_\_\_\_\_  
Fax

\_\_\_\_\_  
Federal Tax Identification Number

\_\_\_\_\_  
Date Business Formed

**Please list your license information:**

\_\_\_\_\_  
License Number

\_\_\_\_\_  
License Class

\_\_\_\_\_  
License Expiration Date

**Please list any supplemental classification(s) held, if any and license number(s):**

\_\_\_\_\_  
License Number

\_\_\_\_\_  
License Class

\_\_\_\_\_  
License Expiration Date

\_\_\_\_\_  
License Number

\_\_\_\_\_  
License Class

\_\_\_\_\_  
License Expiration Date

\_\_\_\_\_  
License Number

\_\_\_\_\_  
License Class

\_\_\_\_\_  
License Expiration Date

**Have you ever been licensed in California under a different name or different license number?**

Yes  No    If yes, list all name(s) and license number(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Corporate Officers – Partners, Proprietor, Owners, Key Personnel:**

| Name | Position | Years w/<br>Firm | % of<br>Ownership |
|------|----------|------------------|-------------------|
|      |          |                  |                   |
|      |          |                  |                   |
|      |          |                  |                   |

|  |  |  |  |
|--|--|--|--|
|  |  |  |  |
|  |  |  |  |

## Section 2 – Rating Questions

| Question   | Response   | Points                                |
|--|--|---------------------------------------|
| 1. How many years has your organization been in business in California as a contractor under your present business name and license number?<br>(3 Yrs or less = 1 pt., 3-6 Yrs = 2 pt., 6+ Yrs = 3 pts.)                   | _____ Years  | _____ Points<br>(For Office Use Only) |
| 2. Have the owners or principals had their license(s) suspended, put on probation or revoked by the Contractors State License Board?<br>(Revoked = 0 pts., Probation = 1 pts., Suspended = 2 pts., Good Standing = 3 pts.) | _____ Good Standing<br>_____ Suspended<br>_____ Probation<br>_____ Revoked | _____ Points<br>(For Office Use Only) |
| 3. How many years has your organization completed the type of work as required in this Request for Qualification?<br>(3 Yrs or less = 1 pt., 3-6 Yrs = 2 pts., 6+ Yrs = 3pts)  | _____ Years  | _____ Points<br>(For Office Use Only) |
| 4. How many school district projects has your firm completed in the past 5 years?<br>(4+ = 3 pts., 3 = 2 pts., 2 = 1 pts., 1 or less = 0 pts.)   | _____ School<br>Projects   | _____ Points<br>(For Office Use Only) |

5. Within in the last five (5) years, has any employee or entity filed a complaint against your firm with the California Contractors License Board?  
(Yes = 0 pts., No = 1 pts.)

Yes    No   If yes, please explain:

|        |
|--------|
| Points |
|--------|

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6. Has your firm ever failed to complete a project in the past five (5) years?  
(Yes = 0 pts., No = 1 pts.)

Yes    No   If yes, please explain:

|        |
|--------|
| Points |
|--------|

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7. Has your firm ever been declared in default on a project in the past five (5) years?  
(Yes = 0 pts., No = 1 pts.)

Yes    No   If yes, please explain:

|        |
|--------|
| Points |
|--------|

8. Has your firm been assessed liquidated damages on a job in the past five (5) years?  
(Yes = 0 pts., No = 1 pts.)

Points

Yes  No If yes, please explain:

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

9. Has your firm ever had insurance terminated by a carrier in the past five (5) years?  
(Yes = 0 pts., No = 1 pts.)

Points

Yes  No If yes, please explain:

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

10. Has your firm or any officer of your firm been found guilty of violating any federal, state or local law, rule or regulation regarding a construction contract?  
(Yes = 0 pts., No = 1 pts.)

Points

Yes  No If yes, please explain:

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

**Section 3 – Insurance / Bonding Requirements**

11. Does your firm maintain the insurance requirements as listed below?  
(Yes = 10 pts., No = 0 pts.)

Points

Yes  No

The Contractor and its officers, employees, agents and subcontractors shall, at their expense, maintain and comply with Insurance Requirements #1-6 below to protect Contractor and District from any and all claims for personal injury, bodily injury and property damage arising from, pertaining to or relating to the scope of work under this agreement.

- a. Commercial General Liability. Minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate for personal injury, bodily injury and property damage including products and completed operations, under Insurance Services Office Occurrence Number CA 00 01, (any auto).
- b. Automobile Liability. \$1,000,000 per accident for bodily injury and property damage under Business Automobile Liability Coverage Form Number CA 00 01, (any auto).
- c. Any insurance or self-insurance maintained by the District shall be excess of the Contractor's insurance and shall not contribute with it.
- d. Waiver of Subrogation. Contractor agrees that in the event of loss due to any perils for which it has agreed to provide Commercial General and Automobile Liability insurance, Contractor shall look solely to its insurance carrier(s) for recovery and grants a waiver of any right to subrogation which any such insurer of Contractor may acquire against the District by virtue of payments of any loss under this insurance.
- e. Certificate of Insurance. Contractor shall furnish the District with original certificates of insurance and amendatory endorsements effecting coverage required by this Agreement and indicating a thirty (30) day cancellation notice or notice of reduction in coverage.
- f. Additional Insured. Insurance shall name the District and its Board of Trustees, officers, employees, agents and volunteers as Additional Insured under said policy.

Premiums on all insurance policies shall be paid by Contractor and shall be deemed included in this contract.

Workers' Compensation: The Contractor and all of their officers, employees, agents, volunteers, and subcontractors agree to; (1) procure and maintain in full force and effect Workers' Compensation and Employer's Liability insurance covering its employees and agents while these persons are participating in the scope of work hereunder: (2) The insurer for the Contractor shall agree to waive all rights of subrogation against District, its Board of Trustees, officials, employees, agents and volunteers for losses under the terms of the insurance policy which arise from work performed by the Contractor.

**\*Please provide a copy of your certificate of insurance with you submittal.**

12. Is your firm able to obtain the Payment and Performance Bonds as required below?  
 (Any respondent unable to obtain the proper bonds will automatically not be deemed qualified.)

Yes  No

|        |
|--------|
| Points |
|--------|

Upon award of any bid the district shall require Performance and Payment Bonds as regulated by state regulations.

The Performance Bond must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish and which it has established.

The Payment Bond must be in the amount of one hundred percent (100%) of the total amount payable. The Payment Bond must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish.

---

|                       |
|-----------------------|
| Section 3 Grand Total |
|-----------------------|



## Section 4 – Performance

13. Has your firm completed projects for any California Community College?  
(Yes = 5 pts., No = 0 pts.)

|        |
|--------|
| Points |
|--------|

Yes    No    If yes, please provide information on the last 3 community college jobs.  
(2 pts. will be awarded for each reference below.)

| Owner | Contact & Phone Number | Job Description | Contract Amount |
|-------|------------------------|-----------------|-----------------|
|       |                        |                 |                 |
|       |                        |                 |                 |
|       |                        |                 |                 |

14. Has your firm completed projects for any other California Public Agency?  
(Yes = 5 pts., No = 0 pts.)

|        |
|--------|
| Points |
|--------|

Yes    No    If yes, please provide information on the last 3 public agency jobs.  
(2 pts. will be awarded for each reference below.)

| Owner | Contact & Phone Number | Job Description | Contract Amount |
|-------|------------------------|-----------------|-----------------|
|       |                        |                 |                 |
|       |                        |                 |                 |
|       |                        |                 |                 |

|                       |
|-----------------------|
| Section 4 Grand Total |
|-----------------------|

## Section 5 – Description of Firm Points Matrix

(Scoring Matrix for Page 15, Section 1)

|   |                                       |
|---|---------------------------------------|
| a. Credentials related to energy efficiency analysis and life cycle cost analysis.<br>(Yes = 2 pts., No = 0 pts.)   | _____ Points<br>(For Office Use Only) |
| b. Experience related to energy efficiency analysis and life cycle cost analysis.<br>(Rate - Maximum 4 pts. / Minimum 0 pts.)   | _____ Points<br>(For Office Use Only) |
| c. Credentials related to sustainable construction and/or energy efficiency standards.<br>(Yes = 2 pts., No = 0 pts.)   | _____ Points<br>(For Office Use Only) |
| d. Experience related to sustainable construction and/or energy efficiency standards<br>(Rate - Maximum 4 pts. / Minimum 0 pts.)  | _____ Points<br>(For Office Use Only) |
| e. Credentials for mechanical systems and central plant design and engineering.<br>(Yes = 2 pts., No = 0 pts.)  | _____ Points<br>(For Office Use Only) |
| f. Experience on projects involving central plant design, including all mechanical and electrical systems and distribution piping throughout a campus or building complex.<br>(Rate - Maximum 4 pts. / Minimum 0 pts.)  | _____ Points<br>(For Office Use Only) |
| g. Experience related to Division of the State Architect approval and administration, including a list of specific projects the firm has completed in the past five years.<br>(Rate - Maximum 4 pts. / Minimum 0 pts.)  | _____ Points<br>(For Office Use Only) |
| h. Experience related to Community College Districts administration including a list of specific projects the firm has completed in the past five years.<br>(Rate - Maximum 4 pts. / Minimum 0 pts.)  | _____ Points<br>(For Office Use Only) |
| i. Experience on projects involving LED parking lot and roadway light retrofit projects including all electrical systems and electrical distribution throughout a campus or building complex.<br>(Rate - Maximum 4 pts. / Minimum 0 pts.)   | _____ Points<br>(For Office Use Only) |
| j. Experience on projects involving interior lighting retrofit projects including all electrical systems and electrical distribution throughout a campus or building complex.<br>(Rate - Maximum 4 pts. / Minimum 0 pts.)   | _____ Points<br>(For Office Use Only) |
| k. Experience on project involving integration of new equipment and central plant systems with energy management systems and existing related legacy systems.<br>(Rate - Maximum 4 pts. / Minimum 0 pts.)   | _____ Points<br>(For Office Use Only) |
| l. Experience on projects comprising HVAC systems for California Community College Districts that the firm as both started and completed.<br>(Rate - Maximum 4 pts. / Minimum 0 pts.)   | _____ Points<br>(For Office Use Only) |
| m. Experience performing comprehensive building retro-commissioning for existing HVAC systems with integrated Energy Management System (EMS) controls, central utility plants, electrical and lighting, plumbing and hot water boiler systems, irrigation, etc.<br>(Rate - Maximum 4 pts. / Minimum 0 pts.) | _____ Points<br>(For Office Use Only) |
| n. Evidence and description of Financial & Operational Capacity to support the services required by the District.<br>(Rate - Maximum 4 pts. / Minimum 0 pts.)   | _____ Points<br>(For Office Use Only) |

Section 5 Grand Total

## Points Tally Sheet

|  |              |
|--|--------------|
| <b>Section 2</b><br>(Maximum 18 pts.)    | _____ Points |
| <b>Section 3</b><br>(Maximum 10 pts.)    | _____ Points |
| <b>Section 4</b><br>(Maximum 22 pts.)    | _____ Points |
| <b>Section 5</b><br>(Maximum 50 pts.)    | _____ Points |
| <b>Grand Total</b><br>(Maximum 100 pts.) | _____ Points |
| <b>For Office Use Only</b>               |              |

# Notice of “No Bid”

If you choose not to respond to this Request for Qualifications for Energy Services Companies, please indicate below. This will help us to create and maintain more accurate and effective respondents’ lists:

- We do not wish to bid on this project at this time. Please retain us on the respondents list in consideration of future projects.
- We do not wish to bid on this project, nor on any similar projects in future with regard to this commodity.

Reason for not bidding: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Proper Name of Respondent

\_\_\_\_\_  
Address

\_\_\_\_\_  
Authorized Agent Name and Title

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Authorized Agent Signature

\_\_\_\_\_  
Phone

\_\_\_\_\_  
E-mail address

\_\_\_\_\_  
Fax

# Non-Collusive Bidding Declaration

I, \_\_\_\_\_ (Name of Bidder's Authorized Officer or Agent) declare as follows:

That I am the \_\_\_\_\_ (Title) of \_\_\_\_\_ (Legal Name of Bidder), the party making the attached bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that 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 bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding, that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in this bid are true, and, further, that the bidder has not, directly or indirectly, submitted his 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 corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

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

\_\_\_\_\_  
Signature of Bidder's Authorized Officer or Agent

# Workers' Compensation Certification

## RESPONDENT'S CERTIFICATION REGARDING WORKERS' COMPENSATION

State of California Labor Code section 3700 in relevant part provides:

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

- By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.
- By securing from the Director of Industrial Relations a certificate of consent to self-insure, 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 employees.

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

\_\_\_\_\_  
Proper Name of Bidder

\_\_\_\_\_  
*Signature of Authorized Agent/Officer*

\_\_\_\_\_  
Date

In accordance with article 5 (commencing at section 1860), chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.

# Qualification Certification

I, \_\_\_\_\_, the \_\_\_\_\_ of the firm, hereby certify under penalty of perjury under the laws of the State of California, that all of the information submitted by the respondent in connection with this submittal and all of the representations made herein are true and correct and that the respondent named below is legally authorized to enter into contracts with the District.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2013 at \_\_\_\_\_ County, California.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Address

\_\_\_\_\_  
Printed Name of Responsible Financial Agent

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Authorized Agent Signature

\_\_\_\_\_  
Phone

\_\_\_\_\_  
E-mail address

\_\_\_\_\_  
Fax

Federal Tax ID # \_\_\_\_\_

|                                 |   |  |
|---------------------------------|---|--|
| <b>PLEASE RETURN or FAX TO:</b> | <b>Palo Verde Community College District</b><br>Attn: Stephanie Slagan<br>1 College Drive<br>Blythe, Ca 92225<br>Phone: (760) 921-5538<br>FAX: (760) 922-0230 | <b>PURPOSE:</b> Information contained in this form will be used by the District to prepare State of California Employment Development Department DE542 Reporting, Internal Revenue Form 1099, and for withholding on payments to nonresident payees. <b>Prompt return of this fully completed form will prevent delays when processing payment.</b><br><i>(See Privacy Act Notice on page 4 of instructions)</i> |
|---------------------------------|---|--|

**PARTS 1-7 are to be completed by PAYEE**

|  |   |                  |                        |
|--|---|------------------|------------------------|
| <b>PART 1<br/>PAYEE DATA</b><br>Please print using block letters | Name (If sole proprietor or single-owner LLC, enter owner's full name here — Last Name, First Name, and Middle Initial) (See page 2, <b>Specific Instructions</b> ):<br>▶ |                  |                        |
|  | Business name, if different from above—trade or "doing business as (DBA)" name. (See page 2, <b>Specific Instructions</b> )<br>▶  |                  |                        |
|  | Mailing address (Number and Street including Suite No. or Apartment No. — <b>DO NOT USE POST OFFICE BOX ADDRESS</b> ):<br>▶   |                  |                        |
|  | City, state and zip code:<br>▶  |                  |                        |
|  | Phone number:<br>▶  | Fax number:<br>▶ | Toll free number:<br>▶ |

|   |   |  |   |
|---|---|--|---|
| <b>PART 2<br/>PAYEE ENTITY TYPE</b><br>CHECK ONE BOX ONLY | <input type="checkbox"/> <b>MEDICAL CORPORATION</b> (including dentistry, podiatry, psychotherapy, optometry, chiropractic, etc.)<br><input type="checkbox"/> <b>EXEMPT CORPORATION (Nonprofit)</b><br><input type="checkbox"/> <b>ALL OTHER CORPORATIONS</b> | <input type="checkbox"/> <b>PARTNERSHIP</b><br><input type="checkbox"/> <b>LIMITED LIABILITY PARTNERSHIP (LLP)</b><br><input type="checkbox"/> <b>LIMITED LIABILITY COMPANY (LLC) ELECTING CORPORATE STATUS ON FORM 8832</b> | <input type="checkbox"/> <b>ESTATE OR TRUST</b><br><input type="checkbox"/> <b>INDIVIDUAL/SOLE PROPRIETOR</b><br><input type="checkbox"/> <b>LIMITED LIABILITY COMPANY (LLC) Single Owner</b><br><input type="checkbox"/> <b>FEDERAL/STATE/LOCAL GOVERNMENT</b> |
|---|---|--|---|

|   |   |   |                              |  |
|---|---|---|------------------------------|--|
| <b>PART 3<br/>PAYEE'S TAXPAYER I.D. NUMBER</b>  | <b>SOCIAL SECURITY NUMBER IS REQUIRED FOR INDIVIDUAL/SOLE PROPRIETOR BY AUTHORITY OF THE REVENUE AND TAXATION CODE SECTION 18646.</b><br><br>IF PAYEE ENTITY TYPE IS A CORPORATION, PARTNERSHIP, LLP, CORPORATE STATUS LLC, ESTATE OR TRUST, OR FEDERAL/STATE/LOCAL GOVERNMENT, ENTER FEIN:<br><table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-bottom: 1px solid black; text-align: center;">           FEDERAL EMPLOYER'S IDENTIFICATION NUMBER (FEIN)         </td> <td style="width: 50%; border-bottom: 1px solid black; text-align: center;">           SOCIAL SECURITY NUMBER (SSN)         </td> </tr> </table> | FEDERAL EMPLOYER'S IDENTIFICATION NUMBER (FEIN) | SOCIAL SECURITY NUMBER (SSN) | <b>NOTE: Payment will not be processed without an accompanying taxpayer I.D. number.</b> |
| FEDERAL EMPLOYER'S IDENTIFICATION NUMBER (FEIN) | SOCIAL SECURITY NUMBER (SSN)  |   |                              |  |

|               |  |   |
|---------------|--|---|
| <b>PART 4</b> | <b>FOR U.S. PAYEES EXEMPT FROM BACKUP WITHHOLDING</b> (See page 3 of instructions) | <input type="checkbox"/> Exempt from backup withholding |
|---------------|--|---|

|  |  |   |
|--|--|---|
| <b>PART 5<br/>PAYEE RESIDENCY STATUS</b> | CHECK APPROPRIATE BOXES<br><input type="checkbox"/> California Resident — Qualified to do business in CA or a permanent place of business in CA<br><input type="checkbox"/> Nonresident (See page 3 of instructions) Payments to non residents for services may be subject to state withholding<br><input type="checkbox"/> <b>WAIVER OF STATE WITHHOLDING FROM FRANCHISE TAX BOARD ATTACHED</b><br><input type="checkbox"/> <b>SERVICES PERFORMED OUTSIDE OF CALIFORNIA</b> | <b>NOTE:</b><br><b>a.</b> An estate is a resident if decedent was a California resident at time of death.<br><b>b.</b> A trust is a resident if at least one trustee is a California resident.<br><i>(See page 3 of instructions)</i> |
|--|--|---|

|  |  |           |
|--|--|-----------|
| <b>PART 6<br/>CERTIFYING SIGNATURE</b> | <b>Under penalties of perjury, I certify that:</b><br>1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), <b>and</b><br>2. I am not subject to backup withholding because: <b>(a)</b> I am exempt from backup withholding, or <b>(b)</b> I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or <b>(c)</b> the IRS has notified me that I am no longer subject to backup withholding, <b>and</b><br>3. I am a U.S. person (including a U.S. resident alien)<br><br><b>Certification Instructions.</b> You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN (See the attached instructions.) |           |
|  | SIGNATURE OF U.S. PERSON<br>▶  | DATE<br>▶ |

|   |   |
|---|---|
| <b>PART 7<br/>TYPE OF BUSINESS ENTERPRISE</b> | CHECK IF APPLICABLE AND PROVIDE A COPY OF CERTIFICATION<br><input type="checkbox"/> Disabled Veteran Business Enterprise<br><input type="checkbox"/> Minority Business Enterprise<br><input type="checkbox"/> Woman Owned Business Enterprise |
|---|---|



## Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. Person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

**Note:** *If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to IRS Form W-9.*

**Foreign Person.** If you are a foreign person, use the appropriate Form W-8 (see **Pub. 515**, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement that specified the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a **nonresident alien or a foreign entity** not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must withhold and pay to the IRS 30% of such payments (29% **after** December 31, 2003; 28% **after** December 31, 2005). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will **not** be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester, or

2. You do not certify your TIN when required (see the Part 6 instructions given below for details), or
3. The IRS tells the requester that you furnished an incorrect TIN, or
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the Part 4 instructions and the separate **Instructions for the Requester of Form W-9**.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### PART 1—PAYEE DATA (NAME)

If you are an individual, you must generally enter the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle the name of the person or entity whose number you enter in Part 3 of the form.

**Sole proprietor.** Enter your **individual** name as shown on your social security card in the "Name" box of Part 1. You may enter your business, trade, or "doing business as (DBA)" name in the "Business Name" box. **You may not enter only the business name.**

**Limited liability company (LLC).** If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701.3, **enter the owner's name in the "Name" box.** Enter the LLC's name in the "Business Name" box.

**Other entities.** Enter your business name as shown on required Federal tax documents in the "Name" box. This name should match the name shown on the charter or other legal documents creating the entity. You may enter any business, trade, or DBA name in the "Business name" box.

**PART 2—PAYEE ENTITY TYPE.** Please check appropriate box.

**Note:** *You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).*

### PART 3—PAYEE'S TAXPAYER IDENTIFICATION NUMBER (TIN)

**Enter your TIN in the appropriate box.** If you are a **resident alien** and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see **How to get a TIN** below.

If you are a **sole proprietor**, the District and **the IRS prefer that you enter your social security number. The State of California Employment Development Department requires your SSN on the DE542 report.**

If you are a single-owner LLC that is disregarded as an entity separate from its owner (see **Limited liability company (LLC)** in Part 1), **enter your SSN**. If the LLC is a corporation, partnership, etc., enter the entity's EIN.

**Note:** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get **Form SS-5**, Application for a Social Security Card, from your local Social Security Administration office or get this form on-line at [www.ssa.gov/online/sst.html](http://www.ssa.gov/online/sst.html). You may also get this form by calling 1-800-772-1213. Use **Form W-7**, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN or **Form SS-4**, Application for Employer Identification Number, to apply for an EIN. You can get Forms W-7 and SS-4 from the IRS by calling 1-800-TAX-FORM (1-800-829-3676) or from the IRS's internet Web Site at [www.irs.gov](http://www.irs.gov).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note:** Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

#### PART 4—EXEMPT FROM BACKUP WITHHOLDING

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in Part 4.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note:** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

**Exempt payees.** Backup withholding is **not required** on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2);
2. The United States or any of its agencies or instrumentalities;
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities;
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities; or
5. An international organization or any of its agencies or instrumentalities;
6. A corporation;
7. A foreign central bank of issue;
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States.
9. A futures commission merchant registered with the commodity Futures Trading Commission;
10. A real estate investment trust;
11. An entity registered at all times during the tax year under the Investment Company Act of 1940;
12. A common trust fund operated by a bank under section 584(a);
13. A financial institution;
14. A middleman known in the investment community as a nominee or custodian; or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

| If the payment is for...   | THEN the payment is exempt for...   |
|--|---|
| Interest and dividend payments   | All exempt recipients except for <b>9</b>   |
| Broker transactions  | Exempt recipients <b>1</b> through <b>13</b> . Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker |
| Barter exchange transactions and patronage dividends                                   | Exempt recipients <b>1</b> through <b>5</b>   |
| Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup> | Generally, exempt recipients <b>1</b> through <b>7</b> <sup>2</sup>   |

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are **not exempt** from backup withholding: medical and health care payments, attorneys' fees; and payments for services paid by a Federal executive agency.

#### PART 5—RESIDENCY STATUS

Each corporation, individual, sole proprietor, partnership, estate or trust doing business with the MiraCosta Community College District must indicate their residency status along with their taxpayer identification number.

A **corporation** will be considered a "resident" if it has a permanent place of business in California. The corporation has a permanent place of business in California if it is organized and existing under the laws of this state or, if a foreign corporation, has qualified to transact intrastate business. A corporation that has not qualified to transact intrastate business (e.g., a corporation engaged exclusively in interstate commerce) will be considered as having a permanent place of business in this state only if it maintains a permanent office in this state that is permanently staffed by its employees.

For **individuals/sole proprietors**, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose, which will extend over a long or indefinite period, will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.

For withholding purposes, a **partnership** is considered a resident partnership if it has a permanent place of business in California. An estate is considered a California estate if the decedent was a California resident at the time of death and a trust is considered a California trust if at least one trustee is a California resident.

More information on residency status can be obtained by calling the Franchise Tax Board at the numbers listed below:

From within the United States, call ..... 1-800-338-0505

From outside the United States, call ..... 1-916-845-6600

For hearing impaired with TDD, call ..... 1-800-822-6268

#### Are You Subject To Nonresident Withholding?

Payments made to nonresident payees, including corporations, individuals, partnerships, estates and trusts, are subject to withholding. Nonresident payees performing services in California or receiving rent, lease or royalty payments from property (real or personal) located in California will have 7% of their total payments

withheld for state income taxes. However, no withholding is required if total payments to the payee are \$1500 or less for the calendar year.

A nonresident payee may request that income taxes be withheld at a lower rate or waived by sending a completed form FTB 588 to the address below. A waiver will generally be granted when a payee has a history of filing California returns and making timely estimated payments. If payee activity is carried on outside of California or partially outside of California, a waiver or reduced withholding rate may be granted. For more information, contact:

Franchise Tax Board  
 Nonresident Withholding Section  
 Attention: State Agency Withholding Coordinator  
 PO Box 651 Sacramento, CA 95812-0651  
 Telephone: (916) 845-4900  
 FAX: (916) 845-4831

**If the Franchise Tax Board has authorized a reduced rate of withholding or waiver, attach a copy to this form.**

**PART 6—CERTIFICATION**

To establish to the withholding agent that you are a U.S. person, or resident alien, sign the PAYEE DATA RECORD Form. The withholding agent may request you to sign even if items 1, 3, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in PART 2 should sign (when required). Exempt recipients, see **Exempt from backup withholding** on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

1. **Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.
2. **Interest, dividend and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.
3. **Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.
4. **Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payment to corporations).
5. **Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified state tuition program**

**payments (under section 529), IRA or Archer MSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

**PART 7—TYPE OF BUSINESS ENTERPRISE**

Please check every box that applies and attach appropriate certification.

| For this type of account:   | Give name and SSN of:   |
|---|---|
| 1. Individual   | The individual  |
| 2. Two or more individuals (joint account)  | The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup> |
| 3. Custodian account of a minor (Uniform Gift to Minors Act)  | The minor <sup>2</sup>  |
| 4. a. The usual revocable savings trust (grantor is also trustee)   | The grantor-trustee <sup>1</sup>  |
| b. So-Called trust account that is not a legal or valid trust under state law   | The actual owner <sup>1</sup>   |
| 5. Sole proprietorship or single-owner LLC  | The owner—See Footnote 3  |
| For this type of account:   | Give name and EIN of:   |
| 6. Sole proprietorship or single-owner LLC  | The owner—See 5 above and Footnote 3.   |
| 7. A valid trust, estate, or pension trust  | Legal entity <sup>4</sup>   |
| 8. Corporate or LLC electing corporate status on Form 8832  | The corporation   |
| 9. Association, club, religious, charitable, educational, or other tax-exempt organization  | The organization  |
| 10. Partnership or multi-member LLC   | The partnership   |
| 11. A broker or registered nominee  | The broker or nominee   |
| 12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments | The public entity   |

**What Name/Number to Give the Requester**

<sup>1</sup> List first and circle the name of the persons whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> **You must show your individual name**, but you may also enter your business or "DBA" name. **The District and the IRS prefer that you provide your SSN. The District needs your SSN for State of California EDD DE542 reporting purposes. You may provide both you SSN and your EIN. The SSN will only be used for State of California EDD DE542 reporting; your EIN will be used for IRS 1009MISC reporting**

<sup>4</sup> List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

**Note:** *If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed*

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**Privacy Act Notice**

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA or Archer MSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, or to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 30% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

**\* NONCOLLUSION DECLARATION**  
**(Prime Respondent)**

The undersigned declares:

I am the \_\_\_\_\_ [title] of \_\_\_\_\_ [name of company],  
the party \_\_\_\_\_  
making the foregoing Proposal.

The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Proposal is genuine and not collusive or sham. The Respondent has not directly or indirectly induced or solicited any other Respondent to put in a false or sham Proposal. The Respondent has not directly or indirectly colluded, conspired, connived, or agreed with any Respondent or anyone else to put in a sham Proposal, or to refrain from bidding. The Respondent has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Proposal price of the Respondent or any other Respondent, or to fix any overhead, profit, or cost element of the Proposal price, or of that of any other Respondent. All statements contained in the Proposal are true. The Respondent has not, directly or indirectly, submitted his or her Proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, Proposal depository, or to any member or agent thereof, to effectuate a collusive or sham Proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Respondent that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Respondent.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_ [date], at \_\_\_\_\_ [city], California.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

**PART 2**  
**PROPOSAL FORM**

TO: Palo Verde Community College District, acting by and through its Governing Board, herein called "DISTRICT".

1. Pursuant to and in compliance with your Request for Proposals and other documents relating thereto, the undersigned Respondent, having familiarized himself with the terms of the contract, the local conditions affecting the performance of the contract and the cost of the work at the place where the work is to be done, hereby proposes and agrees to perform within the time stipulated, the contract, including all of its component parts, and everything required to be performed, including its acceptance by the DISTRICT, and to provide and furnish any and all labor, materials, tools, expendable equipment, and utility and transportation services necessary to perform the contract and complete all of the work in a workmanlike manner required in connection with the LED Lighting project for the Palo Verde College in the DISTRICT described above, all in strict conformance with the drawings and other contract documents on file at the Purchasing Office of said DISTRICT for amounts set forth herein.
  
2. ADDENDA: The undersigned has thoroughly examined any and all Addenda (if any) issued during the Proposal period and is thoroughly familiar with all contents thereof and acknowledges receipt of the following Addenda: (Respondent to list all addenda).

|              |               |
|--------------|---------------|
| ADDENDUM NO. | DATE RECEIVED |
| ADDENDUM NO. | DATE RECEIVED |
| ADDENDUM NO. | DATE RECEIVED |
| ADDENDUM NO. | DATE RECEIVED |

3. \*PROPOSED PRICE

TOTAL CASH PURCHASE PRICE IN WORDS & NUMBERS:

\_\_\_\_\_ DOLLARS

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

4. TIME FOR COMPLETION: The DISTRICT may give a notice to proceed within ninety (90) days of the award of the Proposal by the DISTRICT. Once the CONTRACTOR has received the notice to proceed, the **CONTRACTOR shall complete the work within (116) consecutive calendar days**. Time is of the essence. The undersigned agrees that failure to complete the work within the time set forth herein will result in the imposition of liquidated damages for each consecutive calendar day of delay per building in the amount of **Two Hundred and Fifty Dollars (\$250)**. (Government Code Section 53069.85)
5. In the event that the DISTRICT desires to postpone giving the notice to proceed beyond this ninety (90) day period, it is expressly understood that with reasonable notice to the CONTRACTOR, giving the notice to proceed may be postponed by the DISTRICT. It is further expressly understood by the CONTRACTOR, that the CONTRACTOR shall not be entitled to any claim of additional compensation as a result of the postponement of giving the notice to proceed.

If the CONTRACTOR believes that a postponement will cause a hardship to it, the CONTRACTOR may terminate the contract with written notice to the DISTRICT within ten (10) days after receipt by the CONTRACTOR of the DISTRICT's notice of postponement. It is further understood by the CONTRACTOR that in the event that the CONTRACTOR terminates the Contract as a result of postponement by the DISTRICT, the DISTRICT shall only be obligated to pay the CONTRACTOR for work performed by the CONTRACTOR at the time of notification of postponement. Should the CONTRACTOR terminate the contract as a result of a notice of postponement, the DISTRICT shall have the authority to award the contract to the next lowest responsible Respondent.

6. It is understood that the DISTRICT reserves the right to reject any or all Proposals and/or waive any irregularities or informalities in this Proposal or in the Proposal process. The CONTRACTOR understands that it may not withdraw this Proposal for a period of ninety (90) days after the date set for the opening of Proposals.
7. The required Non-collusion Declaration is attached hereto.
8. It is understood and agreed that if written notice of the acceptance of this Proposal is mailed, telegraphed, or delivered to the undersigned after the opening of the Proposal, and within the time this Proposal is required to remain open, or at any time thereafter before this Proposal is withdrawn, the undersigned will execute and deliver to the DISTRICT a contract in the form attached hereto in accordance with the Proposal as accepted, and that he will also furnish and deliver to the DISTRICT the Performance Bond and Payment Bond, all within five (5) calendar days after receipt of notification of award, and that the work under the contract shall be commenced by the undersigned Respondent, if awarded the contract, by the start date provided in the DISTRICT's Notice to Proceed, and shall be completed by the CONTRACTOR in the time specified in the contract documents.

9. Notice of Intent to Award Contract or other correspondence should be addressed to the undersigned at the address stated below.

10. The names of all persons interested in the foregoing proposal as principals are as follows:

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(IMPORTANT NOTICE: If Respondent or other interested person is a corporation, state the legal name of such corporation, as well as the names of the president, secretary, treasurer, and manager thereof; if a co-partnership, state the true names of the firm, as well as the names of all individual co-partners comprising the firm; if Respondent or other interested person is an individual, state the first and last names in full.)

11. The undersigned Respondent shall be licensed and shall provide the following information:

Respondent's California Contractor's

License Number: \_\_\_\_\_

License expiration date: \_\_\_\_\_

Name on License: \_\_\_\_\_

Type of License: \_\_\_\_\_

If the Respondent is a joint venture, each member of the joint venture must include the above information.

12. Time is of the essence regarding this contract, therefore, in the event the Respondent to whom the Notice of Intent to Award Contract is given fails or refuses to post the required bonds and return executed copies of the Agreement form within five (5) calendar days from the date of receiving the Notice of Intent to Award Contract, the DISTRICT may declare the Respondent's Proposal deposit or bond forfeited as damages.

13. Pursuant to Government Code Section 4552, in submitting a Proposal to the DISTRICT, the Respondent offers and agrees that if the Proposal is accepted, it will assign to the DISTRICT all rights, title, and interest in, and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Business and Professions Code Sections 16700, et seq.), arising from the purchase of goods, materials, or services by the Respondent for sale to the DISTRICT pursuant to the Proposal. Such assignment shall be made and become effective at the time the DISTRICT tenders final payment to the Respondent.

14. The Respondent declares that he/she has carefully examined the location of the proposed work, that he/she has examined all component parts of the RFP and all information provided by DISTRICT related thereto, including the proposed Design-Build Agreement,



and read the accompanying instructions to Respondents, and hereby proposes and agrees, if this Proposal is accepted, to furnish all services, equipment, and materials and do all work required to complete the said Project in accordance with the RFP, in the time and manner therein prescribed for the unit cost and lump sum amounts set forth in this Proposal Form.

15. The Respondent is familiar with Government Code Sections 12650, et seq., and Penal Code Section 72 and understands that false claims can lead to imprisonment.

I, the below-indicated Respondent, declare under penalty of perjury that the information provided and representations made in this Proposal are true and correct.

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Proper Name of Respondent

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Address

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature of Respondent

**NOTE:** *If Respondent is a corporation, the legal name of the corporation shall be set forth above together with the signature of authorized officers or agents and the document shall bear the corporate seal; if Respondent is a partnership, the true name of the firm shall be set forth above, together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if Respondent is an individual, his signature shall be placed above.*

**All signatures must be made in permanent blue ink.**

**\* CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION**

Labor Code Section 3700 in relevant part provides:

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

1. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
2. By securing from the Director of Industrial Relations a certificate of consent to self-insure, 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 employees.

**I am aware of the provisions of Labor Code Section 3700 which 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 provision before commencing the performance of the work of this contract.**

\_\_\_\_\_  
Proper Name of Respondent

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

\_\_\_\_\_

In accordance with Article 5 (commencing at section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and submitted with the Contractor's Proposal.

**\* ACKNOWLEDGMENT OF PRACTICES REGARDING INDEMNITY**

TO: Palo Verde Community College District

RE: Project Number \_\_\_\_\_

Construction Contract for \_\_\_\_\_

Please be advised that with respect to the above-referenced PROJECT the undersigned CONTRACTOR on behalf of itself and all subcontractors hereby waives the benefits and protection of Labor Code Section 3864, which provides:

“If an action as provided in this chapter is prosecuted by the employee, the employer, or both jointly against the third person results in judgment against such third person, or settlement by such third person, the employer shall have no liability to reimburse or hold such third person harmless on such judgment or settlement in the absence of a written agreement to do so executed prior to the injury.”

This Agreement has been signed by an authorized representative of the contracting party and shall be binding upon its successors and assignees. The undersigned further agrees to promptly notify the DISTRICT of any changes of ownership of the contracting party or any subcontractor while this Agreement is in force.

\_\_\_\_\_  
Contracting Party

\_\_\_\_\_  
Name of Agent/Title

**PAYMENT BOND**  
**(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Palo Verde Community College District (sometimes referred to hereinafter as “Obligee”) has awarded to \_\_\_\_\_ (hereinafter designated as the “Principal” or “Contractor”), an agreement for the work described as follows: \_\_\_\_\_ (hereinafter referred to as the “Public Work”); and

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

NOW, THEREFORE, We, \_\_\_\_\_, the undersigned Contractor, as Principal; and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to

transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Palo Verde Community College District and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code Section 9100, or any person, company, or corporation entitled to make a claim on this bond, in the sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code Section 9100; or fail to pay for any materials, provisions, or other supplies, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code Section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys’ fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Section 9550 et seq.

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

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

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PRINCIPAL/CONTRACTOR:

\_\_\_\_\_

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

SURETY:

\_\_\_\_\_

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

Attorney-in-Fact

IMPORTANT:            THIS IS A REQUIRED FORM.

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

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative  
for service for service of process in California)

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

STATE OF CALIFORNIA            )

) ss.

COUNTY OF                            )

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

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

Commission expires: \_\_\_\_\_

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

**CONTRACT PERFORMANCE BOND**  
**(CALIFORNIA PUBLIC WORK)**

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Palo Verde Community College District (sometimes referred to hereinafter as "Obligee") has awarded to \_\_\_\_\_ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: \_\_\_\_\_ (hereinafter referred to as the "Public Work"); and

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

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

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to

transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Palo Verde Community College District in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

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

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or

modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Obligee that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligee as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at Obligee's sole discretion and election, Surety shall obtain a Proposal or Proposals for completing the Contract in accordance with its terms and conditions, and upon determination by Obligee of the lowest responsible Respondent, arrange for a contract between such Respondent and the Obligee and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligee under the Contract and any modifications thereto, less the amount previously paid by the Obligee to the Principal, less any withholdings by the Obligee allowed under the Contract.

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

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

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



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

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

IN WITNESS WHEREOF, we have hereunto set our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL/CONTRACTOR:

\_\_\_\_\_

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

SURETY:

\_\_\_\_\_

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

Attorney-in-Fact

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

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

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

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

Any claims under this bond may be addressed to:



**GUARANTEE**

Guarantee for \_\_\_\_\_ . We hereby guarantee that the \_\_\_\_\_, which we have installed in \_\_\_\_\_ has been done in accordance with the Contract Documents, including without limitation, the drawings and specifications, and that the work as installed will fulfill the requirements included in the Proposal documents. The undersigned and its surety agree to repair or replace any or all such work, together with any other adjacent work, which may be displaced in connection with such replacement, that may prove to be defective in workmanship or material within a period of ( ) years from the recordation date of the Notice of Completion of the above-mentioned structure by the DISTRICT, ordinary wear and tear and unusual abuse or neglect excepted.

In the event the undersigned or its surety fail to comply with the above-mentioned conditions within a reasonable period of time, as determined by the DISTRICT, but not later than ten (10) days after being notified in writing by the DISTRICT, the undersigned and its surety authorize the DISTRICT to proceed to have said defects repaired and made good at the expense of the undersigned and its surety, who will pay the costs and charges therefor upon demand. The undersigned and its surety shall be jointly and severally liable for any costs arising from the DISTRICT's enforcement of this Guarantee.

Countersigned

\_\_\_\_\_  
(Proper Name)

\_\_\_\_\_  
(Proper Name)

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

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

\_\_\_\_\_  
(Signature of Subcontract or Contractor)

\_\_\_\_\_  
(Signature of General Contractor if for Subcontractor)

Representatives to be contacted for service:

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

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between the Palo Verde Community College District, One College Drive, Blythe, CA 92224, hereinafter called "OWNER", and \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter called "CONTRACTOR", and \_\_\_\_\_ whose address is \_\_\_\_\_, hereinafter called "Escrow Agent".

For the consideration hereinafter set forth, the OWNER, CONTRACTOR and Escrow Agent agree as follows:

(1) Pursuant to section 22300 of the Public Contract Code of the State of California, CONTRACTOR has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by OWNER pursuant to the Construction Contract entered into between the OWNER and CONTRACTOR for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract").

Alternatively, on written request of the contractor, the OWNER shall make payments of the retention earnings directly to the escrow agent. When CONTRACTOR deposits the securities as a substitute for Contract earnings, the Escrow Agent shall notify the OWNER within ten (10) days of deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the OWNER and CONTRACTOR. Securities shall be held in the name of the OWNER, and shall designate the CONTRACTOR as beneficial owner.

(2) The OWNER shall make progress payments to the CONTRACTOR for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the OWNER makes payments of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the OWNER pays the Escrow Agent directly.

(4) CONTRACTOR shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the OWNER. These expenses and payment terms shall be determined by the OWNER, CONTRACTOR, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of CONTRACTOR and shall

be subject to withdrawal by CONTRACTOR at any time and from time to time without notice to the OWNER.

(6) CONTRACTOR shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the OWNER to the Escrow Agent that OWNER consents to the withdrawal of the amount sought to be withdrawn by CONTRACTOR.

(7) The OWNER shall have a right to draw upon the securities in the event of default by the CONTRACTOR. Upon seven (7) days' written notice to the Escrow Agent from the OWNER of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the OWNER.

(8) Upon receipt of written notification from the OWNER certifying that the Contract is final and complete, and that the CONTRACTOR has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to CONTRACTOR all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payment of fees and charges.

(9) Escrow Agent shall rely on the written notifications from the OWNER and the CONTRACTOR pursuant to Sections (5) to (8), inclusive, of this agreement and the OWNER and CONTRACTOR shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the OWNER and on behalf of CONTRACTOR in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of Owner:

---

Title

---

Name

---

Signature

---

Address

On behalf of Contractor:

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Address

On behalf of Agent:

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Address

At the time the Escrow Account is opened, the OWNER and CONTRACTOR shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date set forth above.

OWNER

CONTRACTOR

\_\_\_\_\_

Title

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Signature

**INSURANCE DOCUMENTS & ENDORSEMENTS**

The following insurance endorsements and documents must be provided to the Palo Verde Community College District within five (5) calendar days after receipt of notification of award. If the apparent low Respondent fails to provide the documents required below, the District may award the contract to the next lowest responsible and responsive Respondent or release all Respondents, and the Respondent’s Proposal security will be forfeited. All insurance provided by the Respondent shall fully comply with the requirements set forth in Article 11 of the General Conditions.

1. General Liability Insurance: Certificate of Insurance with all specific insurance coverages set forth in Article 11 of the General Conditions, proper Project description, designation of the District as the Certificate Holder, a statement that the insurance provided is primary to any insurance obtained by the District and minimum of 30 days’ cancellation notice. Respondent shall also provide required additional insured endorsement(s) designating all parties required in Article 11 of the General Conditions. The additional insured endorsement shall be an ISO CG 20 10 (11/85), or an ISO CG 20 10 (10/93 or 07/04) and ISO CG 20 37 (10/93 or 07/04) or their equivalent as determined by the District in its sole discretion.

Incidents and claims are to be reported to the insurer at:

Attn: \_\_\_\_\_  
(Title) (Department)

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

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

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

(\_\_\_\_\_) \_\_\_\_\_  
(Telephone Number)

2. Workers’ Compensation/ Employer’s Liability Insurance: Certificate of Workers’ Compensation Insurance meeting the coverages and requirements set forth in Article 11 of the General Conditions, minimum of 30 days’ cancellation notice, proper Project description, waiver of subrogation and any applicable endorsements.



3. Automobile Liability Insurance: Certificate of Automobile Insurance meeting the coverages and requirements set forth in Article 11 of the General Conditions, minimum 30 days' cancellation notice, any applicable endorsements and a statement that the insurance provided is primary to any insurance obtained by the District.

Incidents and claims are to be reported to the insurer at:

Attn: \_\_\_\_\_  
(Title) (Department)  
\_\_\_\_\_  
(Company)  
\_\_\_\_\_  
(Street Address)  
\_\_\_\_\_  
(City) (State) (Zip Code)  
(\_\_\_\_\_) \_\_\_\_\_  
(Telephone Number)

DATE: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

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

## **CONTRACTOR'S CERTIFICATE REGARDING DRUG-FREE WORKPLACE**

This Drug-Free Workplace Certification form is required from all successful Respondents pursuant to the requirements mandated by Government Code Sections 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by performing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the CONTRACTOR or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- a) Publishing a statement, notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace, and specifying actions which will be taken against employees for violations of the prohibition;
- b) Establishing a drug-free awareness program to inform employees about all of the following:
  - 1) The dangers of drug abuse in the workplace;
  - 2) The person's or organization's policy of maintaining a drug-free workplace;
  - 3) The availability of drug counseling, rehabilitation and employee-assistance programs; and
  - 4) The penalties that may be imposed upon employees for drug abuse violations;
- c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code Section 8355 listed above and will (a) publish a statement notifying employees concerning the prohibition of controlled substance at the workplace, (b) establish a drug-free awareness program, and (c) require each employee engaged in the performance of the contract be given a

copy of the statement required by section 8355(a) and require such employee agree to abide by the terms of that statement.

I also understand that if the Palo Verde Community College District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Sections 8350 et seq.

I acknowledge that I am aware of the provisions of Government Code Sections 8350 et seq. and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

DATE: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

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

**CONTRACTOR'S CERTIFICATE REGARDING ALCOHOLIC BEVERAGE  
CAMPUS POLICY**

The CONTRACTOR agrees that it will abide by and implement the DISTRICT's Alcoholic Beverage Campus Policy, which prohibits the use of alcoholic beverages and tobacco products, at any time, on DISTRICT-owned or leased buildings, on DISTRICT property and in DISTRICT vehicles. The CONTRACTOR shall procure signs stating "ALCOHOLIC BEVERAGE USE IS PROHIBITED" and shall ensure that these signs are prominently displayed in all entrances to DISTRICT campus property at all times.

DATE: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

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

**STATEMENT OF ANTICIPATED DISABLED  
VETERAN BUSINESS ENTERPRISE PARTICIPATION**

PALO VERDE COMMUNITY COLLEGE DISTRICT

Project: \_\_\_\_\_

- Our firm anticipates using Disabled Veteran Business Enterprise (DVBE) participation on this project to the maximum degree possible and will, following execution of an agreement, make a Good Faith Effort to invite and encourage DVBE participation.

At the conclusion of the project, we will report to the District the total dollar amount of DVBE participation (service/materials) used under our contract in compliance with the District's Policy.

OR

- Our firm anticipates using Disabled Veteran Business Enterprise (DVBE-supplied services/materials amounting to \$\_\_\_\_\_ or \_\_\_\_\_ % on this project.

Attached is the DVBE Certification Letter(s) for the DVBE firms/individuals we anticipate using.

At the conclusion of the project, we will report to the District the total dollar amount of DVBE participation (service/materials) used under our contract in compliance with the District's Policy.

Company: \_\_\_\_\_

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

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

Signature: \_\_\_\_\_

**CERTIFICATION – PARTICIPATION OF  
DISABLED VETERAN BUSINESS ENTERPRISES**

The Palo Verde Community College District has a participation goal for Disabled Veteran Business Enterprises of at least three percent (3%) per year of the overall dollar amount of funds expended each year by the District for all contracts. At the time of execution of the contract, the Contractor will provide a statement to the District of anticipated participation of Disabled Veteran Business Enterprises in the contract. Prior to, and as a condition precedent for final payment under the contract, the Contractor will provide appropriate documentation to the District identifying the amount paid to Disabled Veteran Business Enterprises pursuant to the contract, so that the District can assess its success at meeting this goal.

The Contractor may provide the anticipated participation of Disabled Veteran Business Enterprises in terms of percentage of its total contract or the dollar amount anticipated to be paid to Disabled Veteran Business Enterprises or by providing the names of the Disabled Veteran Business Enterprises that will participate in the contract. If there is a discrepancy between the anticipated goals and the actual DVBE participation at completion of the contract or a failure to meet the anticipated goal or dollar amounts, the District will require the Contractor to provide, at the completion of the contract, a detailed statement of the reason(s) for the discrepancy or failure to meet the anticipated goals or dollar amounts.

I certify that I have read the above and will comply with the anticipated participation of Disabled Veteran Business Enterprises in this contract.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Fax

## **AGREEMENT FORM**

**THIS AGREEMENT**, entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ in the County Of Riverside, State of California, by and between Palo Verde Community College District, hereinafter called the “DISTRICT”, and \_\_\_\_\_, hereinafter called the “CONTRACTOR”.

**WITNESSETH** that the DISTRICT and the CONTRACTOR for the consideration stated herein agree as follows:

**ARTICLE I - SCOPE OF WORK:** The CONTRACTOR shall furnish all labor, materials, equipment, tools, and utility and transportation services, and perform and complete all work required in connection with LED Lighting Conversion at Santa Ana College in strict accordance with the contract documents enumerated in Article 7 below. The CONTRACTOR shall be liable to the DISTRICT for any damages arising as a result of a failure to comply with that obligation, and the CONTRACTOR shall not be excused with respect to any failure to so comply by an act or omission of the Architect, Engineer, Inspector, Division of the State Architect (DSA), or representative of any of them, unless such act or omission actually prevents the CONTRACTOR from fully complying with the contract documents and the CONTRACTOR protests, in accordance with the contract documents, that the act or omission is preventing the CONTRACTOR from fully complying with the contract documents. Such protest shall not be effective unless reduced to writing and filed with the DISTRICT office within seven (7) days of the date of occurrence of such act or omission preventing the CONTRACTOR from fully complying with the Contract Documents.

**ARTICLE 2 - TIME OF COMPLETION:** The DISTRICT may give notice to proceed within ninety (90) days of the award of the Proposal by the DISTRICT. Once the CONTRACTOR has received a notice to proceed, **the CONTRACTOR shall complete the work within sixty (60) calendar days from receipt of the notice to proceed.** It is expressly understood that time is of the essence.

In the event that the DISTRICT desires to postpone giving the notice to proceed beyond this ninety (60) day period, it is expressly understood that with reasonable notice to the CONTRACTOR, giving the notice to proceed may be postponed by the DISTRICT. It is further expressly understood by the CONTRACTOR, that the CONTRACTOR shall not be entitled to any claim of additional compensation as a result of the DISTRICT’s postponement of giving the notice to proceed.

If the CONTRACTOR believes that a postponement will cause hardship to it, the CONTRACTOR may terminate the contract with written notice to the DISTRICT within ten (10) days after receipt by the CONTRACTOR of the DISTRICT’s notice of postponement. It is further understood by the CONTRACTOR that in the event that the CONTRACTOR terminates the contract as a result of postponement by the DISTRICT, the DISTRICT shall only be

obligated to pay the CONTRACTOR for the work performed by the CONTRACTOR at the time of notification of postponement. Should the CONTRACTOR terminate the contract as a result of a notice of postponement, the DISTRICT shall have the authority to award the contract to the

next lowest responsible Respondent.

**ARTICLE 3 - LIQUIDATED DAMAGES:** It being impracticable and infeasible to determine the amount of actual damage, it is agreed that the CONTRACTOR will pay the DISTRICT the sum of **two hundred and fifty dollars (\$250)** per calendar day for each and every day of delay beyond the time set forth in Article 2 of this Agreement for completing said work as liquidated damages and not as a penalty or forfeiture. In the event the same is not paid, the CONTRACTOR further agrees that the DISTRICT may deduct such amount thereof from any money due or that may become due the CONTRACTOR under the contract. This Article shall not be construed as preventing the DISTRICT from the recovery of damages under provisions of the contract documents.

**ARTICLE 4 - CONTRACT PRICE:** The DISTRICT shall pay to the CONTRACTOR as full consideration for the faithful performance of the contract, subject to any additions or deductions as provided in the contract documents, the sum of \_\_\_\_\_ **DOLLARS (\$ \_\_\_\_\_)**, said sum being the total amount stipulated in the Proposal. Payment shall be made as set forth in the General Conditions.

Should any Change Order result in an increase in the contract price, the cost of such Change Order shall be agreed to in advance by the CONTRACTOR and the DISTRICT, subject to the monetary limitations set forth in Public Contract Code Section 20659. In the event that the CONTRACTOR proceeds with a change in work without an agreement between the DISTRICT and CONTRACTOR regarding the cost of a Change Order, the CONTRACTOR waives any claim of additional compensation for such additional work.

**ARTICLE 5 - HOLD HARMLESS/ INDEMNITY:** CONTRACTOR shall defend, indemnify and hold harmless DISTRICT, Inspector, the State of California and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of Work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, CONTRACTOR shall protect and defend, at its own expense, DISTRICT, Inspector, the State of California and their officers, employees, agents and independent contractors from any legal action including attorneys' fees or other proceeding based upon such act, omission, breach or as otherwise required by this Article.

Furthermore, CONTRACTOR agrees to and does hereby defend, indemnify and hold harmless DISTRICT, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors from every claim or demand made, and every liability, loss, damage, expense or attorney's fees of any nature whatsoever, which may be incurred by reason of:



(a) Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in this Agreement or the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the DISTRICT.

(b) Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of CONTRACTOR or any person, firm or corporation employed by CONTRACTOR, either directly or by independent contract, including all damages or injury to or death of persons, loss (including theft) or loss of use of any property, sustained by any person, firm or corporation, including the DISTRICT, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or damage occurs either on or off DISTRICT property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the DISTRICT.

(c) Any dispute between CONTRACTOR and CONTRACTOR's subcontractors/supplies/sureties, including, but not limited to, any failure or alleged failure of the Contractor (or any person hired or employed directly or indirectly by the Contractor) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

CONTRACTOR, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the DISTRICT, its officers, agents or employees, on account of or founded upon any cause, damage, or injury identified herein Article 5 and shall pay or satisfy any judgment that may be rendered against the DISTRICT, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

**ARTICLE 6 - PROVISIONS REQUIRED BY LAW:** Each and every provision of law and clause required to be inserted in this contract shall be deemed to be inserted herein, and this Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party the contract shall forthwith be physically amended to make such insertion or correction.

**ARTICLE 7 - COMPONENT PARTS OF THE CONTRACT:** The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

Request for Proposals and Attachments Thereto  
Non-Collusion Declaration  
Proposal Guarantee Form  
Proposal Form  
Contractor's Certificate Regarding Worker's Compensation  
Acknowledgment of Practices Regarding Indemnity  
Agreement Form  
Payment Bond  
Performance Bond  
Guarantee  
Escrow Agreement for Security Deposit In Lieu of Retention  
Insurance Documents and Endorsements  
Contractor's Certificate Regarding Drug-Free Workplace  
Contractor's Certificate Regarding Alcohol and Tobacco  
General Conditions  
All Addenda as Issued  
Attachments

All of the above named Contract Documents are intended to be complementary. Work required by one of the above named Contract Documents and not by others shall be done as if required by all.

**ARTICLE 8 - PREVAILING WAGES:** Wage rates for this Project shall be in accordance with the general prevailing rate of holiday and overtime work in the locality in which the work is to be performed for each craft, classification, or type of work needed to execute the contract as determined by the Director of the Department of Industrial Relations. Copies of schedules of rates so determined by the Director of the Department of Industrial Relations are on file at the administrative office of the DISTRICT.

**8.1. Wages.**

**8.1.1.** Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the governing body of District has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of workmen needed to execute the Agreement.

**8.1.2.** Per Diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code § 1773.1 apprenticeship or other training programs authorized by Labor

Code § 3093, and similar purposes when the term “per diem wages” is used herein.

- 8.1.3.** Each worker needed to execute the Work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements in accordance with Labor Code § 1773.1.
- 8.1.4.** Holiday and overtime work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified.
- 8.1.5.** Each worker of CONTRACTOR and any of its subcontractors engaged in work on the System shall be paid not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between CONTRACTOR or any subcontractors and such workers.
- 8.1.6.** CONTRACTOR shall, as a penalty to the District, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code § 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rate as determined by the director for such work or craft in which such worker is employed for any public work done under the contract by him or by any subcontractor under him. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by CONTRACTOR.
- 8.1.7.** Copies of the determined prevailing wage rates are on file and available upon request at the District’s office. District shall provide CONTRACTOR with current prevailing wage rates, in writing. CONTRACTOR shall post, at an appropriate conspicuous point on the Site, a schedule showing all determined general prevailing wage rates.
- 8.1.8.** Any worker employed to perform work on the System which is not covered by any classification available in the District office, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.

**8.2. Record Of Wages Paid: Inspection.** Pursuant to Labor Code § 1776, CONTRACTOR stipulates to the following:

- 8.2.1.** CONTRACTOR and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Project. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms. The payroll records may consist of payroll data that are maintained as computer records, if printouts contain the same information as the forms provided by the division and the printouts are verified as specified in subdivision (a) of Labor Code § 1776.
- 8.2.2.** The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of CONTRACTOR on the following basis:
- 8.2.2.1.**A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative.
- 8.2.2.2.**A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished to a representative of the District, and to the Division of Labor Standards Enforcement, and Division of Apprenticeship Standards of the Department of Industrial Relations.
- 8.2.2.3.**A certified copy of all payroll records enumerated in subdivision (a) shall be made available to the public for inspection or copies thereof. However, a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to the above, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by CONTRACTOR, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of CONTRACTOR.
- 8.2.2.4.**CONTRACTOR shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of the written request.
- 8.2.2.5.**Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement

shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of CONTRACTOR awarded the contract or performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

**8.2.2.6.** CONTRACTOR shall inform the District of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.

**8.2.2.7.** In the event of noncompliance with the requirements of this Section, CONTRACTOR shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects CONTRACTOR must comply with this Section. Should noncompliance still be evident after such 10-day period, CONTRACTOR shall pay a penalty of ONE HUNDRED (\$100.00) to the District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the progress payment then due.

**8.2.2.8.** The responsibility for compliance with this Section shall rest upon CONTRACTOR.

### **8.3. HOURS OF WORK:**

**8.3.1.** As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, CONTRACTOR stipulates that eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by CONTRACTOR or by the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week,

except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed by employees of CONTRACTORS in excess of eight (8) hours per day and forty (40) hours during any one week upon this public work shall be permitted compensation of all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

**8.3.2.** CONTRACTOR shall pay to the District a penalty of TWENTY-FIVE DOLLARS (\$25.00) for each worker employed in the execution of these Construction Provisions by CONTRACTOR or by any Subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the worker so employed by CONTRACTOR is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**8.3.3.** Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to District, unless otherwise agreed to by the parties.

**8.3.4.** Construction work under the Construction Provisions shall be accomplished on a schedule consistent with the normal and reasonable practices of CONTRACTOR and in compliance with applicable ordinances.

#### **8.4. Apprentices.**

**8.4.1.** All apprentices employed by CONTRACTOR to perform services under these Construction Provisions shall be paid the standard wage paid to apprentices under the regulation of the craft or trade at which that apprentice is employed, and shall be employed only at the work of the craft or trade in which that apprentice is registered. Only apprentices, as defined in Labor Code § 3077, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed under these Construction Provisions. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprenticeship agreements under which that apprentice is training.

**8.4.2.** When CONTRACTOR to whom the work under these Construction Provisions is awarded by the District or any Subcontractor under CONTRACTOR, in

performing any of the work under the Construction Provisions, employs workers in any apprenticeable craft or trade, CONTRACTOR and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the public work, for a certificate approving CONTRACTOR or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. CONTRACTOR or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the public work, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five (5) hours of labor performed by a journeyman, except as otherwise provided in Section 1777.5 of the Labor Code. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

**8.4.3.** “Apprenticeable craft or trade” as used in Labor Code § 1777.5 and this Article, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

**8.4.4.** CONTRACTOR, or any Subcontractor which, in performing any of the work under this contract, employs journeymen or apprentices in any apprenticeable craft or trade and which is not contributing to a fund or funds to administer and conduct the apprenticeship programming of any craft or trade in the area of the Site of the public work, to which fund or funds other CONTRACTORS in the area of the Site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which that CONTRACTOR employs journeymen or apprentices on the public work in the same amount or upon the same basis and in the same manner as other CONTRACTORS do, but where the trust fund administrators are unable to accept the funds, CONTRACTORS not signatory to the trust agreement shall pay like amount to the California Apprenticeship Council. CONTRACTOR or Subcontractor may add the amount of such contributions in computing their bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Labor Code § 227.

**8.4.5.** The responsibility of compliance with Labor Code § 1777.5 and this Article for all apprentice able occupations is with CONTRACTOR.

**8.4.6.** The interpretation and enforcement of Sections 1777.5 and 1777.7 of the Labor Code shall be in accordance with the rules and procedures of the California Apprenticeship Council.

**ARTICLE 9 - RECORD AUDIT:** In accordance with Government Code Section 8546.7, records of both the DISTRICT and the CONTRACTOR shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment.

**ARTICLE 10 - CONTRACTOR'S LICENSE:** The CONTRACTOR must possess throughout the Project a Class C-10 Contractor's License, issued by the State of California, which must be current and in good standing.

**IN WITNESS WHEREOF,** this Agreement has been duly executed by the above named parties, on the day and year first above written.

Palo Verde Community College District

CONTRACTOR:

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

\_\_\_\_\_  
Typed or Printed Name

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

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Printed Name



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Title (Authorized Officers or Agents)

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Signature

**(CORPORATE SEAL)**

## GENERAL CONDITIONS

### 1.1 **BASIC DEFINITIONS**

**1.1.1** Action of the Governing Board is a vote of a majority of the District's governing board.

**1.1.2** Approval means written authorization through action of the governing board unless specific delegation of approval authority is delegated to a District representative.

*(ALTERNATE CLAUSE – This clause may only be used if the District has already delegated the authority to the Assistant Superintendent of Business prior to the commencement of the Project.)*

**1.1.3** Approval means written authorization by ARCHITECT or DISTRICT.

**1.1.4** District means the representative, engineer, or other design professional engaged by the District to design and perform general observation of the work of construction and interpret the drawings and specifications for the Project.

**1.1.5** As shown, as indicated, as detailed refer to drawings accompanying this specification.

**1.1.6** Contract or Agreement When the terms are used in these General Conditions shall be references to the Contract Documents as defined herein.

**1.1.7** The Contract Documents The Contract Documents consist of the Agreement between District and Contractor (hereinafter the Agreement or Contract), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to Proposal, instructions to Respondents, notice to Respondents, and the requirements contained in the Proposal Documents, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is a written amendment to the Contract signed by parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Architect. The Contract Documents collectively form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or

agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the District and Contractor, between the District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor. The District shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the District's duties.

**1.1.8** Contractor, District are those mentioned as such in the Agreement. They are treated throughout the Contract Documents as if they are of singular number and neuter gender. Any reference to "Owner" shall mean "District."

**1.1.9** Days means calendar days.

**1.1.10** Inspector of Record is the individual retained by the District in accordance with titles 21 and 24 of the California Code of Regulations and who will be assigned to the Project.

**1.1.11** The Drawings are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the District.

**1.1.12** Emergency shall be defined as a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well as such occurrences as riot, accident, or sabotage.

**1.1.13** Locality in which the work is performed means the county in which the Project is located.

**1.1.14** The Project is the complete construction of the Work performed in accordance with the Contract Documents.

**1.1.15** The Project Manual The Project Manual is the volume assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Conditions of the Contract, and Specifications.

**1.1.16** Provide shall include "provide complete in place," that is "furnish and install."

**1.1.17** Safety Orders are those issued by any cognizant city, county, state or federal agency.

**1.1.18** Site refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.

**1.1.19 The Specifications** The Specifications are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

**1.1.20 Standards, Rules, and Regulations** referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified. Federal, state and local regulations are incorporated into the Contract Documents by reference.

**1.1.21 Subcontractor**, as used herein, includes those having direct or indirect contracts with Contractor and ones who furnished labor, material or services for a special design according to plans, drawings, and specifications of this Work, but does not include ones who merely furnish material not so worked.

**1.1.22 Surety** is the person, firm, or corporation that executes as surety the Contractor's Performance Bond and Payment Bond.

**1.1.23 Work of the Contractor or Subcontractor** shall include all labor, materials and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents. It shall include the initial obligation of any Contractor or Subcontractor who performs any portion of the Work, to visit the Site of the proposed Work (a continuing obligation after the commencement of the Work), to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried out under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated Proposal documents before preparing and submitting any Proposal.

**1.1.24 Workers** includes laborers, workers, and mechanics.

## **1.2 EXECUTION, CORRELATION AND INTENT**

### **1.2.1 Correlation and Intent**

**1.2.1.1 *Documents Complementary and Inclusive.*** The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. All Contract Documents form the Contractor's contract with the District. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both.

**1.2.1.2 *Coverage of the Drawings and Specifications.*** The Drawings and Specifications generally describe the Work to be performed by Contractor. Generally, the Specifications describe Work which cannot be readily indicated on the Drawings and indicate types, qualities, and methods of installation of the various materials and equipment required for the Work. It is not intended to mention every item of Work in the Specifications, which can be adequately

shown on the Drawings, or to show on the Drawings all items of Work described or required by the Specifications even if they are of such nature that they could have been shown. All materials or labor for Work, which is shown on either the Drawings or the Specifications (or is reasonably inferable therefrom as being necessary to complete the Work), shall be provided by the Contractor to provide a complete project. It is intended that the Work be of sound, quality construction, and the Contractor shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by them.

1.2.1.3 *Conflicts*. In the event there is a discrepancy between the various Contract Documents, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply.

1.2.1.4 *Conformance With Laws*. Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, even if through mistake or otherwise any such provision is not inserted, or is not correctly inserted.

Before commencing any portion of the Work, Contractor shall check and review the Drawings and Specifications for such portion for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public and municipal utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract Documents. Such checking shall include Title 21 and Title 24 of the California Code of Regulations, California Building Code, local utility, local water connection, local grading and all other applicable agencies. In the event Contractor observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with the Contract Documents, Contractor shall, within five (5) days, notify District in writing of same and shall ensure that any such violation or inconsistency shall be corrected in the manner provided hereunder prior to the construction of that portion of the Project.

The Contractor shall bear all expenses of correcting Work done contrary to said laws, ordinances, rules, and regulations if the Contractor performed same (1) without first consulting the Architect for further instructions regarding said Work or (2) disregarded the District's instructions regarding said work.

1.2.1.5 *Ambiguity and Inconsistency*. Before commencing any portion of the Work, Contractor shall carefully examine all Drawings and Specifications and other information given to Contractor as to materials and methods of construction and other Project requirements. Contractor shall, within five (5) days, notify District in writing of any perceived or alleged error, inconsistency, conflict, ambiguity, or lack of detail or explanation in the Drawings and Specifications in the manner provided herein. If the Contractor or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract Documents, which it knows

or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Price or the time for performance. If Contractor performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Contractor which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Contract Price or the time for performance.

## **1.2.2 Addenda and Deferred Approvals**

1.2.2.1 *Addenda* are the changes in specifications, drawings, contract documents, and plans which have been authorized in writing by the District, and which alter, explain, or clarify the contract documents. Addenda shall govern over all other Contract Documents. Subsequent addenda issued shall govern over prior addenda unless otherwise specified in the addenda.

1.2.2.2 *Deferred Approvals*. Contract Documents which require deferred approval items are meant to be for illustration purposes only. Contractor is responsible for all deferred approval requirements set forth in the Contract Documents. Contractor is responsible to comply with all laws, building codes, and regulations necessary to obtain all necessary approvals, including those required from the Division of the State Architect (“DSA”) and the State Fire Marshall. Contractor shall not be granted an extension of time for failure to obtain necessary approvals due to failure to comply with laws, building codes, and other regulations (including Title 24 of the California Code of Regulations). Contractor shall schedule all deferred approval items in its progress schedule pursuant to Article 3. If Contractor fails to include deferred-approval items in its schedule which results in a critical path delay, then Contractor shall be subject to the assessment of liquidated damages.

## **1.2.3 Specification Interpretation**

1.2.3.1 *Titles*. The Specifications are separated into titled sections for convenience only and not to dictate or determine the trade or craft involved.

1.2.3.2 *As Shown, Etc*. Where “as shown,” “as indicated,” “as detailed,” or words of similar import are used, reference is made to the Drawings accompanying the Specifications unless otherwise stated. Where “as directed,” “as required,” “as permitted,” “as authorized,” “as accepted,” “as selected,” or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by District is intended unless otherwise stated.

1.2.3.3 *General Conditions*. The General Conditions and supplementary general conditions are a part of each and every section of the Specifications.

1.2.3.4 *Abbreviations*. In the interest of brevity, the Specifications are written in an abbreviated form and may not include complete sentences. Omission of words or phrases such

as “Contractor shall,” “shall be,” etc., are intentional. Nevertheless, the requirements of the Specifications are mandatory. Omitted words or phrases shall be supplied by inference in the same manner as they are when a “note” occurs on the Drawings. In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.2.3.5 *Plural*. Words in the singular shall include the plural whenever applicable or the context so indicates.

1.2.3.6 *Metric*. The Specifications may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1” (25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the “International System of Units” (SI) and generally follow ASTM E 380, “Standard for Metric Practice.”

1.2.3.7 *Standard Specifications*. Any reference to standard specifications of any society, institute, association, or governmental authority is a reference to the organization’s standard specifications, which are in effect at the date of the Contractor’s proposal unless directed otherwise. If applicable specifications are revised prior to completion of any part of the Work, the Contractor may, if acceptable to District, perform such Work in accordance with the revised specifications. The standard specifications, except as modified in the Specifications for the Project, shall have full force and effect as though printed in the Specifications. District will furnish, upon request, information as to how copies of the standard specifications referred to may be obtained.

## **1.2.4 Rules of Document Interpretation**

1.2.4.1 In the event of conflict within the drawings, the following rules shall apply:

- (a) General Notes, when identified as such, shall be incorporated into other portions of Drawings.
- (b) Schedules, when identified as such, are complementary with other notes and other portions of Drawings including those identified as General Notes.
- (c) Larger scale drawings shall take precedence over smaller scale drawings.
- (d) At no time shall the Contractor base construction on scaled drawings.

1.2.4.2 Specifications shall govern as to materials, workmanship, and installation procedures.

1.2.4.3 If Contractor observes that drawings and specifications are in conflict, Contractor shall, within five (5) days, notify the Architect in writing for the purposes of obtaining an interpretation of the Contract Documents.

1.2.4.4 In the case of conflict or inconsistencies, the order of precedence shall be as follows:

- (a) General Conditions take precedence over Drawings and Specifications.
- (b) Special Conditions take precedence over General Conditions.
- (c) The Agreement shall take precedent over the Special Conditions.
- (d) In the case of disagreement or conflict between or within standards, specifications, and drawings, the more stringent, higher quality, and greater quantity of Work shall apply.

**1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

The Drawings, Specifications, and other contract documents for the Project are the property of the District and/or Architect. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by the District. All copies except the Contractor's record set, shall be returned or properly accounted for upon completion of the Work. The Drawings, Specifications, and other documents prepared by the Architect, and copies thereof furnished to the Contractor are not to be used by the Contractor or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work. The District and/or Architect hereby grants the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings, Specifications, and other documents prepared for the Project in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the District's property interest or other reserved right.

**ARTICLE 2**

**DISTRICT**

**2.1 INFORMATION AND SERVICES REQUIRED OF THE DISTRICT**

**2.1.1 Site Survey.**

The District will furnish, at its expense, a legal description of the Site and a land survey showing the boundaries of the Site. Contractor shall be responsible for all surveys regarding location of construction, grading and site work.



### 2.1.2 Soils.

When required by the scope of the Project, the District will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required and deemed necessary by the Architect or as required by local or state codes. Such services, with written reports and appropriate written professional recommendations, may include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

### 2.1.3 Contractor Reliance.

If a soils investigation report has been obtained from test holes at the Site, and such report is available for the Contractor's use in preparing its Proposal and Work under this Contract. The soils report is available at the District's office for review. Any information obtained from such report or any other information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only. If, during the course of Work under this Contract, Contractor encounters subsurface conditions which differ materially from those indicated in the soils investigation report, then Contractor shall notify the District within five (5) calendar days of discovery of the condition, and changes to the contract price may be made in accordance with Article 7 entitled "Changes in the Work." Contractor agrees that no claim against District will be made by Contractor for damages and hereby waives any rights to damages in the event the Contractor fails to notify District within the five-day period mentioned above.

**WARNING: DISTRICT DOES NOT WARRANT THE SOILS AT THE PROJECT SITE. SOILS INVESTIGATION REPORT IS PROVIDED FOR CONTRACTORS INFORMATION ONLY. CONTRACTOR HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE PROJECT SITE AND THE SOILS CONDITIONS OF THE SITE. DISTRICT DOES NOT WARRANT THE SOILS CONDITIONS OF THE SITE AND CONTRACTOR IS FULLY RESPONSIBLE TO ASCERTAIN SITE CONDITIONS FOR THE PURPOSES OF DETERMINING CONSTRUCTION MEANS AND METHODS PRIOR TO COMMENCING CONSTRUCTION. THE SOILS INVESTIGATION REPORT IS NOT A CONTRACT DOCUMENT.**

### 2.1.4 Utilities.

2.1.4.1 *Regional Notification Center.* Contractor, except in an emergency, shall contact the appropriate regional notification center at least two working days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the District, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and carried out by the Contractor unless such an inquiry identification number has been assigned to the Contractor or any subcontractor of the Contractor and the District has been given the identification number by

the Contractor. Any damages arising from failure to make appropriate regional notification shall be at the sole risk of Contractor. Any delays caused by failure to make appropriate regional notification shall be at the sole risk of Contractor and shall not be considered for extension of time pursuant to Paragraph 8.4.

#### *2.1.4.2 Utilities - Removal and Restoration*

The District has endeavored to determine the existence of utilities at the Site of the Work from the records of the District of known utilities in the vicinity of the Work. The positions of these utilities as derived from such records are shown in the Contract Documents.

No excavations were made to verify the locations shown for underground utilities. The service connections to these utilities may not be shown on the plans. It shall be the responsibility of the Contractor to determine the exact location of all service connections. The Contractor shall make its own investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing work which could result in damage to such utilities. The Contractor shall immediately notify the District's representative as to any utility discovered by Contractor in a different position than shown in the Contract Documents or which is not shown on the Contract Documents.

Contractor shall coordinate its Work with all utilities, including, but not limited to electricity, water, gas and telephone and meet with said utilities prior to the start of any work.

#### *2.1.4.3 Other Utilities.*

In case it should be necessary to remove, relocate, or temporarily maintain a utility because of interference with the Work, the work on the utility shall be performed and paid for as follows:

When it is necessary to remove, relocate or temporarily maintain a service connection, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the work on the service connection. The work on the service connection shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the service connection has the option of doing such work with his own forces or permitting the work to be done by the Contractor.

When it is necessary to remove, relocate, or temporarily maintain a utility which is in the position shown on the plans, the cost of which is not required to be borne by the owner thereof, the Contractor shall bear all expenses incidental to the work on the utility. The work on the utility shall be done in a manner satisfactory to the owner thereof; it being understood that the owner of the utility has the option of doing such work with his own forces or permitting the work to be done by the Contractor.

When it is necessary to remove, relocate, or temporarily maintain a utility which is not shown on the plans or is in a position different from that shown on the plans and were it in the position shown on the plans would not need to be removed, relocated, or temporarily maintained,

and the cost of which is not required to be borne by the owner thereof, the District will make arrangements with the owner of the utility for such work to be done at no cost to the Contractor, or will require the Contractor to do such work in accordance with Article 7 or will make changes in the alignment and grade of the Work to obviate the necessity to remove, relocate, or temporarily maintain the utility. Changes in alignment and grade will be ordered in accordance with Article 7 herein.

No representations are made that the obligations to move or temporarily maintain any utility and to pay the cost thereof is or is not required to be borne by the owner of such utility, and it shall be the responsibility of the Contractor to investigate to find out whether said cost is required to be borne by the owner of the utility.

The right is reserved to governmental agencies and to owners of utilities to enter at any time upon any street, alley, right-of-way, or easement for the purpose of making changes in their property made necessary by the Work and for the purpose of maintaining and making repairs to their property.

## **2.1.5 Existing Utility Lines; Removal, Relocation.**

### *2.1.5.1 Main or Trunkline Facilities*

If the Contractor while performing the contract discovers utility facilities not identified by the District in the Contract Documents, Contractor shall, within five (5) days, notify the District and utility in writing.

The District has the responsibility to identify, with reasonable accuracy, main or trunkline facilities on the plans and specifications. In the event that main or trunkline utility facilities are not identified with reasonable accuracy in the plans and specifications and made a part of the Notice Inviting Proposals, District shall assume the responsibility for their timely removal, relocation, or protection.

The owner of 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.

The Contractor shall exercise reasonable care and shall be compensated by the District for the actual verified field costs of locating, and removing, relocating, protecting or temporarily maintaining such main or trunkline utility facilities not indicated with reasonable accuracy in the plans and specifications, and for equipment in use on the project necessarily idled during such work. This work shall be performed in accordance with Article 7 of these General Conditions.

Alternatively, District may make changes in the alignment and grade of the work to obviate the need to remove, relocate, or temporarily maintain the utility, in accordance with Article 7 or District may make arrangements with the owner of the utility for such work to be done at no cost to the Contractor.

The Contractor shall not be assessed a forfeiture for delay in completion of the Project when such delay is caused by the failure of the District or the owner of the utility to provide for the removal, relocation, protection or temporary maintenance of all such main or trunkline facilities not indicated with reasonable accuracy.

Nothing herein shall preclude the District from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.

Nothing herein shall be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.

*2.1.5.2 Assessment.* These subparagraphs shall not be construed to preclude assessment against the Contractor for any other delays in completion of the Work. Nothing in these subparagraphs shall be deemed to require the District to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, or meter junction boxes on or adjacent to the Site.

*2.1.5.3 Notification.* If the Contractor, while performing Work under this Contract, discovers utility facilities not identified by the District in the Contract Documents. Contractor shall, within five (5) days, notify the District and the utility in writing. If Contractor fails to notify the District within forty eight hours after discovery of any utility facilities not identified by District in the Contract Documents, Contractor waives all rights to be compensated for any extra Work or damages resulting from such discovered utilities.

#### **2.1.6 Easements.**

District shall secure and pay for easements for permanent structures or permanent changes in existing facilities, if any, unless otherwise specified in the Contract Documents.

## **2.2 DISTRICT 'S RIGHT TO CARRY OUT THE WORK**

District has the right to carry out any work on the Project if the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, including, but not limited to:

1. Failure to supply adequate workers on the entire Project or any part thereof;
2. Failure to supply a sufficient quantity of materials;
3. Failure to perform any provision of this Contract;
4. Failure to comply with safety requirements, or due to Contractor is creation of an unsafe condition;
5. In the case of bona fide emergency;
6. Failure to order materials in a timely manner;
7. Failure to prepare deferred-approval items or shop drawings in a timely manner;
8. Failure to comply with Contractor's schedule which would result in a delay to the critical path;

9. Failure to comply with the Subletting and Subcontracting Fair Practices, Public Contract Code section 4100, et seq.

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails (within a five-day period after receipt of written notice or a shorter time period expressly stated in the written notice from the District in an emergency situation) to commence and continue correction of such default with diligence and promptness, the District may correct such deficiencies without prejudice to other remedies the District may have, including those set forth in Article 14 after providing five-day written notice to Contractor and Surety. If during this five (5) day period, Surety personally delivers notice to District that it intends to perform such work, District shall allow Surety seven (7) days to perform. In an emergency situation, the District may correct such deficiencies without prejudice to other remedies the District may have, including those set forth in Article 14 after providing 48 hours notice to the Contractor. In either case, the Contractor will be invoiced the cost of correcting such deficiencies, including compensation for additional services and expenses made necessary by such default, or neglect. The invoice amount shall be deducted from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District.

### **ARTICLE 3**

#### **THE CONTRACTOR**

##### **3.1 SUPERVISION AND CONSTRUCTION PROCEDURES**

###### **3.1.1 Contractor.**

The Contractor shall continually supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures; and shall coordinate all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. The Contractor shall not perform the Work without utilizing the Contract Documents or, where required, approved shop drawings, product data, or samples for any such portion of the work. If any of the Work is performed by contractors retained directly by the District, Contractor shall be responsible for the coordination and sequencing of the work of those other contractors so as to avoid any impact on the project schedule pursuant to the requirements of Article 6 and Article 8. Specific duties of the Contractor shall include those set out in Section 43 of Title 21 of the California Code of Regulations and Section 4-343 of Title 24 of the California Code of Regulations. These duties include, but are not limited to the following:

- (a) Responsibilities. It is the duty of the Contractor to complete the Work covered by his or her contract in accordance with the approved plans and specifications. The Contractor in no way is relieved of any responsibility by the activities of the District, Engineer, Inspector or DSA in the performance of their duties.

(b) Performance of the work. The Contractor shall carefully study the approved plans and specifications and shall plan its schedule of operations well ahead of time. If at any time it is discovered that work is being done which is not in accordance with the approved plans and specifications, the contractor shall correct the work immediately.

All inconsistencies or times which appear to be in error in the plans and specifications shall promptly be called to the attention of the District or, Engineer, for interpretation or correction. Local conditions which may affect the structure shall be brought to the District's attention at once. In no case, shall the instruction of the Architect be construed to cause work to be done which is not in conformity with the approved plans, specifications, change orders, construction change directives, and as required by law.

The Contractor shall not carry on Work except with the knowledge of the Inspector of Record.

(c) Verified Reports. The Contractor shall make and submit to the office from time to time, verified reports as required in Section 36 of Title 21 and Section 4-366 of Title 24.

Contractor shall fully comply with any and all reporting requirements of Education Code Sections 81147, et seq., in the manner prescribed by Title 24, as applicable.

### **3.1.2 Contractor Responsibility.**

The Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

### **3.1.3 Obligations not Changed by District's Actions.**

The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the District in the District's administration of the Contract or by tests, inspections, or approvals required or performed by persons other than the Contractor.

### **3.1.4 Acceptance/Approval of Work.**

The Contractor shall be responsible to determine when any completed portions of the Work already performed under this Contract or provided pursuant to Article 6 are suitable to receive subsequent Work thereon.

### **3.1.5 Performance of Work With Own Force.**

Contractor shall perform at least 50% of the Work, exclusive of supervisory and clerical work without the services of any subcontractor. Contractor shall supervise and direct the work competently and efficiently, devoting such attention thereto and applying such skills as may be necessary to perform the Work in accordance with the Contract Documents.

## **3.2 SUPERVISION**

### **3.2.1 Full Time Supervision.**

Unless personally present on the Project site where the Work is being performed, the Contractor shall keep on the Work at all times during its progress a competent construction Superintendent satisfactory to the District. The Superintendent shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share superintendency duties with another project or job. The Superintendent shall not be replaced except with written consent of the District. The Superintendent shall represent the Contractor in its absence and shall be fully authorized to receive and fulfill any instruction from the the Inspector, the District or any other District representative. All Requests for Information shall be originated by the Superintendent and responses thereto shall be given to the Superintendent. No Work shall begin on any day by any Subcontractor or other person on the Project site until the Superintendent has arrived, or shall any Work continue during the day after the Superintendent has departed from the Project site. The Superintendent shall have authority to bind Contractor through the Superintendent's acts. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be binding on the Contractor. Before commencing the Work, Contractor shall give written notice to District of the name and a Statement of Qualifications of such superintendent. Superintendent shall not be changed except with written consent of District, unless a superintendent proves to be unsatisfactory to Contractor and ceases to be in its employ, in which case, Contractor shall notify District in writing. Contractor shall provide a replacement superintendent approved by the District prior to performing additional work.

### **3.2.2 Staff.**

Notwithstanding other requirements of the contract documents, the Contractor and each Subcontractor shall: (1) furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; (2) organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and (3) keep an adequate force of skilled and fit workers on the job to complete the Work in accordance with all requirements of the Contract Documents.

### **3.2.3 Right to Remove.**

District shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier.

## **3.3 LABOR AND MATERIALS**

### **3.3.1 Contractor to Provide.**

Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, air conditioning, utilities, transportation, and other facilities, services and permits necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

### **3.3.2 Quality.**

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of the highest quality or as specifically stated in the Contract Documents. The Contractor shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment within ten (10) days of a written request by the District, including furnishing the District with bona fide copies of invoices for materials or services provided on the Project. All labor shall be performed by workers skilled in their respective trades, and shall be of the same or higher quality as with the standards of other community college construction.

### **3.3.3 Replacement.**

Any work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved by the District, in which case, they shall be removed and replaced by the Contractor at no additional cost or extension of time to the District.

### **3.3.4 Discipline.**

The Contractor shall enforce strict discipline and good order among the Contractor's and Subcontractor's employees, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. As used in this subsection, "unfit" includes any person who the District concludes is improperly skilled for the task assigned to that person, who fails to comply with the requirements of this article, or who creates safety hazards which jeopardize other persons and/or property.



### **3.3.5 Noise, Drugs, Tobacco, and Alcohol.**

Contractor shall take all steps necessary to insure that employees of Contractor or any of its subcontractors' employees do not use, consume, or work under the influence of any alcohol, tobacco or illegal drugs while on the project. Contractor shall further prevent any of its employees or its subcontractor employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the project. Likewise, Contractor shall prevent its employees or subcontractor's employees from bringing any animal onto the project. Contractors shall not violate any written campus policies.

### **3.3.6 Delivery of Material.**

Contractor shall place orders for materials or equipment so that the Work may be completed in accordance with the Construction schedule for the Work as set forth in Article 8 of this Agreement. Contractor shall, upon demand from the Architect, furnish to the District documentary evidence including, but not limited to purchase orders, invoices, bills of materials, work orders and bills of lading, showing that orders have been placed.

### **3.3.7 Liens and Other Security Interests of Subcontractors and Material Suppliers.**

No material, supplies, or equipment for the Work shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by it, to District free from any claims, security interests, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any Work covered by this Contract shall have any right to place a lien upon the premises or any improvement or appurtenance thereof, except that Contractor may install metering devices or other equipment of a utility company or political subdivision, title to which is commonly retained by the utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District as to its owner within five (5) days of such installation in writing, prior to making the installation.

### **3.3.8 Title to Materials.**

The title to new materials or equipment for the Work of this Contract, and attendant liability for its protection and safety, shall remain with Contractor until incorporated in the Work of this Contract and accepted by the District; no part of said materials shall be removed from its place of storage, and Contractor shall keep an accurate inventory of all said materials and equipment in a manner satisfactory to the District or its authorized representative.

### **3.3.9 Assemblies.**

For all material and equipment specified or indicated in the Drawings, the Contractor shall provide all labor, materials, equipment, and services necessary for complete assemblies and

complete working systems. Incidental items not indicated on the Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described, or be necessary in good practice to provide a complete assembly or system, shall be furnished as though itemized in the Contract Documents in every detail. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.

### **3.3.10 Noise Control.**

The Contractor shall be responsible for the installation of noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction equipment noise is subject to the control of the Environmental Protection Agency's Noise Control Program (Part 204 of Title 40, Code of Federal Regulations). If classes are in session at any point during the progress of the Project, and, in the District's reasonable discretion, the noise from such Work disrupts or disturbs the students or faculty or the normal operation of the college, at the District's request, the Contractor shall schedule the performance of all such Work around normal campus hours or make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall Contractor have a right to receive additional compensation or an extension to the contract time as a result of any such rescheduling or the making of such arrangements. These controls shall be implemented during site preparation and construction.

## **3.4 WARRANTY**

The Contractor warrants to the District and Architect that material and equipment furnished under the Contract will be of the highest quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Contractor's warranty to District includes, but is not limited to the following representations:

(a) In addition to any other warranties provided elsewhere, Contractor shall, and hereby does, warrant all Work after the date of Notice of Completion of Work by District and shall repair or replace any or all such work, together with any other work, which may be displaced in so doing that may prove defective in workmanship or materials within a three (3) year period from date of completion as defined in Public Contract Code Section 7107(c) without expense whatsoever to District, ordinary wear and tear, unusual abuse or neglect excepted. District will give notice of observed defects with reasonable promptness. Contractor shall notify District upon completion of repairs.

(b) In the event of failure of Contractor to comply with above mentioned conditions within one week after being notified in writing, District is hereby authorized to proceed to have defects repaired and made good at expense of Contractor who hereby agrees to pay costs and charges therefore immediately on demand.

(c) If, in the opinion of the District, defective Work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District, the District will attempt to give the notice required by this Article. If the Contractor cannot be contacted or does not comply with the District's requirements for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this article, proceed to make such correction or attention which shall be charged against Contractor. Such action by the District will not relieve the Contractor of the guarantee provided in this Article or elsewhere in this Contract.

(d) This Article does not in any way limit the guarantee on any items for which a longer warranty is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish District all appropriate guarantee or warranty certificates upon completion of the project.

### **3.5 TAXES**

Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. District is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

### **3.6 PERMITS, FEES AND NOTICES**

#### **3.6.1 Payment.**

The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are necessary after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those required by the Division of the State Architect (DSA). District shall be responsible for all testing and inspection as required by the DSA on-site or within the distance limitations set forth in Paragraph 13.5.2, unless a different mileage range is specified in the Special Conditions.

#### **3.6.2 Compliance.**

The Contractor shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities bearing on performance of the Work.

#### **3.6.3 Responsibility.**

The Contractor shall perform all Work in conformance with every law, statute, ordinance, building code, rule or regulation. The Contractor shall assume full responsibility for such Work and shall bear the attributable cost of correction or project delay.

**3.7 [RESERVED]**

**3.8 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**3.8.1 Requirements.**

(a) Within ten (10) calendar days after being awarded the contract, Contractor shall submit a progress schedule for District's approval. The schedule shall not exceed time limits set forth in the Contract Documents and shall comply with all of the scheduling requirements as set forth in the Specifications. Failure to submit a schedule or submittal of a schedule which shows completion of the Work beyond the specified completion date shall be deemed a material breach by the Contractor. The schedule must indicate the beginning and completion of all phases of construction and shall use the "critical path method" (commonly called CPM) for the value reporting, planning and scheduling, of all Work required under the Contract Documents. The scheduling is necessary for the District's adequate monitoring of the progress of the Work and shall be prepared in accordance with the time frame described in Article 8 of the General Conditions. The architect may disapprove of any schedule or require modification to it if, in the opinion of the Architect or District, adherence to the progress schedule will not cause the Work to be completed in accordance with the Agreement.

(b) Contractor shall not submit a schedule showing early completion without indicating float time through the date set for Project completion by District. Contractor's schedule shall account for all days past early completion as float which belongs to the Project. Usage of float shall not entitle Contractor to any delay claim or damages due to delay.

(c) Contractor shall not be granted an extension of time for failure to obtain necessary approvals for deferral approvals due to failure to comply with laws, building codes, and other regulations (including Title 24 of the California Code of Regulations). Contractor shall schedule all deferred approval items and shop drawings in its progress schedule. If Contractor fails to include deferred approval items and shop drawings in its schedule which results in a critical path delay, then Contractor shall be subject to the assessment of liquidated damages.

(d) In addition to providing a schedule update every thirty (30) days, the Contractor, if requested by the District, shall provide revised schedules within ten (10) days if, at any time, the District, consider the completion date to be in jeopardy because of "activities behind schedule." The additional schedule shall include a new arrow or precedence diagram and schedule reports conforming to the requirements above, designed to show how the Contractor intends to accomplish the Work to meet the completion date. The form and method employed by the Contractor shall be the same as for the original initial schedule. The Contractor shall modify any portions of the schedule that become infeasible because of "activities behind schedule" or for any other valid reason. An activity that cannot be completed by its original latest completion date shall be deemed to be behind schedule. If Contractor submits a revised schedule showing an

earlier completion date for the Project, District's acceptance of this revised schedule shall not entitle Contractor to any delay claim or damages due to any such revised schedule.

### **3.8.2 Failure to Meet Requirements.**

Failure of the Contractor to provide proper schedules as required by this Article and Article 9 is a material breach of the contract and grounds for termination pursuant to Article 14. The District, at its sole discretion, may choose, instead, to withhold, in whole or in part, any progress payments or retention amounts otherwise payable to the Contractor.

## **3.9 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the Site for the District one current copy of the Uniform Building Code, Titles 19, 21 and 24 of the California Code of Regulations and one record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings, Product Data, Samples, and similar required submittals. These documents shall be available to the District and shall be delivered to the Representative for delivery to the District upon completion of the Work.

## **3.10 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

### **3.10.1 Submittals defined.**

3.10.1.1 *Shop Drawings.* The term "shop drawings" as used herein means drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents. The Contractor shall obtain and submit with shop drawings all seismic and other calculations and all product data from equipment manufacturers. "Product data" as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work. As used herein, the term "manufactured" applies to standard units usually mass-produced, and "fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

3.10.1.2 *Samples.* The term “samples” as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the District to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

3.10.1.3 *Contractor’s Schedule for Submission of Shop Drawings.* Contractor shall obtain and shall submit all required shop drawings, samples, etc., in accordance with Contractor’s “Schedule for Submission of Shop Drawings and Samples” as required in the scheduling portion of the General Conditions at Articles 3.8 or the Specifications with such promptness as to cause no delay in its own Work or in that of any other contractor or subcontractor but in no event later than ninety (90) days after the execution of the Contract. No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have shop drawings and samples submitted in accordance with the Schedule. Each Subcontractor shall submit all shop drawings, samples, and manufacturer’s descriptive data for the review of the District, the Contractor, and the Architect through the Contractor. By submitting shop drawings, product data, samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents, including the construction schedule. The submission of the shop drawings, product data, samples, etc., shall not deviate from the requirements of the Contract Documents including detailing and design intent which is specifically outlined in Contract Documents except as specifically authorized by the Architect or through an accepted substitution pursuant to Paragraph 3.10.4. All deviations from the Contract Documents shall be narratively described in a transmittal accompanying the shop drawings. However, shop drawings shall not be used as a means of requesting a substitution, the procedure for which is defined in Paragraph 3.10.4, “Substitutions.” Review by District shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. Any submission, which in Architect’s opinion is incomplete, contains errors, or has been checked superficially will be returned unreviewed by the District for resubmission by the Contractor. Contractor shall stamp, sign, and date each submittal indicating its representation that the submittal meets all of the requirements of the Contract Documents and evidence Contractor’s review through execution of the following stamp to be placed on each shop drawings:

“The contractor has reviewed and approved the field dimensions and the construction criteria, and has also made written notation regarding any information in the shop drawings that does not conform to the contract documents. This shop drawing has been coordinated with all other shop drawings received to date by contractor and this duty of coordination has not been delegated to subcontractors, material suppliers, the District, or the engineers on this project.

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Signature of Contractor and date

3.10.1.4 *Extent of Review.* In reviewing shop drawings, the District will not verify dimensions and field conditions. The District will review and approve shop drawings, product data, samples, etc., for aesthetics and for conformance with the design concept of the Work and the information in the Contract Documents. The District's review shall neither be construed as a complete check which relieves the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the District's attention to the deviations at the time of submission. The District's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in shop drawings or schedules, for proper fitting of the Work, coordination of the differing subcontractor trades and shop drawings and Work which is not indicated on the shop drawings at the time of submission of shop drawings. Contractor and Subcontractors shall be solely responsible for any quantities which may be shown on the submittals or Contract Documents. In no event shall changes to the Contract Documents be authorized by any shop drawing review actions of the District. No review action by the District, implicit or explicit, shall be interpreted to authorize changes to the requirements set forth in the Contract Documents. Changes to the Contract Documents shall only be authorized by a separate written change order or change directive pursuant to Article 7 below.

### **3.10.2 Drawing Submission Procedure.**

3.10.2.1 *Transmittal Letter and Other Requirements.* All shop drawings must be properly identified with the name of the Project and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents. Shop drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of District and Contractor.

3.10.2.2 *Copies Required.* Each submittal shall include one (1) legible, reproducible sepia and five (5) legible prints of each drawing or schedule, table, cut sheet, etc., including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications, until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Contractor, of: (1) manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; (2) wiring diagrams and controls; (3) schedules; (4) all seismic calculations and other calculations; and (5) other pertinent information as required by the District.

3.10.2.3 *Corrections.* The Contractor shall make all corrections required by District and shall resubmit, as required by District, corrected copies of shop drawings or new samples until approved. Contractor shall direct specific attention in writing or on resubmitted shop drawings to revisions other than the corrections required by the District on previous submissions. Professional services required for more than one (1) re-review of required submittals of shop drawings, product data, or samples are subject to charge to the Contractor pursuant to Paragraph 4.4.

3.10.2.4 *Approval Prior to Commencement of Work.* No portion of the Work requiring a shop drawing or sample submission or other submittal shall be commenced until the submission has been reviewed by Contractor and District and approved by District unless specifically directed in writing by the District. All such portions of the Work shall be in accordance with approved shop drawings and samples.

### **3.10.3 Sample Submissions Procedure.**

3.10.3.1 *Samples Required.* In case a considerable range of color, graining, texture, or other characteristics are anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics which will be present in the finished products; and products delivered or erected without submittal and approval of a full range of samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate. All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Project, the purpose for which the samples are submitted and the date, and shall be accompanied by a letter of transmittal containing similar information, together with the Specification section number. Each tag or sticker shall have clear space for the review stamps of Contractor and District.

3.10.3.2 *Labels and Instructions.* All samples of materials shall be supplied with the manufacturer's descriptive labels and application instructions.

3.10.3.3 *District's Review.* The District will review and, if appropriate, approve submissions and will return them to the Contractor with the District's stamp and signature applied thereto, indicating the timing for review and appropriate action in compliance with the District's standard procedures.

3.10.3.4 *Record Drawings and Annotated Specifications.* The Contractor will prepare and maintain on a current basis an accurate and complete set of Record Drawings clearly showing all changes, revisions to specifications and substitutions during construction, including, without limitation, field changes and the final location of all electrical and mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features, and Annotated Specifications showing clearly all changes, revisions, and substitutions during construction. A copy of such Record Drawings in Autocad (or most current version required by OPSC) and Annotated Specifications will be delivered to District in accordance with the Contractor's approved construction schedule. In case a specification allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show



which of the allowable items the Contractor has furnished. The Contractor will update the Record Drawings and Annotated Specifications as often as necessary to keep them current, but no less often than weekly. The Record Drawings and Annotated Specifications shall be kept at the Site and available for review and inspection by the District. On completion of the Work and prior to Application for Final Payment, the Contractor will provide one complete set of Record Drawings in Autocad (or most current version required by OPSC) and Annotated Specifications to the District, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

3.10.3.5 *Equipment Manuals.* Contractor shall obtain and furnish three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents and any additional data specifically requested under the various sections of the Specifications for each division of the Work. The manuals shall be arranged in logical, sequential order, labeled, indexed, and placed in three-ring binders. At the completion of its Work, the Contractor shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to submittal of Contractor's Application for Final Payment, and as a further condition to its approval by the District, each Subcontractor shall deliver the manuals, arranged in logical, sequential order, labeled, indexed, endorsed, and placed in three-ring binders, to the Contractor, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the District through the Representative.

3.10.3.6 *District's Property.* All shop drawings, computer disks, annotated specifications, samples and other submittals shall become the District's property upon receipt by the District.

### **3.10.4 Substitutions.**

3.10.4.1 *One Product Specified.* Unless the Specifications state that no substitution is permitted, whenever the Contract Documents indicate any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction or any specific name, make, trade name, or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of the material, process, or article desired and shall be deemed to be followed by the words "or equal." Pursuant to Paragraph 3.10.4.3, the Contractor may, unless otherwise stated, offer any material, process, article, etc., which shall be materially equal or better in every respect to that so indicated or specified ("Specified Item") and will completely accomplish the purpose of the Contract Documents.

3.10.4.2 *Products Specified Which are Commercially Unavailable.* If the Contractor fails to make a request for substitutions for products, prior to the submission of its Proposal, and such products subsequently become commercially unavailable, the Contractor may request a substitution for such commercially unavailable item. The decision to grant this request is solely at the District's discretion. The written approval of the District, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. The

District may condition its approval of the substitution upon the delivery to District of an extended warranty or other assurances of adequate performance of the substitution as well as an equitable deduction in the contract price should the substituted item cost less than the Specified Item. All risks of delay due the approval of a requested substitution by the DSA, or any other governmental agency having jurisdiction, shall be on the requesting party. All additional costs, all procurement and construction delays, and all costs for review by the District or its consultants shall be the responsibility of the Contractor and will be deducted from Contractor's pay request.

3.10.4.3 *Substitution Request Form.* Requests for substitutions of products, materials, or processes in place of a Specified Item must in writing on the District's Substitution Request Form ("Request Form") at the time of submitting Proposals to the District, except as provided for in Paragraph 3.10.4.2.

The Request Form must be accompanied by evidence as to whether the proposed substitution:

1. Is equal in quality/service/ability to the Specified Item;
2. Will entail no changes in detail, construction, and scheduling of related work;
3. Will be acceptable in consideration of the required design and artistic effect;
4. Will provide no cost disadvantage to the District;
5. Will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts; and
6. Will required no change of the construction schedule.

In completing the Request Form, the Respondent must state, with respect to each requested substitution, whether the Respondent will agree to provide the Specified Item in the event that the District denies the Respondent's request for such requested substitution. In the event that the Respondent has agreed in the Request Form to provide the Specified Item and the District denies the Respondent's requested substitution for a Specified Item, the Respondent shall provide the Specified Item without any additional cost or charge to the District.

After Proposals are opened, the apparent lowest Respondent shall provide, within five (5) days of opening such Proposals, any and all Drawing, Specifications, samples, performance data, calculations, and other information, as may be required to assist the Architect and the District in determining whether the proposed substitution is acceptable. The burden of establishing these facts shall be upon the Respondent.

After the District's receipt of such evidence by the Respondent, the District will make its final decision as to whether the Respondent's request for substitution for any Specified Items will be granted. The decision as to whether a proposed request for substitution is equal to a Specified Item shall be at the sole discretion of the District. Any request for substitution that is granted by the District shall be documented and processed though a Change Order. The District may condition its approval of any substitution upon delivery to the District of an extended warranty or other assurances of adequate performance of the substitution. Any and all risks of

delay due to approval by the DSA or any other governmental agency having jurisdiction shall be on the Respondent.

If the Architect and District accept a proposed substitution, the Contractor agrees to pay for all engineering and design services, including, without limitation, compensation to the Architect and affected engineers for their required time to process such substitution through the Division of the State Architect, if required, and to make all changes and adjustments in materials or the work of all trades directly or indirectly affected by the substituted item or items at no cost to the District.

3.10.4.4 *List of Manufacturers and Products Required.* The Contractor shall require all Subcontractors to prepare and submit to the Contractor, within thirty (30) days of execution of the Subcontract, comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for the Contractor's or Architect's approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data, and samples, required by the Contract Documents, but rather shall be considered as a base from which more detailed submittals shall be developed for final review by the Contractor and the Architect.

### **3.10.5 Deferred Approvals**

Deferred approvals shall be submitted and processed pursuant to the requirements of Division 1 of the Specifications. All deferred approvals shall be prepared by Contractor or Contractor's agent early enough so as to not delay the Project. Contractor is aware that Title 21 California Code of Regulations Section 17(g) and Title 24 California Code of Regulations Section 4-317 have specific requirements for deferred approval as to governing agencies and as to the Architect and Engineer for the Project. As a result, any delay associated with the time for approval by applicable agencies or by the Architect or Architect's consultants shall be Contractor's.

## **3.11 INTEGRATION OF WORK**

### **3.11.1 Scope.**

The Contractor shall be responsible for cutting, fitting, or patching to complete the Work and to make all parts fit together properly. Contractor shall be responsible for ensuring that all trades are coordinated and scheduled so as to ensure the timely and proper execution of the work. When modifying existing work or installing new Work adjacent to existing work, Contractor shall match, as closely as conditions of Site and materials will allow, the finishes, textures, and colors of the original work, refinishing existing work at no additional cost to District. All cost caused by defective or ill-timed work shall be borne by Contractor. Contractor shall be solely responsible for protecting existing work on adjacent properties and shall obtain all required permits for shoring and excavations near property lines.

### **3.11.2 Structural Members.**

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at the Contractor's risk and subject to replacement at its own expense without reimbursement under the Contract. Schedule delays resulting from Agency approvals for unauthorized work shall be the Contractor's responsibility.

### **3.11.3 Subsequent Removal.**

Permission to patch any areas or items of the Work shall not constitute a waiver of the District's or the Architect's right to require complete removal and replacement of the areas or items of the Work if, in the opinion of the Architect or the District, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents.

## **3.12 CLEANING UP**

### **3.12.1 Contractor's Responsibility.**

Contractor at all times shall keep premises free from debris such as waste, dust, excess water, storm water runoffs, rubbish, and excess materials and equipment. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises and dispose of it in a lawful manner. Disposal receipts or dump tickets shall be furnished to the District within five (5) days of request. Upon completion of Work, Contractor shall clean exterior of buildings, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected, so surfaces are free from foreign material or discoloration; Contractor shall clean and polish all glass, plumbing fixtures, equipment, finish hardware and similar finish surfaces. Upon completion of the Work, Contractor shall also remove temporary utilities, fencing, barricades, planking, sanitary facilities and similar temporary facilities from Site.

Contractor shall remove rubbish and debris resulting from the Work on a daily basis. Contractor shall maintain the structures and Site in a clean and orderly condition at all times until acceptance of the project by the District. Contractor shall keep its access driveways and adjacent streets, sidewalks, gutters and drains free of rubbish, debris and excess water by cleaning and removal each day.

3.12.1.1 In addition to the general cleaning, the following special cleaning shall be done at the completion of the work in accordance with the specifications including, but not limited to:

- (a) Remove putty stains from glazing, then wash and polish glazing.
- (b) Remove marks, stains, fingerprints and other soil or dirt from painted, stained or decorated work.

- (c) Clean and polish hardware and plumbing trim; remove stains, dust, dirt, plaster and paint.
- (d) Remove spots, soil, plaster and paint from tile work, and wash tile.
- (e) Clean all fixtures and equipment, remove excess lubrication, clean light fixtures and lamps, polish metal surfaces.
- (f) Remove debris from roofs, down spout and drainage system.

#### **3.12.2 Failure to Cleanup.**

If the Contractor fails to clean up as provided in the Contract Documents, the District may do so, and the cost thereof shall be the responsibility of the Contractor and deducted from the next progress payment.

### **3.13 ACCESS TO WORK**

The Contractor shall provide the District, Engineers and the Inspector of Record, access to the Work in preparation and progress wherever located. Contractor shall provide safe and proper facilities for such access so that District's representatives may perform their functions.

CONTRACTOR IS AWARE THAT THIS CONTRACT MAY BE SPLIT INTO SEVERAL PHASES AS ADDRESSED IN ARTICLE 6.

### **3.14 ROYALTIES AND PATENTS**

#### **3.14.1 Payment and indemnity for Infringement.**

Contractor shall hold and save the District and its officers, agents, and employees, the Architect, and the Architect's consultants harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the District, unless otherwise specifically provided in the contract documents, and unless such liability arises from the sole negligence, or active negligence, or willful misconduct of the District, the Architect, or the Architect's consultants.

#### **3.14.2 Review.**

The review by the District of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an

approval for the use by the Contractor in violation of any patent or other rights of any person or entity.

### **3.15 INDEMNIFICATION**

#### **3.15.1 Contractor.**

See Article 5 of the Agreement Form for specific indemnity and hold harmless requirements. Contractor shall defend, indemnify and hold harmless District, Inspector, the State of California and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of Work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, Contractor shall protect and defend, at its own expense, District, Inspector, the State of California and their officers, employees, agents and independent contractors from any legal action including attorneys' fees or other proceeding based upon such act, omission, breach or as otherwise required by this Section 3.15.1.

Furthermore, Contractor agrees to and does hereby defend, indemnify and hold harmless District, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors as set forth in Agreement Form.

Contractor shall ensure that its contract with each of its subcontractors contains provisions requiring the subcontractors to defend, indemnify and hold harmless the District, Architect, Inspector, the State of California to a minimum level as set forth in this Article and consistent with the language of 3.15.1.

The Contractor's and Subcontractors' obligation to defend, indemnify and hold harmless the District, Architect, Inspector, the State of California and their officers, employees, agents and independent contractors hereunder shall include, without limitation, any and all claims, damages, and costs for the following: (1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; (2) breach of any warranty, express or implied; (3) failure of the Contractor or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; and (4) products installed in or used in connection with the Work.

### **3.16 SUBMISSION OF DAILY REPORTS**

#### **3.16.1 General.**

At the close of each working day, the Contractor shall submit a daily report to the Architect and the Inspector, on forms approved by the District, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day. An attempt shall be made to reconcile the report daily, and it shall be signed by the Architect and the Contractor. In the event of disagreement, pertinent notes shall be entered by each party to explain points which

cannot be resolved that day. Each party shall retain a signed copy of the report. Reports by subcontractors or others shall be submitted through the Contractor.

**3.16.2 Labor.**

The report required by Paragraph 3.16.1 shall show names of workers, classifications, hours worked and hourly rate. Project superintendent expenses are not allowed.

**3.16.3 Materials.**

The report required by Paragraph 3.16.1 shall describe and list quantities of materials used and unit costs.

**3.16.4 Equipment.**

The report required by Paragraph 3.16.1 shall show type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable, and hourly/daily cost. Move-on and move-off fees shall be noted.

**3.16.5 Other Services and Expenditures.**

Other services and expenditures shall be described in detail as the District requires.

**ARTICLE 4**

**ADMINISTRATION OF THE CONTRACT**

**4.1 Districts Designated Representative**

**4.1.1 Replacement of Representative.**

In the case of the termination of the Representative, the District may appoint an representative or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement representative under the Contract Documents shall be the same as that of the former architect.

**4.2 REPRESENTATIVE'S ADMINISTRATION OF THE CONTRACT**

**4.2.1 Status.**

Pursuant to Titles 24 and 21 of the California Code of Regulations and as required pursuant to the Field Act, Education Code 81130 et seq. the Representative will provide administration of the Contract Documents and the Work, and will be the District's representative during construction, as well as during the one (1) year period following the commencement of any warranties. The Representative will have authority to act on behalf of the District only to the extent provided in the Contract Documents.

#### **4.2.2 Site Visits.**

The Representative will visit the Site at intervals necessary in the judgment of the District to become generally familiar with the progress and quality of the Work and to determine in general if the Work is being performed in accordance with the Contract Documents.

#### **4.2.3 Limitations of Construction Responsibility.**

The District shall not have control over, charge of, or be responsible for construction means, methods, techniques, schedules, sequences or procedures, fabrication, procurement, shipment, delivery, receipt, installation, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract Documents. The District shall not be responsible for the Contractor's, Subcontractors', material or equipment suppliers', or any other person's schedules or failure to carry out the Work in accordance with the Contract Documents. The District shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, their agents or employees, or any other persons or entities performing or supplying portions of the Work. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the District in the District's administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

#### **4.2.4 Communications Facilitating Contract Administration.**

Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the District and the Contractor shall communicate through the Representative. Where direct communication is necessary between the District and the Contractor, the District's communication shall be through the District's authorized designee. The representative shall be promptly informed, and shall receive copies of all written communications. Contractor shall not rely upon any communications from the District that is not from the District's authorized designee. Communications by and with the representative's consultants shall be through the District. Communications by and with Subcontractors and material or equipment suppliers shall be through the Contractor.

#### **4.2.5 Payment Applications.**

The representative will review and make recommendations to the District regarding the amounts due the Contractor on the Certificates for Payment pursuant to Article 9 and subject to the Inspector's approval and District's observation.

#### **4.2.6 Rejection of Work.**

In addition to the rights, duties, and obligations of the Inspector under this Article, the Representatives may recommend to the District that the District reject Work which does not conform to the Contract Documents. Whenever the Representative considers it necessary or advisable to achieve the intent of the Contract Documents, the Representative may recommend to the District that the district require additional inspection or testing of the Work in accordance with Paragraph 13.5, whether or not such Work is fabricated, installed, or completed. However,



neither this authority of the representative nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the District to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

#### **4.2.7 Warranties Upon Completion.**

The Representative, in conjunction with the Inspector will conduct field reviews of the Work to determine the date of completion, shall receive and forward to the District for the District's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment when the Architect believes the Work has been completed in compliance with the requirements of the Contract Documents. The handling by the District of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the District any responsibilities or liabilities required by the Contract Documents of the Contractor or other entities, parties, or persons performing or supplying the Work.

The Representative will conduct a field review of the Contractor's comprehensive list of items to be completed or corrected (final punch list) and one (1) follow-up field review if required. The cost incurred by the District for further field reviews or the preparation of further punch lists by the Architect shall be invoiced to the Contractor and deducted from the final payment.

#### **4.2.8 Interpretation.**

The Architect will interpret and decide matters concerning performance and requirements of the Contract Documents.

#### **4.2.9 Additional Instructions.**

*4.2.9.1 Typical Parts and Sections.* Whenever typical parts or sections of the Work are completely detailed on the Drawings, and other parts or sections which are essentially of the same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.

*4.2.9.2 Dimensions.* Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on Drawings, District shall supply them on request. The District's decisions on matters relating to aesthetic effect will be final.

## **4.3 INSPECTOR OF RECORD**

### **4.3.1 General.**

One or more project inspectors employed by the District and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties are as specifically defined in Title 24.

### **4.3.2 Inspector's Duties.**

All Work shall be under the observation of the Inspector. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the drawings or specifications nor shall the Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

### **4.3.3 Inspector's Authority to Reject or Stop Work.**

The Inspector shall have the authority to reject Work whenever provisions of the Contract Documents are not being complied with, and Contractor shall instruct its Subcontractors and employees accordingly. In addition, the Inspector may stop any Work that poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.

### **4.3.4 Inspector's Facilities.**

Within seven (7) days after notice to proceed, the Contractor shall provide the Inspector with the temporary facilities as required under Division 1 of the Specifications.

### **4.3.5 Testing Times.**

The District will provide inspection and testing at its cost during the normal eight (8) hour day Monday through Friday (except holidays). Work by the Contractor outside of the normal eight (8) hour day shall constitute an authorization from the Contractor to the District to provide inspection and testing as required outside of the normal eight (8) hour day. Contractor shall reimburse District for any additional costs associated with inspection and testing (including re-inspection and re-testing) outside the normal eight-hour day and for any retests caused by the Contractor.

#### **4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE DISTRICT FOR PROFESSIONAL SERVICES**

If at any time prior to the completion of the requirements under the Contract Documents, the District is required to provide or secure additional professional services for any reason by any act of the Contractor, the Contractor shall be invoiced by the District for any costs incurred for any such additional services, which costs shall be deducted from the next progress payment. Such invoicing shall be independent from any other District remedies and shall not be considered a waiver of any District rights or remedies. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District. Additional services shall include, but shall not be limited to, the following:

- (a) Services made necessary by the default of the Contractor.
- (b) Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- (c) Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
- (d) Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors' proposed by the Contractor, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- (e) Services for evaluating and processing claims submitted by the Contractor in connection with the Work outside the established Change Order process.
- (f) Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time of completion.
- (g) Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- (h) Services in conjunction with more than one (1) re-review of submittals of shop drawings, product data, samples, etc.

#### **4.5 DISPUTES**

##### **4.5.1 Decision of District.**

Disputes between District and Contractor involving money or time, including those alleging an error or omission, shall be referred initially to the District for action as provided in Paragraph 4.5.2. A decision by the District, as provided in Paragraph

4.5.5, shall be required as a condition precedent to proceeding with remedies set forth in Paragraph 4.5.9 as to all such matters arising prior to the date final payment is due, regardless of whether such matters relate to execution and progress of the Work, or the extent to which the Work has been completed. The decision by the District in response to a Claim shall not be a condition precedent to the remedies under Paragraph 4.5.9 in the event: (1) the position of Architect is vacant; (2) the District has not received evidence or has failed to render a decision within agreed time limit; (3) the District has failed to take action required under Paragraph 4.5.5 within thirty (30) days after the Claim is made, forty-five (45) days have passed after the Claim has been referred to the District; or (4) the Claim relates to a Stop Notice Claim not arising from any extra change order or Construction Change Directive for which approval has not been provided.

#### **4.5.2 District's Review.**

The District will review claims and take one or more of the following preliminary actions within ten (10) days of receipt of a claim: (1) request additional supporting data from the claimant; (2) submit a schedule to the parties indicating when the District expects to take action; (3) reject the claim in whole or in part, stating reasons for rejection; (4) recommend approval of the claim; or (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

#### **4.5.3 Documentation if Resolved.**

If a claim has been resolved, the District will prepare or obtain appropriate documentation.

#### **4.5.4 Actions if Not Resolved.**

If a claim has not been resolved and all documentation requested pursuant to Paragraph 4.5.2 has been provided, the party making the claim shall, within ten (10) days after the Architect's preliminary response, take one or more of the following actions: (1) modify the initial claim; (2) notify the District that the initial claim stands; or (3) supplement with additional supporting data.

#### **4.5.5 District's Written Decision.**

If a claim has not been resolved after consideration of the foregoing and of other evidence presented by the parties or requested by the District, the District will notify the parties in writing that the District's decision will be made within twenty (20) days. Upon expiration of such time period, the District will render to the parties its written decision relative to the claim, including any change in the Contract Sum or Contract Time or both. The District may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

#### **4.5.6 Continuing Contract Performance.**

Pending final resolution of a Claim, including, negotiation, mediation, arbitration, or litigation, the Contractor shall proceed diligently with performance of the Contract, and the District shall continue to make any undisputed payments in accordance with the Contract. If the dispute is not resolved, Contractor agrees it will neither rescind the contract nor stop the progress of the work, but Contractor's sole remedy shall be to submit such controversy to determination by a court of competent jurisdiction in the county where the project is located, after the project has been completed, and not before. At the District's sole option, the District may submit individual disputes for binding arbitration and Contractor agrees to the resolution determined for each individual dispute by Arbitrator, including resolution of time and delays. If binding arbitration is utilized for individual disputes, such resolution is full and final as to that particular claim.

#### **4.5.7 Claims for Concealed Trenches or Excavations Greater Than Four Feet Below the Surface.**

When any excavation or trenching extends greater than four feet below the surface or if any condition involving hazardous substances are encountered:

(a) Immediately upon discovery, The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, by telephone and in writing, of the condition except:

1. If such condition is a hazardous waste condition, Contractor's Proposal includes removal or disposal of hazardous substances. Material that the Contractor believes may be a material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law. In such case, the notice bulletin procedures of Article 7 apply.
2. Subsurface or latent physical conditions at the Site differing from those indicated.
3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract.

(b) The public entity shall investigate the conditions, and if District finds that the conditions do materially so differ, do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a change order or construction change directive under the procedures described in the Contract.

(c) In the event that a dispute arises between the public entity or District and the Contractor whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

#### **4.5.8 Claims for Extension of Time.**

If Contractor and District cannot agree upon an extension of time, whether compensable or not, then Contractor must have first completed the procedures set forth in Paragraph 8.4. Upon completion of the procedures set forth under Paragraph 8.4, Contractor must then comply with the requirements in this Article including those set forth under Paragraph 4.5.9.

#### **4.5.9 Claims Procedures.**

##### *4.5.9.1 Procedure applicable to all Claims:*

(a) **Definition of Claim:** A "Claim" means a separate demand by the Contractor for (1) time extension, (2) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to the CONTRACT and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (3) and amount the payment of which is disputed by the District.

(b) **Filing Claim is Not Basis To Discontinue Work:** The Contractor shall promptly comply with Work under the Contract or Work requested by the District even though a written claim has been filed. The Contractor and the District shall make good faith efforts to resolve any and all claims that may arise during the performance of the Work covered by this contract.

(c) **Claim Notification:** The Contractor shall within seven (7) calendar days after the claim arises, submit a notification, in writing, with the District stating clearly the basis for the claim. If the notification is not submitted within seven (7) days after the claim arises, the Contractor shall be deemed to have waived all right to assert the claim, and the claim shall be denied. Claims submitted after the final payment date shall also be considered null and void by the District. All claims shall be reviewed pursuant to Paragraph 4.5.1, 4.5.2, and 4.5.5.

(d) **Formal Claim Submission:** If the Contractor does not concur with the District's decision regarding the Claim Notification, the Contractor will issue a formal Claim Appeal within fourteen (14) days of receipt of the District's decision and all detailed information in support of the Claim Appeal within thirty (30) days. All appeals shall be submitted before final payment. If the Claim Appeal is not submitted within fourteen (14) calendar days and detailed information within thirty (30) days, the Contractor shall

be deemed to have waived its right to assert the Claim and the Claim shall be denied. Contractor's failure to submit any detailed information which is in the possession of Contractor shall render such information inadmissible by Contractor at trial or arbitration.

(e) **Appeal Claim Format:** The Contractor shall provide all written detailed documentation which supports the claim, including but not limited to: arguments, justifications, cost, estimates, schedule analysis and detailed documentation. The format of the Claim Appeal shall be as follows:

- (1) Cover letter.
- (2) Summary of factual basis of claim and amount of claim.
- (3) Summary of the basis of the claim, including the specific clause and section under the Contract under which the claim is made.
- (4) Documents relating to the claim, including:
  - a. Specifications
  - b. Drawings
  - c. Clarifications (RFI's)
  - d. Other relevant information
  - e. Analysis of claim merit.
  - f. Analysis of claim cost.
  - g. For claims relating to time extensions, an analysis and supporting documentation evidencing any effect upon the critical path.
  - h. Certification.
  - i. Chronology of events and related correspondence.
  - j. Daily reports and logs.

(f) **Certification:** The Contractor (and subcontractors, if applicable) shall submit with the claim a certification under penalty of perjury:

- (1) That the Contractor has reviewed the claim and that such claim is made in good faith;
- (2) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief;
- (3) The amount requested accurately reflects the amount of compensation for which the Contractor believes the District is liable.
- (4) That the Contractor is familiar with Government Code Sections 12650 et seq. and Penal Code Section 72 and that false claims can lead to substantial fines and/or imprisonment.

(g) **Signature of Certification:** If the Contractor is not an individual, the certification shall be executed by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(h) **Mandatory Claim Appeal Procedure:** The Contractor's Claim Appeal shall be denied if it fails to provide the written basis of the claim and certification as set forth herein.

(i) **District May Request Additional Information:** Within thirty (30) days of receipt of the Claim Appeal and the information under this Article, the District may request in writing any additional documentation supporting the claim or documentation relating to defenses to the claim which the District may assert.

*4.5.9.2 Claims Procedures in Addition to Government Code Claim.* Nothing in the claims procedures set forth in this Article 4 of the General Conditions shall act to waive or relieve the Contractor from meeting the requirements set forth in Government Code section 900 et seq.

*4.5.9.3 Binding Arbitration of Individual Claim Issues.* At the District's sole option, the District may submit individual disputes, or claims, to binding arbitration and Contractor agrees to the resolution determined for each individual dispute by Arbitrator, including resolution of time and delays. If binding arbitration is utilized, such resolution is a full and final resolution of the particular claim or dispute. Under no circumstances may the Contractor stop work, rescind its contract or otherwise slow the progress of Work during resolution of individual claims in binding Arbitration.

*4.5.9.4 Resolution of Disputes in Court of Competent Jurisdiction.* If claims are not resolved under the procedure set forth and pursuant to Article 4.5.9.3, such claim or controversy shall be submitted to a court in the county of competent jurisdiction after the Project has been completed, and not before. Prior to the filing of any such action in accordance with this Paragraph, the Contractor shall comply with the requirements set forth in Government Code section 900 et seq.

*4.5.9.5 Warranties, Guarantees and Obligations.* The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon Contractor by the General Conditions and amendments thereto; and all of the rights and remedies available to District and Architect thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by laws or regulations by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.



## **ARTICLE 5**

### **SUBCONTRACTORS**

#### **5.1 DEFINITIONS**

##### **5.1.1 Subcontractual Relations**

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the same obligations and responsibilities, assumed by Contractor pursuant to the Contract Documents. Each subcontract agreement shall preserve and protect the rights of the District and the Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Contractor shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

##### **5.1.2 Subcontractor Licenses.**

All subcontractors shall be properly licensed by the California State Licensing Board.

##### **5.1.3 Substitution of Subcontractor**

Substitution of Subcontractors shall be permitted only as authorized under Public Contract Code §§ 4107 et seq. Any substitutions of Subcontractors shall not result in any increase in the Contract Price or result in the granting of any extension of time for the completion of the Project.

##### **5.1.4 Contingent Assignment of Subcontracts and Other Contracts**

Each subcontract and other contract or agreement for any portion of the Work is hereby assigned by the Contractor to the District provided that:

- (a) Such assignment is effective only after termination of this contract with the Contractor by the District as provided herein and only for those subcontracts and other contracts and agreements that the District accepts by notifying the Subcontractor or Materialman (as may be applicable) in writing; and

(b) Such assignment is subject to the prior rights of the Surety(ies) obligated under the Payment Bond and Performance Bond.

The Contractor shall include adequate provisions for this contingent assignment of subcontracts and other contracts and agreements in each such document.

## **ARTICLE 6**

### **CONSTRUCTION BY DISTRICT OR BY SEPARATE CONTRACTORS**

#### **6.1 DISTRICT'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

##### **6.1.1 Separate Contracts.**

(a) District reserves the right to let other contracts in connection with this Work. Contractor shall afford other contractors reasonable opportunity for (1) introduction and storage of their materials; (2) access to the Work; and (3) execution of their work. Contractor shall properly connect and coordinate its work with that of other Contractors.

(b) If any part of Contractor's Work depends on proper execution or results of any other contractor, the Contractor shall inspect and within seven (7) days or less, report to District, in writing, any defects in such work that render it unsuitable for proper execution of Contractor's work. Contractor will be held accountable for damages to District for that work which it failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute its acceptance of other contractors' work as fit and proper for reception of its work, except as to defects which may develop in other contractors' work after execution of Contractor's work.

(c) To ensure proper execution of its subsequent Work, Contractor shall measure and inspect Work already in place and shall at once report to the Architect in writing any discrepancy between executed Work as built and the Contract Documents.

(d) Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by District in prosecution of the Project and the potential impact of such work on Contractor's schedule.

(e) Nothing herein contained shall be interpreted as granting to Contractor the exclusive occupancy at the site of Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project Site. If execution of any contract by the District is likely to cause interference with Contractor's performance of its contract, District shall decide which contractor shall cease work temporarily and which contractor shall continue, or whether work can be coordinated so that contractors may proceed simultaneously.

(f) District shall not be responsible for any damages suffered or extra costs incurred by Contractor resulting directly or indirectly from award or performance or attempted performance of any other contract or contracts at the Project, or caused by any decision or omission of District respecting the order of precedence in performance of contracts.

**CONTRACTOR IS AWARE THAT THIS CONTRACT MAY BE SPLIT INTO SEVERAL PHASES. IF THE CONTRACT IS SPLIT INTO PHASES THEN CONTRACTOR HAS MADE ALLOWANCE FOR ANY DELAYS OR DAMAGES WHICH MAY ARISE FROM COORDINATION WITH CONTRACTORS FOR OTHER PHASES. IF ANY DELAYS SHOULD ARISE FROM ANOTHER CONTRACTOR WORKING ON A DIFFERENT PHASE, CONTRACTOR'S SOLE REMEDY FOR DAMAGES, INCLUDING DELAY DAMAGES, SHALL BE AGAINST THE CONTRACTOR WHO CAUSED SUCH DAMAGE AND NOT THE DISTRICT. CONTRACTOR SHALL PROVIDE ACCESS TO OTHER CONTRACTORS FOR OTHER PHASES AS NECESSARY TO PREVENT DELAYS AND DAMAGES TO OTHER CONTRACTORS WORKING ON OTHER PHASES OF CONSTRUCTION.**

**6.1.2** District's Right to Carry Out the Work.

See Paragraph 2.2.

**6.1.3** Designation as Contractor.

When separate contracts are awarded to contractors on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate District/Contractor Agreement.

**6.1.4** Contractor Duties.

The Contractor shall have overall responsibility to reasonably coordinate and schedule Contractor's activities with the activities of the District's own forces and of each separate contractor 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 construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Sum deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors, and the District until subsequently revised. Additionally, Contractor shall coordinate with Architect and District inspector to ensure timely and proper progress of work.

**6.2** **CONSTRUCTIVE OWNERSHIP OF PROJECT SITE AND MATERIAL**

Upon commencement of Work, the Contractor becomes the constructive owner of the entire site, improvements, material and equipment on Project site. Contractor must ensure proper safety and storage of all materials and assumes responsibility as if Contractor was the owner of

the Project site. All risk of loss or damage shall be borne by Contractor during the Work until the date of Completion. As construction owner, Contractor must carry adequate insurance in case of calamity and is not entitled to rely on the insurance requirements as set forth in this agreement as being adequate coverage in case of calamity.

### **6.3 DISTRICT 'S RIGHT TO CLEAN UP**

If a dispute arises among the Contractor, separate contractors, and the District as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.12, the District may clean up and allocate the cost among those it deems responsible.

## **ARTICLE 7**

### **CHANGES IN THE WORK**

#### **7.1 CHANGES**

##### **7.1.1 No Changes Without Authorization.**

There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Construction Change Directive, or order by the District for a minor change in the Work as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's Governing Board has authorized the same and the cost thereof approved in writing by Change Order or executed Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 7, all Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the District's Governing Board, the Architect, the Contractor, and the DSA.

Should any Change Order result in an increase in the Contract price, the cost of such Change Order shall be agreed to, in writing, in advance by Contractor and District and be subject to the monetary limitations set forth in Public Contract Code Section 20659. In the event that Contractor proceeds with any change in Work without first notifying District and obtaining the Architect's and District's consent to a Change Order, Contractor waives any claim of additional compensation for such additional work.

**CONTRACTOR UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT THE REASON FOR THIS NOTICE REQUIREMENT IS SO THAT DISTRICT MAY HAVE AN OPPORTUNITY TO ANALYZE THE WORK AND DECIDE WHETHER THE DISTRICT SHALL PROCEED WITH THE CHANGE ORDER OR ALTER THE PROJECT SO THAT SUCH CHANGE IN WORK BECOMES UNNECESSARY.**

## **7.2 CHANGE ORDERS (“CO”)**

A CO is a written instrument prepared by and signed by the District(as authorized by the District’s Governing Board), the Contractor, and the DSA (if necessary), stating their agreement upon all of the following:

- (a) A description of a change in the Work;
- (b) The amount of the adjustment in the Contract Sum, if any; and
- (c) The extent of the adjustment in the Contract Time, if any.

## **7.3 CONSTRUCTION CHANGE DIRECTIVE**

### **7.3.1 Definition.**

A Construction Change Directive is a written order prepared by and signed by the District and the District, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The District may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions within. If applicable, the Contract Sum and Contract Time will be adjusted accordingly. In the case of a Construction Change Directive being issued, Contractor must commence Work immediately or delays from failure to perform Construction Change Directive shall be the responsibility of Contractor. Any dispute as to the sum of Construction Change Directive or timing of payment, shall be resolved pursuant to Paragraph 4.5.

### **7.3.2 Use to Direct Change**

A Construction Change Directive shall be used in the absence of agreement on the terms of a CO. A copy of a proposed form is provided at the end of this Article.

## **7.4 REQUEST FOR INFORMATION (“RFI”)**

### **7.4.1 Definition.**

An RFI is a written request prepared by the Contractor requesting the District to provide additional information necessary to clarify or amplify an item which the Contractor

believes is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions.

#### **7.4.2 Scope.**

The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Cost, Contract Time, or the Contract Documents.

#### **7.4.3 Response Time.**

The District must respond to a RFI within a reasonable time after receiving such request. If the Architect's response results in a change in the Work, then such change shall be effected by a written CO or Construction Change Directive, if appropriate. If the District cannot respond to the RFI within a reasonable time, the Architect shall notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond.

#### **7.4.4 Costs Incurred.**

The Contractor shall be responsible for any costs incurred for professional services, which shall be deducted from the next progress payment, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request. District, at its sole discretion, shall invoice Contractor for all such professional services arising from this Article.

### **7.5 REQUEST FOR PROPOSAL ("RFP")**

#### **7.5.1 Definition.**

An RFP is a written request prepared by the District requesting the Contractor to submit to the District an estimate of the effect of a proposed change on the Contract Price and the Contract Time.

#### **7.5.2 Scope.**

An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by Paragraph 7.7. The Contractor shall not be entitled to any Additional Compensation for preparing a response to an RFP, whether ultimately accepted or not.

## **7.6 CHANGE ORDER REQUEST (“COR”)**

### **7.6.1 Definition.**

A COR is a written request prepared by the Contractor requesting that the District and the Architect issue a COR based upon a proposed change called for in an RFP or a claim pursuant to Paragraph 4.5.

### **7.6.2 Changes in Price.**

A COR shall include breakdowns per Paragraph 7.7 to validate any change in Contract Price due to proposed change or claim.

### **7.6.3 Changes in Time.**

A COR shall also include any additional time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Project Schedule as defined in Paragraph 3.8 of the General Contract. Any changes in time will be granted only if there is an impact to the critical path. If contractor fails to request a time extension in a COR, then the Contractor is thereafter precluded from requesting or claiming a delay.

## **7.7 COST OF CHANGE ORDERS**

### **7.7.1 Scope.**

Within ten (10) days after a request is made for a change that impacts the Contract Sum as defined in Paragraph 9.1, the critical path, or the Contract Time as defined in Paragraph 8.4.2, the Contractor shall provide the District and the Architect, with a written estimate of the effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, and wage rates required for the change, and the effect upon the Contract Time of such CO. Changes may be made by District by an appropriate written CO, or, at the District’s option, such changes shall be implemented immediately upon the Contractor’s receipt of an appropriate written Construction Change Directive.

District may, as provided by law and without affecting the validity of this Agreement, order changes, modification, deletions and extra work by issuance of written CO or Construction Change Directives from time to time during the progress of the Project, contract sum being adjusted accordingly. All such work shall be executed under conditions of the original Agreement except that any extension of time caused thereby shall be adjusted at time of ordering such change. District has discretion to order changes on a “time and material” basis with adjustments to time made after Contractor has justified through documentation the impact on the critical path of the Project.

### 7.7.2 Determination of Cost.

The amount of the increase or decrease in the Contract Price from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation:

- (a) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. If an agreement cannot be reached within fifteen (15) days after submission and negotiation of Contractor's proposal, Contractor may submit pursuant to Paragraph 7.7.3. Submission of sums which have no basis in fact are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code Section 12650 et seq.);
- (b) By unit prices contained in Contractor's original Proposal and incorporated in the Project documents or fixed by subsequent agreement between District and Contractor;
- (c) Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee. However, in the case of disagreement, Contractor must utilize the procedure under section 7.7.3; or
- (d) By cost of material and labor and percentage of overhead and profit. If the value is determined by this method the following requirements shall apply:

#### 1. **Basis for Establishing Costs.**

a. Labor will be the actual cost for wages prevailing locally for each craft or type of workers at the time the extra Work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification which would increase the extra Work cost will not be permitted unless the Contractor establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b. Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

The District reserves the right to approve materials and sources of supply or to supply materials to the Contractor if necessary for the progress of the Work. No markup shall be applied to any material provided by the District.

c. Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$250 or less.



Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the Work is performed.

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Necessary loading and transportation costs for equipment used on the extra Work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the District than holding it at the Work Site, it shall be returned unless the Contractor elects to keep it at the Work Site at no expense to the District.

All equipment shall be acceptable to the Inspector, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

d. Other Items. The District may authorize other items which may be required on the extra work. Such items include labor, services, material, and equipment which are different in their nature from those required by the Work, and which are of a type not ordinarily available from the Contractor or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the request for payment.

e. Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the request for payment is not substantiated by invoices or other documentation, the District may establish the cost of the item involved at the lowest price which was current at the time of the Daily Report.

f. Overhead. Overhead, including direct and indirect costs, shall be submitted with the COR and include: home office overhead, off-site supervision, CO preparation/negotiation/research, time delays, project interference and disruption, additional guaranty and warranty durations, on-site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs.

### **7.7.3 Format for Proposed Cost Change.**

The following format shall be used as applicable by the District and the Contractor to communicate proposed additions and deductions to the Contract. A copy of a proposed Construction Change Directive form is provided at the end of this Article.

|   | <u>EXTRA</u> | <u>CREDIT</u> |
|---|--------------|---------------|
| (a) Material (attach itemized quantity and unit cost plus sales tax)  | _____        | _____         |
| (b) Labor (attach itemized hours and rates)   | _____        | _____         |
| (c) Equipment (attach invoices)   | _____        | _____         |
| (d) Subtotal  | _____        |               |
| (e) If Subcontractor performed Work, add Subcontractor's overhead and profit to portions performed by Sub-contractor, not to exceed fifteen percent (15%) of item (d).  | _____        | _____         |
| (f) Liability and Property Damage Insurance, Worker's, Compensation Insurance, Social Security, and Unemployment Taxes, not to exceed as follows: FICA @ <b>6.2%</b> - with a wage ceiling of \$84,900; Medicare @ <b>1.45%</b> - no wage ceiling; FUTA @ <b>.8%</b> - with a wage ceiling of \$7,000; ETT and SUI @ <b>2.3%</b> - with a wage ceiling of \$7,000; Workers' Compensation @ <b>5.94%</b> ; Liability and Property Damage @ <b>2.5%</b> . <b>Total not-to-exceed is 19.19%</b> . <i>(Note: Modifications to these percentages will be evaluated and possibly modified only on a case-by-case basis and only after proper proof of alternate percentages are documented and approved in advance. In addition, as wage ceilings are met, those corresponding percentages must drop from the "burden" calculations).</i> | _____        | _____         |
| (g) Subtotal  | _____        | _____         |
| (h) General Contractor's Overhead and Profit: Not to exceed fifteen percent (15%) of Item (g) if Contractor performed the work. No more than five percent (5%) of Item (g) if Subcontractor performed the work. If work was performed by Contractor and Subcontractors, portions performed by Contractor shall not exceed fifteen percent (15%) if Item (g), and portions performed by Subcontractor shall not exceed five percent (5%) of Item (g)   | _____        | _____         |
| (i) Subtotal  | _____        | _____         |

|     |   | <u>EXTRA</u> | <u>CREDIT</u> |
|-----|---|--------------|---------------|
| (j) | Bond not to exceed one percent (1%) of Item | _____        |               |
|     | (g)   |              | _____         |
| (k) | TOTAL                                       |              |               |
| (l) | Time  | _____        | _____         |
|     |   | _____        | _____         |

The undersigned Contractor approves the foregoing Change Order or Construction Change Directive as to the changes, if any, and the contract price specified for each item and as to the extension of time allowed, if any, for completion of the entire work on account of said Change Order or Construction Change Directive, and agrees to furnish all labor, materials and service and perform all work necessary to complete any additional work specified therein, for the consideration stated herein. It is understood that said Change Order or Construction Change Directive shall be effective when approved by the Governing Board of the District.

It is expressly understood that the value of such extra Work or changes, as determined by any of the aforementioned methods, expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages or time extensions not included are deemed waived.

The Contractor expressly acknowledges and agrees that any change in the Work performed shall not be deemed to constitute a delay or other basis for claiming additional compensation based on theories including, but not limited to, acceleration, suspension or disruption to the Project.

**7.7.4 Deductive Change Orders**

All deductive Change Order(s) must be prepared pursuant to Paragraph 7.7.3. Contractor will be allowed a maximum of 5% total profit and overhead. If subcontractor work is involved, subcontractors shall be entitled to a maximum of 5% profit and overhead on the deducted work. Any deviation from this Article shall not be allowed.

**7.7.5 Discounts, Rebates, and Refunds.**

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided herein.

**7.7.6 Accounting Records.**

With respect to portions of the Work performed by COs and Construction Change Directives on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the District, which shall be available to the District on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

**7.7.7 Notice Required.**

If the Contractor desires to make a claim for an increase in the Contract Price, or any extension in the Contract Time for completion, it shall notify the District pursuant to Paragraph 4.5 and this Article. No claim shall be considered unless made in accordance with this subparagraph. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Contract Price or extension of the Contract Time resulting from such claim shall be authorized by a CO.

**7.7.8 Applicability to Subcontractors.**

Any requirements under this Article 7 shall be equally applicable to COs or Construction Change Directives issued to Subcontractors by the Contractor to the same extent required by the Contractor.

**7.7.9 Alteration to Change Order Language.**

Contractor shall not alter or reserve time in Change Orders or Construction Change Directives. Contractor shall execute finalized Change Orders and proceed under Paragraph 7.7.7 and Paragraph 4.5 with proper notice. If Contractor intends to reserve time, without an approved CPM schedule prepared pursuant to Paragraph 3.8 then Contractor may be prosecuted pursuant to the False Claim Act.

**CONSTRUCTION CHANGE DIRECTIVE NO. \_\_\_\_\_**

PROJECT: \_\_\_\_\_

TO: \_\_\_\_\_

You are hereby directed to provide the extra work necessary to comply with this Construction Change Directive.

DESCRIPTION OF CHANGE: \_\_\_\_\_

\_\_\_\_\_

**NOTE:**

Contractor agrees to furnish all labor and materials and perform all of the above-described work in accordance with the above terms in compliance with the applicable sections of the Contract documents. The amount of the charges under this Construction Change Directive is limited to the charges allowed under Article 7 of the General Conditions. The adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Construction Change Directive shall constitute the entire compensation and/or adjustment in the contract time and contract sum due to the Contractor arising out of the change in the work covered by this Construction Change Directive, unless otherwise provided in this Construction Change Directive.

**CHANGE ORDER NO. \_\_\_\_\_**

PROJECT: \_\_\_\_\_

TO: \_\_\_\_\_

You are hereby directed to provide the extra work necessary to comply with this Change Order.

DESCRIPTION OF CHANGE: \_\_\_\_\_

COST (This cost shall not be exceeded): \_\_\_\_\_

Original Contract Price: \$ \_\_\_\_\_

Change Order Amount: \$ \_\_\_\_\_

New Contract Price: \$ \_\_\_\_\_

TIME FOR COMPLETION: \_\_\_\_\_

Original Completion Date: \_\_\_\_\_

Time for Completion of CO: \_\_\_\_\_

New Completion Date: \_\_\_\_\_

**NOTE:**

Contractor agrees to furnish all labor and materials and perform all of the above-described work in accordance with the above terms in compliance with the applicable sections of the Contract documents. The amount of the charges under this Change Order is limited to the charges allowed under Article 7 of the General Conditions. The adjustment in the contract sum, if any, and the adjustment in the contract time, if any, set out in this Change Order shall constitute the entire compensation and/or adjustment in the contract time and contract sum due to the Contractor arising out of the change in the work covered by this Change Order, unless otherwise provided in this Change Order. It is understood that this Change Order shall be effective when approved by the Governing Board of the District.

## ARTICLE 8

### TIME

#### **8.1 DEFINITIONS**

##### **8.1.1 Contract Time.**

Contractor shall perform and complete all Work under this Contract within the time specified in the Agreement Form. Moreover, Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or Project milestones developed pursuant to the provisions of the Contract including, but not limited to the Project Schedule set forth in the Specifications.

##### **8.1.2 Notice to Proceed.**

District may give a notice to proceed within three (3) months of the award of the Proposal by District. Once Contractor has received the notice to proceed, Contractor shall complete the Work in the period of time referenced in the Contract Documents.

In the event that District desires to postpone the giving of the notice to proceed beyond this three-month period, it is expressly understood that with reasonable notice to the Contractor, the giving of the date to proceed may be postponed by District. It is further expressly understood by Contractor, that Contractor shall not be entitled to any claim of additional compensation as a result of the postponement of the giving of the notice to proceed

If the Contractor believes that a postponement will cause a hardship to Contractor, Contractor may terminate the contract with written notice to District within 10 days after receipt by Contractor of District's notice of postponement. It is further understood by Contractor that in the event that Contractor terminates the Contract as a result of postponement by the District, the District shall only be obligated to pay Contractor for the Work that Contractor had performed at the time of notification of postponement. Should Contractor terminate the contract as a result of a notice of postponement, District shall have the authority to award the contract to the next lowest responsible Respondent.

##### **8.1.3 Computation of Time.**

The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

The Contractor will only be allowed a time extension for unusually severe weather if it results in precipitation or other conditions which in the amount, frequency, or duration is in excess of the norm at the location and time of year in question as established by NOAA weather data. No less than 22 calendar days will be allotted for in the contractor's schedule for each winter weather period which is defined as the months, in aggregate of October, November, December, January, February and March. The weather days shall be shown on the schedule and

if not used will become float for the Project's use. The Contractor will not be allowed a day-for-day weather delay when the contract is Proposal for construction during a period that normally includes inclement weather. A day-for-day extension will only be allowed for those days in excess of the norm. The Contractor is expected to work seven (7) days per week (if necessary, irrespective of inclement weather), to maintain access, and to protect the Work under construction from the effects of inclement weather.

If the weather is unusually severe in excess of the NOAA data norm and prevents the Contractor from beginning work at the usual daily starting time, or prevents the Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof, the Architect will designate such time as unavoidable delay and grant one (1) calendar-day extension.

## **8.2 HOURS OF WORK.**

### **8.2.1 Sufficient Forces.**

Contractors and Subcontractors shall continuously furnish sufficient forces to ensure the prosecution of the Work in accordance with the Construction Schedule.

### **8.2.2 Performance During Working Hours.**

Work shall be performed during un-occupied hours as defined by the class schedule for each building.

### **8.2.3 Costs for After Hours Inspections.**

If the Contractor elects to perform Work outside the Inspector's regular working hours, costs of any inspections required outside regular working hours shall be invoiced to the Contractor by the District and deducted from the next Progress Payment.

## **8.3 PROGRESS AND COMPLETION.**

### **8.3.1 Time of the Essence.**

Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

## **8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES**

### **8.4.1 Liquidated Damages.**

Contractor and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood



that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Agreement Form for each calendar day of delay in completion. Any liquidated damages recovered by the District shall not, however, limit the District's right to separately recover any actual out-of-pocket damages it suffers due to Contractor's delay. Contractor and his surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

#### **8.4.2 Excusable Delay.**

Contractor shall not be charged for liquidated damages because of any delays in completion of Work which are not the fault or negligence of Contractor or its subcontractors, including acts of God, as defined in Public Contract Code Section 7105, acts of enemy, epidemics and quarantine restrictions. Contractor shall within five (5) calendar days of beginning of any such delay notify District in writing of causes of delay; thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing Work when, in its judgment, the findings of fact justify such an extension. Extensions of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted after proper compliance with Paragraph 3.8 requiring preparation and submission of a properly prepared CPM schedule.

No extended overhead, general conditions costs, impact costs, out-of-sequence costs or any other type of compensation, by any name or characterization, shall be paid to the Contractor for any delay to any activity not designated as a critical path item on the latest approved Project schedule.

The Contractor shall notify the Architect in writing of any anticipated delay and its cause, in order that the Architect may take immediate steps to prevent, if possible, the occurrence or continuance of delay, and may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work might be delayed thereby.

In the event the Contractor requests an extension of Contract time for unavoidable delay, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in work. When requesting time, i.e., extensions, for proposed Change Orders, they must be submitted with the proposed Change Order with full justification and documentation. If the Contractor fails to submit justification with the proposed Change Order it waives its right to a time extension at a later date. Such justification must be based on the official Contract schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the scope of work. The justification must include, but is not limited to, the following information:

- (a) The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform these activities within the stated duration.

(b) Logical ties to the official Contract schedule for the proposed changes and/or delay showing the activity/activities in the schedule whose start or completion dates are affected by the change and/or delay. (A fragment of any delay of over ten (10) days must be provided.)

The Contractor and District understand and expressly agree that insofar as Public Contract Code Section 7102 may apply to changes in the Work or delays under this contract, the actual delays and damages, if any, and time extensions are intended to, and shall provide, the exclusive and full method of compensation for changes in the Work and construction delays.

#### **8.4.3 Notice by Contractor Required.**

The Contractor shall within five (5) calendar days of beginning of any such delay notify the District in writing of causes of delay with justification and supporting documentation. District will then ascertain the facts and extent of the delay and grant an extension of time for completing the Work when, in its judgment, the findings of fact justify such an extension. Extensions of time shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so affected. The sole remedy of Contractor for extensions of time under Paragraph 8.4.2 shall be an extension of the Contract Time at no cost to the District.

Claims relating to time extensions shall be made in accordance with applicable provisions of Article 7.

#### **8.4.4 No Additional Compensation for Delays within Contractor's Control**

CONTRACTOR IS AWARE THAT GOVERNMENTAL AGENCIES, SUCH AS THE DEPARTMENT OF GENERAL SERVICES, GAS COMPANIES, ELECTRICAL UTILITY COMPANIES, WATER DISTRICTS AND OTHER AGENCIES MAY HAVE TO APPROVE CONTRACTOR PREPARED DRAWINGS OR APPROVE A PROPOSED INSTALLATION. CONTRACTOR HAS INCLUDED DELAYS AND DAMAGES WHICH MAY BE CAUSED BY SUCH AGENCIES IN CONTRACTOR'S BID. THUS, CONTRACTOR IS NOT ENTITLED TO MAKE CLAIM UPON THE DISTRICT FOR DAMAGES OR DELAYS ARISING FROM THE DELAYS CAUSED BY SUCH AGENCIES. FURTHERMORE, THE CONTRACTOR HAS SCHEDULED FOR SUCH DELAYS AND IS NOT ENTITLED TO AN EXTENSION OF TIME FOR DELAYS CAUSED BY GOVERNMENTAL AGENCIES WHICH CONTRACTOR MUST OBTAIN APPROVALS FROM AND, THUS, CONTRACTOR IS NOT ENTITLED TO AN EXTENSION OF TIME.

CONTRACTOR SHALL ONLY BE ENTITLED TO COMPENSATION FOR DELAY WHEN THE FOLLOWING CONDITIONS ARE MET: (1) THE DISTRICT IS RESPONSIBLE FOR THE DELAY; (2) THE DELAY IS UNREASONABLE UNDER THE CIRCUMSTANCES INVOLVED; AND (3) THE DELAY WAS NOT WITHIN THE CONTEMPLATION OF DISTRICT AND CONTRACTOR.

## **ARTICLE 9**

### **PAYMENTS AND COMPLETION**

#### **9.1 CONTRACT SUM**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the District to the Contractor for performance of the Work under the Contract Documents.

#### **9.2 COST BREAKDOWN**

##### **9.2.1 Required Information.**

On forms or software programs (e.g., Microsoft Project or Primavera) approved by the District, the Contractor shall furnish the following:

- (a) Within ten (10) days of the award of the Contract, a detailed breakdown of the Contract Price (hereinafter "Schedule of Values") for each Project or Site;
- (b) Within ten (10) days of the award of the Contract, a schedule of estimated monthly payment requests due the Contractor showing the values and construction time of the various portions of the Work to be performed by it and by its Subcontractors or material and equipment suppliers containing such supporting evidence as to its correctness as the District may require;
- (c) Within ten (10) days of the award of the Contract, the name, address, telephone number, fax number, California State Contractors License number, classification and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for completion of the Project.

##### **9.2.2 District Approval Required.**

The District shall review all submissions received pursuant to Paragraph 9.2.1 in a timely manner. All submissions must be approved by the District before becoming the basis of any payment.

#### **9.3 PROGRESS PAYMENTS**

##### **9.3.1 Payments to Contractor.**

Within thirty (30) days after approval of the Request for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as certified by Architect and Inspector and verified by Contractor) up to the last day of the previous month, less the aggregate of previous payments. If the District has made specific findings that this Project is substantially complex in accordance with Public Contract Code section 7201, this percentage shall be 90% of the value of the Work performed (as certified by Architect and/or

Inspector and verified by Contractor). The value of the Work completed shall be the Contractor's best estimate. Work completed as estimated shall be an approximation or estimate only and no mistake, inaccuracy, error or falsification in said any approved estimate shall operate to release the Contractor, or any surety upon any bond, from damages arising from such Work, or from the District's enforcement of each and every provision of this Contract including but not limited to the Performance Bond and Payment Bond. The District shall have the right to subsequently to correct any mistake, inaccuracy, error or falsification made or otherwise set forth in any approved Request for Payment and such correction may occur in any future Payment Application or in the final payment to the Contractor. No Surety upon any bond shall be relieved, released or exonerated of its obligations under this Contract or any applicable bond when the District is unable to correct an overpayment to the Contractor due to any abandonment by the Contractor or termination by the District.

The Contractor shall not be entitled to have any payment requests processed, or be entitled to have any payment made for work performed, so long as any lawful or proper direction given by the District concerning the Work, or any portion thereof, remains incomplete.

Notwithstanding anything to the contrary stated above, the Contractor may include in its Request for Payment the value of any structural steel, mail order materials, G.F.R.C. panels and other such custom-made materials prepared specifically for the Project and unique to the Project so long as all of the following requirements are satisfied:

- (a) The aggregate cost of materials stored off-site shall not exceed Twenty-Five Thousand Dollars (\$25,000) at any time without the written approval of the District to be given or withheld in the District's sole discretion;
- (b) Title to such materials shall be vested in the District as evidenced by documentation satisfactory in form and substance to the District, including, without limitation, recorded financing statements, UCC filings and UCC searches;
- (c) With each Contractor Request for Payment, the Contractor shall submit to the District a written list identifying each location where materials are stored off-site (which must be a bonded warehouse) and the value of the materials at each location. The Contractor shall procure insurance satisfactory to the District (in its reasonable discretion) for materials stored off-site in an amount not less than the total value thereof;
- (d) The consent of any Surety shall be obtained to the extent required prior to payment for any materials stored off-site;
- (e) Representatives of the District shall have the right to make inspections of the storage areas at any time; and
- (f) Such materials shall be (1) protected from diversion, destruction, theft and damage to the reasonable satisfaction of the District; (2) specifically marked for use on the Project; and (3) segregated from other materials at the storage facility.

### **9.3.2 Purchase of Materials and Equipment.**

The Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays.

### **9.3.3 No Waiver.**

No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the District may enforce each and every provision of this Contract which includes, but is not limited to, the Performance Bond and Payment Bond. The District may correct any error subsequent to any payment. In no event shall the Contractor or the Surety be released or exonerated from performance under this Contract when the District overpays the contractor based upon any mistake, inaccuracy, error or falsification in any estimate that is included in any Request for Payment.

### **9.3.4 Issuance of Certificate of Payment.**

The Architect shall, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the Architect's reasons for withholding approval in whole or in part as provided in Paragraph 9.6. The review of the Contractor's Application for Payment by the Architect is based on the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents, (2) results of subsequent tests and inspections, (3) minor deviations from the Contract Documents correctable prior to completion, and (4) specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified.

### **9.3.5 Payment of Undisputed Contract Payments.**

In accordance with Public Contract Code section 7100, payments by the District to the Contractor for any and all undisputed amounts (including all progress or final payments) is contingent upon the Contractor furnishing the District with a release of all claims against the District related to such undisputed amounts. Disputed contract claims in stated amounts may be specifically excluded by the Contractor from the operation of the release. If, however, the Contractor specifically excludes any claims, the Contractor shall provide details such as a specific number of disputed days or costs of any such exclusion in accordance with Articles 4.5 and 7.7.

## **9.4 APPLICATIONS FOR PROGRESS PAYMENTS**

### **9.4.1 Procedure.**

9.4.1.1 *Application for Progress.* On or before the fifth (5th) day of each calendar month during the progress of the Work, Contractor shall submit to the Architect an itemized Application for Progress Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized, if required, and supported by the following or such portion thereof as Architect requires:

- (a) The amount paid to the date of the Application to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- (b) The amount being requested under the Application for Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
- (c) The balance that will be due to each of such entities after said payment is made;
- (d) A certification that the Record Drawings and Annotated Specifications are current;
- (e) Itemized breakdown of work done for the purpose of requesting partial payment;
- (f) An updated construction schedule in conformance with Paragraph 3.8;
- (g) The additions to and subtractions from the Contract Price and Contract Time;
- (h) A summary of the retentions held;
- (i) Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time;
- (j) The percentage of completion of the Contractor's Work by line item; and
- (k) An updated Schedule of Values from the preceding Application for Payment.

### **9.4.2 Prerequisites for Progress Payments.**

9.4.2.1 *First Payment Request.* The following items, if applicable, must be completed before the first payment request will be accepted for processing:

- (a) Installation of the Project sign;
- (b) Receipt by Architect of submittals, if applicable;

- (c) Installation of field office;
- (d) Installation of temporary facilities and fencing;
- (e) Submission of documents listed in the Paragraph 9.2 relating to Cost Breakdown;
- (f) Preliminary schedule analysis, due within 10 days after Notice to Proceed;
- (g) Contractor's Construction Schedule (Progress Schedule to be CPM based in conformance with Paragraph 3.8);
- (h) Schedule of unit prices, if applicable;
- (i) Submittal Schedule;
- (j) Copies of necessary permits;
- (k) Copies of authorizations and licenses from governing authorities;
- (l) Initial progress report;
- (m) Surveyor qualifications, if applicable;
- (n) Written acceptance of District's survey of rough grading, if applicable;
- (o) List of all subcontractors, with names, license numbers, telephone numbers, and scope of work;
- (p) All bonds and insurance endorsements; and
- (q) Resumes of General Contractor's Project Manager, and if applicable, job site Secretary, Record Documents Recorder, and job site Superintendent.

9.4.2.2 *Second Payment Request.* The second payment request will not be processed until all submittals and shop drawings have been accepted for review by the Architect or designee.

9.4.2.3 *All Payment Requests.* No payment requests will be processed unless Contractor has submitted copies of the Certified Payroll records for the Work which correlates to the payment request and a proper CPM schedule pursuant to Paragraph 3.8 is submitted.

9.4.2.4 Any payments made to Contractor where criteria set forth in Paragraph 9.4.2.1 or 9.4.2.2 have not been met shall not constitute a waiver of said criteria by District. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Contractor may pay its Subcontractors and suppliers and that Contractor agrees that failure to submit such items may constitute a breach of contract by Contractor and may subject Contractor to termination.

## **9.5 WARRANTY OF TITLE**

The Contractor warrants title to all work. The Contractor further warrants that all work is free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Failure to keep work free of liens, claims, security interests or encumbrances is grounds to make a claim against Contractor's payment and performance bond to immediately remedy and defend.

If a lien or stop notice of any nature should at any time be filed against the Work or any District property, by any entity which has supplied material or services at the request of the Contractor, Contractor and Contractor's surety shall promptly, on demand by District and at Contractor's and surety's own expense, take any and all action necessary to cause any such lien or stop notice to be released or discharged immediately therefrom.

If the Contractor fails to furnish to the District within ten (10) calendar days after demand by the District, satisfactory evidence that a lien or stop notice has been so released, discharged, or secured, then District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Contractor under the Contract.

## **9.6 DECISIONS TO WITHHOLD PAYMENT**

### **9.6.1 Reasons to Withhold Payment.**

The District may withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required by Paragraph 9.4 cannot be made. The District may withhold payment, in whole, or in part, to such extent as may be necessary to protect the District from loss because of, but not limited to:

- (a) Defective Work not remedied;
- (b) Stop Notices served upon the District;
- (c) Liquidated damages assessed against the Contractor;
- (d) The cost of completion of the Contract if there exists reasonable doubt that the Work can be completed for the unpaid balance of any Contract Price or by the completion date;
- (e) Damage to the District or other contractor;
- (f) Unsatisfactory prosecution of the Work by the Contractor;
- (g) Failure to store and properly secure materials;



- (h) Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, acceptable monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed Change Order, Construction Change Directives, and verified reports;
- (i) Failure of the Contractor to maintain record drawings;
- (j) Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- (k) Unauthorized deviations from the Contract Documents;
- (l) Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and completion dates.
- (m) Failure to properly pay prevailing wages as defined in Labor Code section 1720, et seq.;
- (n) Failure to properly maintain or clean up the Site;
- (o) Payments to indemnify, defend, or hold harmless the District;
- (p) Any payments due to the District including but not limited to payments for failed tests, or utilities changes or permits;
- (q) Failure to submit an acceptable schedule in accordance with Paragraph 3.8; or
- (r) Failure to pay Subcontractor or suppliers as required by Paragraph 9.8.1.
- (s) Failure to provide release from material suppliers or subcontractors when requested to do so.

**9.6.2 Reallocation of Withheld Amounts.**

District may, in its discretion, apply any withheld amount to payment of outstanding claims or obligations as defined in Paragraphs 9.6.1 and 9.5. In so doing, District shall make such payments on behalf of Contractor. If any payment is so made by District, then such amount shall be considered as a payment made under Contract by District to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligation. District will render Contractor an accounting of such funds disbursed on behalf of Contractor.

If Contractor defaults or neglects to carry out the Work in accordance with the contract documents or fails to perform any provision thereof, District may, after five (5) calendar days written notice to the Contractor and without prejudice to any other remedy make good such deficiencies. The District shall adjust the total Contract price by reducing the amount thereof by

the cost of making good such deficiencies. If District deems it inexpedient to correct Work which is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract price (of at least 150% of the estimated reasonable value of the nonconforming work) shall be made therefor.

### **9.6.3 Payment After Cure.**

When the grounds for declining approval are removed, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

## **9.7 NONCONFORMING WORK**

Contractor shall promptly remove from premises all Work identified by District as failing to conform to the Contract whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract without additional expense to District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

If Contractor does not remove such Work which has been identified by District as failing to conform to the Contract Documents within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) calendar days' time thereafter, District may, upon ten (10) calendar days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

## **9.8 SUBCONTRACTOR PAYMENTS**

### **9.8.1 Payments to Subcontractors.**

No later than ten (10) days after receipt, or pursuant to Business and Professions Code Section 7108.5 and Public Contract Code section 7107, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

### **9.8.2 No Obligation of District for Subcontractor Payment.**

The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

### **9.8.3 Payment Not Constituting Approval or Acceptance.**

An approved Request for Payment, a progress payment, or partial or entire use or occupancy of the Project by the District shall not constitute acceptance of Work not in accordance with the Contract Documents.

### **9.8.4 Joint Checks.**

District shall have the right, if necessary for the protection of the District, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District.

## **9.9 COMPLETION OF THE WORK**

### **9.9.1 Close-Out Procedures.**

9.9.1.1 *Punch List Items.* When the Contractor considers the Work complete, the Contractor shall prepare and submit to the District a comprehensive list of minor items to be completed or corrected (hereinafter "Punch List"). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Upon receipt of the Contractor's Punch List, and not before, the Architect and/or Inspector will make an inspection to determine whether the Work, or designated portion thereof, is complete. If the inspection discloses any item, whether or not included on the Contractor's list, is not completed in accordance with the requirements of the Contract Documents, the Contractor shall, before District's issuance of the Notice of Completion, complete or correct such item. The Contractor shall then submit a request for an additional inspection by the District to determine Completion. When the Work, or designated portion thereof, is complete, the District will file a Notice of Completion. Warranties required by the Contract Documents shall commence on the date of Completion of the Work, or designated portion thereof, unless otherwise provided in the Notice of Completion. The Notice of Completion shall be submitted to the District and the Contractor for their written acceptance of responsibilities assigned to them in such Notice.

#### *9.9.1.2 Close-Out Requirements.*

- (a) **Utility Connections.** Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.
- (b) **Record Drawings.**

1. The intent of this procedure is to obtain an exact “as built” record of the Work upon completion of the project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all record drawings.
  - a. Any Work not installed as originally indicated on drawings.
  - b. The exact location and elevations of all covered utilities, including valves, cleanouts, etc.
2. Contractor is liable and responsible for inaccuracies in as-built drawings, even though they become evident at some future date.
3. Upon completion of the Work and as a condition precedent to approval of final payment, Contractor shall obtain the Inspector’s approval of the corrected prints and employ a competent draftsman to transfer the “as- built” information to the most current version of Autocad or as presently being utilized for Plan Check Submission by either the District, OPSC or DSA and print a complete set of transparent sepias. When completed, Contractor shall deliver corrected sepias and Diskette with Autocad file to the District.

(c) Maintenance Manuals. At least thirty (30) days prior to final inspection, three (3) copies of complete operations and maintenance manuals, repair parts lists, service instructions for all electrical and mechanical equipment, and equipment warranties shall be submitted. All installation, operating, and maintenance information and drawings shall be bound in 8½” x 11” binders. Provide a table of contents in front and all items shall be indexed with tabs. Each manual shall also contain a list of subcontractors, with their addresses and the names of persons to contact in cases of emergency. Identifying labels shall provide names of manufactures, their addresses, ratings, and capacities of equipment and machinery.

(d) Inspection Requirements.

1. Before calling for final inspection, Contractor shall determine that the following Work has been performed:
  - a. The Work has been completed.
  - b. All life safety items are completed and in working order.
  - c. Mechanical and electrical Work complete, fixtures in place, connected and ready for tryout and test.
  - d. Electrical circuits scheduled in panels and disconnect switches labeled.
  - e. Painting and special finishes complete.
  - f. Broken glass replaced and glass cleaned.
  - g. Grounds cleared of Contractor’s equipment, raked clean of debris, and trash removed from Site.

- h. Work cleaned, free of stains, scratches, and other foreign matter, replacement of damaged and broken material.
  - i. Final cleanup, as in Paragraph 3.12.
- 2. Furnish a letter to District stating that a responsible representative of District has been instructed in working characteristics of mechanical and electrical equipment.

**9.9.2** Costs of Multiple Inspections.

More than two (2) requests of the District to make inspections required under Paragraph 9.9.1 shall be considered an additional service of Architect, and all subsequent costs will be invoiced to Contractor and if funds are available, withheld from remaining payments.

**9.10** **PARTIAL OCCUPANCY OR USE**

**9.10.1** District's Rights.

The District may occupy or use any completed or partially completed portion of the Work at any stage. The District and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. If District and Contractor cannot agree as to responsibilities such disagreement shall be resolved pursuant to Paragraph 4.5.1. When the Contractor considers a portion complete, the Contractor shall prepare and submit a Punch List to the District as provided under Paragraph 9.9.1.

**9.10.2** Inspection Prior to Occupancy or Use.

Immediately prior to such partial occupancy or use, the District, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

### **9.10.3 No Waiver.**

Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of the Work not complying with the requirements of the Contract Documents.

## **9.11 COMPLETION AND FINAL PAYMENT**

### **9.11.1 Final Inspection.**

Contractor shall comply with Punch List procedures under Paragraph 9.9.1.1, and maintain the presence of project superintendent and project manager until the punch list is complete to ensure proper and timely completion of the punch list. Under no circumstances shall Contractor demobilize its forces prior to completion of the punch list. Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect shall inspect the Work and shall submit to Contractor and District a final inspection report noting the work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

Upon completion of the Work contained in the final inspection report, the Contractor shall notify the District and Architect, who shall again inspect such Work. If the Architect and the District finds the Work contained in such final inspection report acceptable under the Contract Documents and, therefore, the Work fully completed, it shall notify Contractor, who shall then submit to the Architect its final Application for Payment.

Upon receipt and approval of such final Application for Payment, the Architect shall issue a final Certificate of Payment stating that to the best of its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Architect in connection with the Work, such Work has been completed in accordance with the Contract Documents. The District shall thereupon inspect such Work and either accept the Work as complete or notify the Architect and the Contractor in writing of reasons why the Work is not complete. Upon acceptance of the Work of the Contractor as fully complete (which, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), the District shall record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of payment from the District, pay the amounts due Subcontractors.

### **9.11.2 Retainage.**

The retainage, less any amounts disputed by the District or which the District has the right to withhold Pursuant to Paragraph 9.6, shall be paid after approval of the District by the Architect's Certificate of Payment, after the satisfaction of the conditions set forth in Article 9, and after thirty-five (35) days after the acceptance of the Work and recording of the Notice of Completion by District. No interest shall be paid on any retainage, or on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the

Contract Documents, except as provided to the contrary in any Escrow Agreement between the District and the Contractor pursuant to Public Contract Code § 22300.

**9.11.3** Procedures for Application for Final Payment.

9.11.3.1 *Prerequisites for Final Payment.* The following conditions must be fulfilled prior to Final Payment:

- (a) A full and final waiver or release of all Stop Notices in connection with the Work shall be submitted by Contractor, including a release of Stop Notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop Notice rights.
- (b) The Contractor shall have made all corrections to the Work which are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.
- (c) Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.
- (d) Contractor must have completed all requirements set forth in Paragraph 9.9.1.2.
- (e) Architect shall have issued a Final Certificate of Payment if applicable.
- (f) The Contractor shall have delivered to the District all manuals and materials required by the Contract Documents.
- (g) The Contractor shall have completed final clean up as required by Paragraph 3.12.

**9.12** **SUBSTITUTION OF SECURITIES**

The District will permit the substitution of securities in accordance with the provisions of Public Contract Code section 22300.

**ARTICLE 10**

**PROTECTION OF PERSONS AND PROPERTY**

**10.1** **SAFETY PRECAUTIONS AND PROGRAMS**

**10.1.1** Contractor Responsibility.

The Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials

delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk, with the exception of damage to the work caused by "acts of God" as defined in Public Contract Code Section 7105(b)(2).

Contractor shall take, and require subcontractor to take, all necessary precautions for safety of workers on the Work and shall comply with all applicable federal, state, local and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by District or Architect or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of its organization on the Work, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety and health of workers. The name and position of person so designated shall be reported to District by Contractor. Contractor shall correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected promptly.

#### **10.1.2 Subcontractor Responsibility.**

Contractor shall require that Subcontractors participate in, and enforce, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Each Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

#### **10.1.3 Cooperation.**

All Subcontractors and material or equipment suppliers, shall cooperate fully with Contractor, the District, and all insurance carriers and loss prevention engineers.

#### **10.1.4 Accident Reports.**

Subcontractors shall immediately, within two (2) days, report in writing to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported within four (4) days by telephone or messenger.



Contractor shall thereafter immediately, within two (2) days, report the facts in writing to the District and the Architect giving full details of the accident.

**10.1.5 First-Aid Supplies at Site.**

The Contractor will provide and maintain at the Site first-aid supplies which complies with the current Occupational Safety and Health Regulations.

**10.1.6 Material Safety Data Sheets and Compliance with Proposition 65.**

(a) Contractor is required to have material safety data sheets available in a readily accessible place at the job site for any material requiring a material safety data sheet per the Federal “hazard communication” standard, or employees’ “right-to-know law.” The Contractor is also required to properly label any substance brought into the job site, and require that any person working with the material, or within the general area of the material, is informed of the hazards of the substance and follows proper handling and protection procedures.

Contractor is required to comply with the provisions of California Health and Safety Code section 25249, et seq., which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer. The Contractor agrees to familiarize itself with the provisions of this section, and to comply fully with its requirements.

**10.1.7 Non-Utilization of Asbestos Material.**

**NO ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS SHALL BE USED IN THIS CONSTRUCTION OR IN ANY TOOLS, DEVICES, CLOTHING, OR EQUIPMENT USED TO EFFECT THIS CONSTRUCTION.**

Asbestos and/or asbestos-containing products shall be defined as all items containing, but not limited to, chrysotile, amosite, anthophyllite, tremolite, and antinolite.

Any or all material containing greater than one-tenth of one percent (>.1%) asbestos shall be defined as asbestos-containing material.

All Work or materials found to contain asbestos or Work or material installed with asbestos-containing equipment will be immediately rejected and this Work will be removed at no additional cost to the District.

Decontamination and removal of Work found to contain asbestos or Work installed with asbestos-containing equipment shall be done only under supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency.

The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant, who shall have sole discretion and final determination in this matter.

The asbestos consultant shall be chosen and approved by the District, who shall have sole discretion and final determination in this matter.

The Work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

Interface of Work under this Contract with work containing asbestos shall be executed by the Contractor at his risk and at his discretion, with full knowledge of the currently accepted standards, hazards, risks, and liabilities associated with asbestos work and asbestos-containing products. By execution of this Contract, the Contractor acknowledges the above and agrees to hold harmless District and its assigns for all asbestos liability which may be associated with this work and agrees to instruct his employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

## **10.2 SAFETY OF PERSONS AND PROPERTY**

### **10.2.1 The Contractor.**

The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- (a) Employees on the Work and other persons who may be affected thereby;
- (b) The Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- (c) Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

Contractor is constructive owner of Project site as more fully discussed in Paragraph 6.2.

### **10.2.2 Contractor Notices.**

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

### **10.2.3 Safety Barriers and Safeguards.**

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting

danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

#### **10.2.4 Use or Storage of Hazardous Material.**

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the District any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the District and local fire authorities.

#### **10.2.5 Protection of Work.**

The Contractor and Subcontractors shall continuously protect the Work, the District's property, and the property of others, from damage, injury, or loss arising in connection with operations under the Contract Documents. The Contractor and Subcontractors, at their own expense, shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the District.

The Contractor, at Contractor's expense, will remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work.

Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations. All permits, licenses, or inspection fees required for such repair Work shall be obtained and paid for by Contractor.

#### **10.2.6 Requirements for Existing Sites.**

Contractor shall (unless waived by the District in writing):

- (a) When performing construction on existing sites, become informed and take into specific account the maturity of the students on the Site; and perform Work which may interfere with the college campus routine before or after campus hours, enclose working area with a substantial barricade, and arrange Work to cause a minimum amount of inconvenience and danger to students and faculty in their regular campus activities. The Contractor shall comply with specifications and directives of the District regarding the timing of certain construction activities in order to avoid unnecessary interference with the college functioning.
- (b) Provide substantial barricades around any shrubs or trees indicated to be preserved.
- (c) Deliver materials to building area over route designated by Architect.

(d) Take preventive measures to eliminate objectionable dust, noise, or other disturbances.

(e) Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits or directions of Architect; and not interfere with the Work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of District and Architect regarding signs, advertising, fires, and smoking and require that all workers comply with all regulations while on the Project site.

(f) Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved land surveyor or civil engineer and all maps and records required therefrom shall be filed with county and local authorities, at no cost to the District. All filing and plan check fees shall be paid by Contractor.

(g) Provide District on request with Contractor's written safety program and safety plan for each site.

#### **10.2.7 Shoring and Structural Loading.**

The Contractor shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the Contractor. All such items shall conform with the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The Contractor shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the Work. The installation of such bracing or shoring shall not damage the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Contractor at no cost to the District.

#### **10.2.8 Conformance Within Established Limits.**

The Contractor and Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the District or the Contractor, and shall not unreasonably encumber the premises with construction equipment or materials.

### **10.2.9 Subcontractor Enforcement of Rules.**

Subcontractors shall enforce the District's and the Contractor's instructions, laws, and regulations regarding signs, advertisements, fires, smoking, the presence of liquor, and the presence of firearms by any person at the Site.

### **10.2.10 Site Access.**

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the District, observe the boundaries of the Site designated by the District, park only in those areas designated by the District, which areas may be on or off the Site, and comply with any parking control program established by the District, such as furnishing license plate information and placing identifying stickers on vehicles.

### **10.2.11 Security Services.**

The Contractor shall be responsible for providing security services for the Site as needed for the protection of the Site and as determined in the District's sole discretion.

## **10.3 EMERGENCIES**

### **10.3.1 Emergency Action.**

In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 7.

### **10.3.2 Accident Reports.**

The Contractor shall promptly report in writing to the District all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses in conformance with Article 10.1.4. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported in accordance with Paragraph 10.1.4, immediately by telephone or messenger to the District.

## **10.4 HAZARDOUS MATERIALS**

### **10.4.1 Discovery of Hazardous Materials.**

In the event the Contractor encounters or suspects the presence on the job site of material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by § 25249.5 of the California Health and Safety Code, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the District and the Architect in writing, whether or not such material was generated by the Contractor or the District. The Work in the affected area shall not thereafter be

resumed, except by written agreement of the District and the Contractor, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the District and the Contractor.

#### **10.4.2 Hazardous Material Work Limitations.**

In the event that the presence of hazardous materials is suspected or discovered on the Site (except in cases where asbestos and other hazardous material work in the Contractor's responsibility), the District shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Contractor shall not be required pursuant to Article 7 to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by District, as certified by an independent testing laboratory and approved by the appropriate government agency.

#### **10.4.3 Indemnification by Contractor for Hazardous Material Caused by Contractor.**

In the event the hazardous materials on the Project Site is caused by the Contractor, the Contractor shall pay for all costs of testing and remediation, if any, and shall compensate the District for any additional costs incurred as a result of Contractor's generation of hazardous material on the Project Site. In addition, the Contractor shall defend, indemnify and hold harmless District and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Project Site.

#### **10.4.4 Terms of Hazardous Material Provision.**

The terms of this Hazardous Material provision shall survive the completion of the Work and/or any termination of this Contract.

## **ARTICLE 11**

### **INSURANCE AND BONDS**

#### **11.1 CONTRACTOR'S LIABILITY INSURANCE**

##### **11.1.1 Insurance Requirements.**

Before the commencement of the Work, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least an A status as rated in the most recent edition of Best's Insurance Reports or as amended by the Supplementary General Conditions, such insurance as will protect the District from claims set forth below, which may arise out of or result from the

Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (a) Claims for damages because of bodily injury, sickness, disease, or death of any person District would require indemnification and coverage for employee claim;
- (b) Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person;
- (c) Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;
- (d) Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work;
- (e) Claims involving contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and
- (f) Claims involving Completed Operations, Independent Contractors' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating (XCU); and
- (g) Claims involving sudden or accidental discharge of contaminants or pollutants.

#### **11.1.2 Subcontractor Insurance Requirements.**

The Contractor shall require its Subcontractors to take out and maintain similar public liability insurance and property damage insurance required under Paragraph 11.1.1 in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy the requirements of Paragraph 11.1.1 without prior written approval of the District.

#### **11.1.3 Additional Insured Endorsement Requirements.**

The Contractor shall name, on any policy of insurance required under Paragraph 11.1, the District, Architect, Inspector, the State of California, their officers, employees, agents and independent contractors as additional insureds. Subcontractors shall name the Contractor, the District, Architect, Inspector, the State of California, their officers, employees, agents and independent contractors as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (11/85), or an ISO CG 20 10 (10/93 or 07/04) and ISO CG 20 37 (10/93 or 07/04) or their equivalent as determined by the District in its sole discretion, and must state that coverage is afforded the additional insured with respect to

claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Contractor pursuant to 11.1.1 must be designated in the policy as primary to any insurance obtained by the District. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

**11.1.4 Specific Insurance Requirements.**

Contractor shall take out and maintain and shall require all subcontractors, if any, whether primary or secondary, to take out and maintain:

1. Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than \$2,000,000.00 or Commercial General Liability Insurance (including automobile insurance) which provides limits of not less than:
  - (a) Per occurrence (combined single limit) ..... \$1,000,000.00
  - (b) Project Specific Aggregate (for this project only) ..... \$1,000,000.00
  - (c) Products and Completed Operations ..... \$1,000,000.00
  - (d) Personal and Advertising Injury Limit..... \$1,000,000.00

2. Insurance Covering Special Hazards

The following Special hazards shall be covered by riders or riders to above mentioned public liability insurance or property damage insurance policy or policies of insurance, in amounts as follows:

- (a) Automotive and truck where operated in amounts ..... \$1,000,000.00
- (b) Material Hoist where used in amounts..... \$1,000,000.00
- (c) Explosion, Collapse and Underground (XCU coverage) ..... \$1,000,000.00

3. In addition, provide Excess Liability Insurance coverage in the amount of Two Million Dollars (\$2,000,000.00).

**11.2 WORKERS' COMPENSATION INSURANCE**

During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Contractor's Work is subcontracted, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of



those employees not otherwise protected. The Contractor shall file with the District certificates of insurance as required under Paragraph 11.6 and in compliance with Labor Code § 3700.

### **11.3 BUILDER'S RISK/ "ALL RISK" INSURANCE**

#### **11.3.1 Course-of-Construction Insurance Requirements.**

The Contractor, during the progress of the Work and until final acceptance of the Work by District upon completion of the entire Contract, shall maintain Builder's Risk, Course of Construction or similar first party property coverage issued on a replacement cost value basis consistent with the total replacement cost of all insurable Work and the Project included within the Contract Documents. Coverage is to insure against all risks of accidental direct physical loss, and must include, by the basic grant of coverage or by endorsement, the perils of vandalism, malicious mischief (both without any limitation regarding vacancy or occupancy), fire, sprinkler leakage, civil authority, sonic boom, earthquake, flood, collapse, wind, lightning, smoke and riot. The coverage must include debris removal, demolition, increased costs due to enforcement of building ordinance and law in the repair and replacement of damage and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project which is the subject of the Contract Documents, including completed Work and Work in progress, to the full insurable value thereof. Such insurance shall include the District and the Architect as additional named insureds, and any other person with an insurable interest as designated by the District.

The Contractor shall submit to the District for its approval all items deemed to be uninsurable. The risk of the 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.

### **11.4 FIRE INSURANCE**

Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the District.

### **11.5 OTHER INSURANCE**

The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

### **11.6 PROOF OF INSURANCE**

The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance and certificates have been

obtained and delivered in duplicate to the District for approval subject to the following requirements:

(a) Certificates and insurance policies shall include the following clause:

“This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice.”

(b) Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.

(c) Certificates of insurance shall clearly state that the District and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by District.

(d) The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the District.

## **11.7 COMPLIANCE**

In the event of the failure of any contractor to furnish and maintain any insurance required by this Article 11, the Contractor shall be in default under the Contract. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the District and the Architect.

## **11.8 WAIVER OF SUBROGATION**

Contractor waives (to the extent permitted by law) any right to recover against the District for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the District.

The provisions of this section are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The District and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

## **11.9 PERFORMANCE AND PAYMENT BONDS**

### **11.9.1 Bond Requirements.**

Unless otherwise specified in the Special Conditions, prior to commencing any portion of the Work, the Contractor shall furnish separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California as sureties.

To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, the Contractor shall, upon request of the District, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the District. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor will release the surety. If the Contractor fails to furnish the required bonds, the District may terminate the Contract for cause.

### **11.9.2 Surety Qualification.**

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost.

### **11.9.3 Alternate Surety Qualifications.**

If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with § 995.660 of the California Code of Civil Procedure and proof of such is provided to the District.

## **ARTICLE 12**

### **UNCOVERING AND CORRECTION OF WORK**

## **12.1 UNCOVERING OF WORK**

### **12.1.1 Uncovering Work for Required Inspections.**

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the Inspector or the Architect, be uncovered for the Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Contract Sum or Time.

### **12.1.2 Costs for Inspections not Required.**

If a portion of the Work has been covered which the Inspector or the Architect has not specifically requested to observe prior to its being covered, the Inspector or the Architect may request to see such Work, and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncover and replacement shall, by appropriate Change Order, be charged to the District. If such Work is not in accordance with Contract Documents, the Contractor shall pay such costs unless the condition was caused by the District or a separate contractor, in which event the District shall be responsible for payment of such costs to the Contractor.

## **12.2 CORRECTION OF WORK**

### **12.2.1 Correction of Rejected Work.**

The Contractor shall promptly correct the Work rejected by the Inspector or the District upon recommendation of the Architect as failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

### **12.2.2 Three-Year Warranty Corrections.**

If, within three (3) years after the date of Completion of the Work or a designated portion thereof, or after the date for commencement of warranties established under Paragraph 9.9.1, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the District to do so unless the District has previously given the Contractor a written acceptance of such condition. This period of three (3) years shall be extended with respect to portions of the Work first performed after Completion by the period of time between Completion and the actual performance of the Work. This obligation under this Paragraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The District shall give such notice promptly after discovery of the condition.

### **12.2.3 District's Rights if Contractor Fails to Correct.**

If the Contractor fails to correct nonconforming Work within a reasonable time, the District may correct it, pursuant to Article 9.

## ARTICLE 13

### **MISCELLANEOUS PROVISIONS**

#### **13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located.

#### **13.2 SUCCESSORS AND ASSIGNS**

The District and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

#### **13.3 WRITTEN NOTICE**

In the absence of specific notice requirements in the Contract Documents, written notice shall be deemed to have been duly served if delivered in person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

#### **13.4 RIGHTS AND REMEDIES**

##### **13.4.1 Duties and Obligations Cumulative.**

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

##### **13.4.2 No Waiver.**

No action or failure to act by the Inspector, the District, or the Architect shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

#### **13.5 TESTS AND INSPECTIONS**

##### **13.5.1 Compliance.**

Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

### **13.5.2 Independent Testing Laboratory.**

The District will select and pay an independent testing laboratory to conduct all tests and inspections. Selection of the materials required to be tested shall be made by the laboratory or the District's representative and not by the Contractor. Any costs or expenses of inspection or testing incurred outside of a fifty (50) mile radius from the Project Site or not located in a contiguous county to the Site, whichever distance is greater, shall be paid for by the District, invoiced by the District to the Contractor, and deducted from the next Progress Payment.

### **13.5.3 Advance Notice to Inspector.**

The Contractor shall notify the Inspector a sufficient time in advance of its readiness for required observation or inspection so that the Inspector may arrange for same. The Contractor shall notify the Inspector a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector may arrange for the testing of the material at the source of supply.

### **13.5.4 Testing Off-Site.**

Any material shipped by the Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector that such testing and inspection will not be required, shall not be incorporated in the Work.

### **13.5.5 Additional Testing or Inspection.**

If the Inspector, the Architect, the District, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under Paragraph 13.5.1, the Inspector will, upon written authorization from the District, make arrangements for such additional testing, inspection, or approval. The District shall bear such costs except as provided in Paragraph 13.5.7.

### **13.5.6 Costs for Retesting.**

If such procedures for testing, inspection, or approval under Paragraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the District, invoiced to the Contractor, and deducted from the next Progress Payment.

### **13.5.7 Costs for Premature Test.**

In the event the Contractor requests any test or inspection for the Project and is not completely ready for the inspection, the Contractor shall be invoiced by the District for all costs

and expenses resulting from that testing or inspection, including, but not limited to, the Inspector's and Architect's fees and expenses, and the amount of the invoice of shall be deducted from the next Progress Payment.

## **13.6 TRENCH EXCAVATION**

### **13.6.1 Trenches Greater Than Five Feet.**

Pursuant to Labor Code § 6705, if the Contract Price exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, submit to the District or a registered civil or structural engineer employed by the District or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

### **13.6.2 Excavation Safety.**

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or by the person to whom authority to accept has been delegated by the District.

### **13.6.3 No Tort Liability of District.**

Pursuant to Labor Code § 6705, nothing in this Article shall impose tort liability upon the District or any of its employees.

### **13.6.4 No Excavation Without Permits.**

The Contractor shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

## **13.7 WAGE RATES, TRAVEL, AND SUBSISTENCE**

### **13.7.1 Wage Rates.**

Pursuant to the provisions of Article 2 (commencing at § 1720), Division 2, Part 7, Chapter 1 of the Labor Code, the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director"). These rates are on file at the administrative office of the DISTRICT and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request. The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

Any worker employed to perform work on the Project, but such work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

#### **13.7.2 Holiday and Overtime Pay.**

Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the contract documents or authorized by law.

#### **13.7.3 Wage Rates Not Affected by Subcontracts.**

The Contractor shall pay and shall cause to be paid each worker engaged in the execution of the Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.

#### **13.7.4 Per Diem Wages.**

The Contractor shall pay and shall cause to be paid to each worker needed to execute the Work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code §1773.1.

#### **13.7.5 Forfeiture and Payments.**

Pursuant to Labor Code §1775, the Contractor shall forfeit to the District, not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Agreement by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on consideration of: (1) whether the Contractor or Subcontractor's failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Contractor or Subcontractor; and (2) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations.

### **13.8 RECORDS OF WAGES PAID**

#### **13.8.1 Payroll Records.**

(a) Pursuant to §1776 of the Labor Code, each Contractor and Subcontractor shall keep an accurate payroll records showing the name, address, social security number,



work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.

(b) All payroll records shall be certified and submitted with each application for payment, but shall not be submitted less than once per month. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

- (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- (2) A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards of the Department of Industrial Relations.
- (3) A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to Paragraph (2) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Contractor, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the Division of Labor Standards Enforcement.

(d) The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor awarded the Contract or the Subcontractor(s) performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an

individual's name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

(f) The Contractor shall inform the District of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The Contractor or Subcontractor(s) shall have 10 calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or Subcontractor(s) shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

Responsibility for compliance with this Article shall rest upon the Contractor.

### **13.8.2 Withholding of Contract Payments & Penalties.**

The District may withhold or delay contract payments to the Contractor and/or any Subcontractor if:

- (a) The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
- (b) The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
- (c) The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or
- (d) The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
- (e) The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing workers on public works projects.

## **13.9 APPRENTICES**

### **13.9.1 Apprentice Wages and Definitions.**

All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which

he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in §3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with §3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.

### **13.9.2 Employment of Apprentices.**

Contractor agrees to comply with the requirements of Labor Code §1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, when performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code §1777.5. The Contractor or any Subcontractor must apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project site for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor upon the Contractor's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code §1777.5.

### **13.9.3 Submission of Contract Information.**

Prior to commencing work on the Project, the Contractor and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the District if requested. Within 60 days after concluding work on the Project, the Contractor and Subcontractors shall submit to the District, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.

### **13.9.4 Apprentice Fund.**

The Contractor or any Subcontractor under him or her, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director

determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and Subcontractors may add the amount of the contributions in computing his or her Proposal for the Contract.

#### **13.9.5 Prime Contractor Compliance.**

The responsibility of compliance with Article 13 and §1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor. Any Contractor or Subcontractor that knowingly violates the provisions of this Article or Labor Code §1777.5 shall be subject to the penalties set forth in Labor Code §1777.7.

### **13.10 ASSIGNMENT OF ANTITRUST CLAIMS**

#### **13.10.1 Application.**

Pursuant to Government Code § 4551, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties. If the District receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the Proposal price, less the expenses incurred in obtaining that portion of the recovery.

#### **13.10.2 Assignment of Claim.**

Upon demand in writing by the assignor, the District shall, within one (1) year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the District has not been injured thereby or the District declines to file a court action for the cause of action.

### **13.11 STATE AUDIT**

Pursuant to and in accordance with the provisions of Government Code § 10532, or any amendments thereto, all books, records, and files of the District, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state

funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after final payment is made under this Contract. Contractor shall preserve and cause to be preserved such books, records, and files for the audit period.

## **ARTICLE 14**

### **TERMINATION OR SUSPENSION OF THE CONTRACT**

#### **14.1 TERMINATION BY THE CONTRACTOR FOR CAUSE**

##### **14.1.1 Grounds for Termination.**

The Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, for only the following reasons:

- (a) Issuance of an order of a court or other public authority having jurisdiction; or
- (b) An act of government, such as a declaration of national emergency.

##### **14.1.2 Notice of Termination.**

If one of the above reasons exists, the Contractor may, upon written notice of seven (7) additional days to the District, terminate the Contract and recover from the District payment for Work executed and for reasonable costs verified by the Architect with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages.

#### **14.2 TERMINATION BY THE DISTRICT FOR CAUSE**

##### **14.2.1 Grounds for Termination.**

The District may terminate the Contractor and/or this Contract for the following reasons:

- (a) Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- (b) Persistently or repeatedly is absent, without excuse, from the job site;
- (c) Fails to make payment to Subcontractors, suppliers, materialmen, etc.;
- (d) Persistently disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction;
- (e) Becomes bankrupt or insolvent, including the filing of a general assignment for the benefit of creditors; or
- (f) Otherwise is in substantial breach of a provision of the Contract Documents.

#### **14.2.2 Notification of Termination.**

When any of the above reasons exist, the District may, without prejudice to any other rights or remedies of the District and after giving the Contractor and the Contractor's surety, if any, written notice of seven (7) days, terminate the Contractor and/or this Contract and may, subject to any prior rights of the surety:

- (a) Take possession of the Project and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- (b) Accept assignment of Subcontracts. Contractor acknowledges and agrees that if the District (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the District which the District has chosen to accept; and
- (c) Complete the Work by any reasonable method the District may deem expedient, including contracting with a replacement contractor or contractors.

#### **14.2.3 Payments Withheld.**

If the District terminates the Contract for one of the reasons stated in Paragraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is complete. All costs associated with the termination and completion of the Project shall be the responsibility of the Contractor and/or its surety.

#### **14.2.4 Payments Upon Completion.**

If the unpaid balance of the Contract Sum exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If the costs to complete the Work including, but not limited to, compensation for professional services and expenses made necessary thereby exceed the unpaid balance, the Contractor shall pay the difference to the District. The amount to be paid

to the Contractor, or District, as the case may be, shall be certified by the Architect upon application. This payment obligation shall survive completion of the Contract.

### **14.3 TERMINATION OF CONTRACT BY DISTRICT (CONTRACTOR NOT AT FAULT)**

#### **14.3.1 Termination for Convenience.**

District may terminate the Contract upon fifteen (15) calendar days of written notice to the Contractor and use any reasonable method the District deems expedient to complete the project, including contracting with replacement contractor or contractors, if it is found that reasons beyond the control of either the District or Contractor make it impossible or against the District's interest to complete the work. In such a case, the Contractor shall have no claims against the District except: (1) the actual cost for labor, materials, and services performed which may be documented through timesheets, invoices, receipts, or otherwise, and as approved by the District; (2) ten percent (10%) of the value of all remaining contract work as determined by the District for profit and overhead; and (3) minus any withholdings, credits or other offsets in accordance with the Contract Documents. Contractor acknowledges and agrees that if the District (in its sole and absolute discretion) decides to takeover completion of the Project, the Contractor agrees to immediately assign all subcontracts to the District which the District has chosen to accept.

#### **14.3.2 Non-Appropriation of Funds/ Insufficient Funds.**

In the event that sufficient funds are not appropriated to complete the Project or the DISTRICT determines that sufficient funds are not available to complete the Project, DISTRICT may terminate or suspend the completion of the Project at any time by giving written notice to the Contractor. In the event that the DISTRICT exercises this option, the DISTRICT shall pay for any and all work and materials completed or delivered onto the site for which value is received, and the value of any and all work then in progress and orders actually placed which cannot be canceled up to the date of notice of termination. The value of work and materials paid for shall include a factor of fifteen percent (15%) for the Contractor's overhead and profit and there shall be no other costs or expenses paid to Contractor. All work, materials and orders paid for pursuant to this provision shall become the property of the DISTRICT. DISTRICT may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as DISTRICT may determine. Adjustment shall be made for increases in the cost of performance of the Agreement caused by suspense, delay or interruption.

### **14.4 REMEDIES OTHER THAN TERMINATION**

If a default occurs, the District may, without prejudice to any other right or remedy, including, without limitation, its right to terminate the Contract pursuant to Article 14.2, do any of the following:

- (a) Permit the Contractor to continue under this Contract, but make good such deficiencies or complete the Contract by whatever method the District may deem

expedient, and the cost and expense thereof shall be deducted from the Contract Price or paid by the Contractor to the District on demand;

(b) If the workmanship performed by the Contractor is faulty or defective materials are provided, erected or installed, then the District may order the Contractor to remove the faulty workmanship or defective materials and to replace the same with work or materials that conform to the Contract Documents, in which event the Contractor, at its sole costs and expense, shall proceed in accordance with the District's order and complete the same within the time period given by the District in its notice to the Contractor; or

(c) Initiate procedures to declare the Contractor a non-responsible Respondent for a period of two to five years thereafter.

All amounts expended by the District in connection with the exercise of its rights hereunder shall accrue interest from the date expended until paid to the District at the maximum legal rate. The District may retain or withhold any such amounts from the Contract Price. If the Contractor is ordered to replace any faulty workmanship or defective materials pursuant to Paragraph (b) above, the Contractor shall replace the same with new work or materials approved by the Architect and the District, and, at its own cost, shall repair or replace, in a manner and to the extent the Architect and the District shall direct, all work or material that is damaged, injured or destroyed by the removal of said faulty workmanship or defective material, or by the replacement of the same with acceptable work or materials. In no event shall anything in this Paragraph be deemed to constitute a waiver by the District of any other rights or remedies that it may have at law or in equity, it being acknowledged and agreed by the Contractor that the remedies set forth in this Paragraph are in addition to, and not in lieu of, any other rights or remedies that the District may have at law or in equity.



## **SUPPLEMENTARY CONDITIONS**

### **A. APPLICABILITY**

(a) This Project IS NOT subject to Compliance Monitoring Unit requirements. If the Project IS subject to Compliance Monitoring Unit requirements, then Section B below shall apply to the Project. If the Project IS NOT subject to Compliance Monitoring Unit requirements, Section B may be disregarded by the Contractor.

### **B. COMPLIANCE MONITORING UNIT**

(a) This Project is subject to labor compliance monitoring and enforcement by the Compliance Monitoring Unit (“CMU”) within the Division of Labor Standards Enforcement pursuant to Title 8, California Code of Regulations, Section 16450 et seq.

(b) The Contractor and all Subcontractors shall be required to furnish, at least monthly, electronic certified payroll records directly to the Labor Commissioner/ Compliance Monitoring Unit in accordance with Title 8, California Code of Regulations, Section 16450 et seq. All payroll records shall be furnished in a format prescribed by Title 8, California Code of Regulations, Section 16401. The Contractor and all Subcontractors are directed to go to <https://app.mylcm.com> and follow the instructions to enroll in CMU’s eCPR system to submit electronic certified payroll records. The District will have direct and immediate access to all CPRs for the Project that are submitted through the eCPR system. The District can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.

(c) The CMU may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Project site (“On-Site Visits”). On-Site Visits may include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the CMU to ensure compliance with prevailing wage requirements. The CMU shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner.

(d) Any lawful activities conducted or any requests made by the CMU shall not be the basis for any delays, claims, costs, damages or liability of any kind against the District by the Contractor. Contractor and all Subcontractors shall cooperate and comply with any lawful requests by the Compliance Monitoring Unit. The failure of the CMU, the Division of Labor Standards Enforcement, or any other part of the Department of Industrial Relations to comply with any requirement imposed by the California Code of

Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.

(e) Prior to commencing any work on the Project, the Contractor shall post the notice/poster required under Title 8, California Code of Regulations, Section 16451(d) in both English and Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the CMU website, at the Division of Labor Standards Enforcement District Offices or can be obtained by emailing a request to [CMU@dir.ca.gov](mailto:CMU@dir.ca.gov).