



RFQ #2024-21-083Q

**REQUEST FOR QUALIFICATIONS
DESIGN-BUILD QUALIFICATIONS FOR
PREFABRICATED BUILDINGS FOR
JEFFERSON MIDDLE SCHOOL**

Mandatory Pre-Proposal Conference:
December 13, 2023, at 3:00 P.M.
Jefferson Middle School
823 Acacia Ave.
Oceanside, CA 92058

RFP Questions Due:
December 21, 2023, by 3:00 P.M.

RFP Response Due:
January 4, 2024, by 3:00 P.M.

OCEANSIDE UNIFIED SCHOOL DISTRICT
2111 MISSION AVENUE
OCEANSIDE, CA 92058
760-966-4070

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NOTICE OF REQUEST FOR QUALIFICATIONS

Notice is hereby given that the Oceanside Unified School District's ("District") Board of Education ("Board") of the County of San Diego, State of California, will receive sealed qualifications from Design-Build Entities (DBE) associated with the following project:

RFQ #2024-21-083Q

REQUEST FOR QUALIFICATIONS DESIGN-BUILD QUALIFICATIONS FOR PREFABRICATED BUILDINGS FOR JEFFERSON MIDDLE SCHOOL

The Request for Qualification (RFQ) package and required forms may be obtained from the OUSD webpage at www.oside.us/Page/1160, and from the Bond Construction Program page at <https://oceansideusbond.maasco.com/procurement-bids/>, or from the Oceanside Unified School District, Bond Construction Management Office, 2111 Mission Avenue, Building E, Oceanside, CA 92058.

A mandatory pre-proposal conference will take place on Wednesday, December 13, 2023, at 3:00pm at Jefferson Middle School located at 823 Acacia Ave., Oceanside, CA 92058. Please RSVP to Nancy Rosenberg via email at nancy.rosenberg@oside.us by 2:00 P.M. on Tuesday, December 12, 2023, to confirm attendance.

Completed proposal submissions and all supporting documents should be placed in a sealed envelope marked "Confidential" and mailed or delivered to Nancy Rosenberg, at the Oceanside Unified School District, Bond Construction Management Office, 2111 Mission Avenue, Building E, Oceanside, CA, 92058 up to, but not later than **3:00 p.m., on January 4, 2024**.

The District reserves the right to reject any or all qualifications, to accept or to reject any one or more items of qualifications, or to waive any irregularities or informalities in the qualifications.

OVERVIEW OF SERVICES SOUGHT

A. INTRODUCTION

- a. **Purpose of Request for Qualifications.** The purpose of this Request for Qualifications (“RFQ”) is to prequalify Design-Build Entities (“DBE”) interested in providing design-build services for modular/pre-engineered, prefabricated buildings to the Oceanside Unified School District Office, at Jefferson Middle School.

The desired scope of work, which will be more fully described in a later Request for Proposals, will likely include: (DB) delivery approach of modular/pre-engineered, prefabricated buildings for the new Administration, Gym/MPR, Food Service, Visual and Performing Arts classroom structure, and two exterior canopies, aiming to provide these buildings as pre-engineered/prefabricated structures at Jefferson Middle School.

Pursuant to Education Code Section 17250.10 et seq, the District intends to contract with a single DBE to complete the design documents and construct the Project.

The budget for the design and construction of the Project, inclusive of all costs of design, engineering, demolition, hazard material removal, and construction, is approx. \$16M. The District’s anticipated award date for the contract is April 20, 2024, with design-build services to commence immediately thereafter. Demolition, site preparation, infrastructure and other non-related construction (by others) is expected to start summer 2024, to be completed by winter 2025 for occupancy on January 2026

Your firm is invited to complete and submit a Prequalification Questionnaire and other information outlining your organization’s qualifications and willingness to provide the services described above. It is mandatory that all DBEs who intend to submit a proposal, fully complete the Prequalification Questionnaire, provide all materials requested herein, and be approved by the District to be on the final qualified Proposal list.

B. OVERVIEW OF DESIGN-BUILD COMPETITION

- a. **Two-Phase Design-Build Competition.** The process contemplated by the District for award of the design-build contract is conducted in two (2) phases:

Phase 1 – Request for Qualifications (RFQ): Phase 1 consists of this process of prequalifying DBEs for this Project. The procedures and forms for DBE prequalification for this Project are set forth in **Sections II-VI** of this packet.

Once all prequalification submittals are received, the District’s prequalification selection committee (“Selection Committee”) will score the submittals and interviews, if any are conducted. The Selection Committee will create a “short-list” of qualified teams based on score results, and provide those on the short-list a Request for Proposals (“RFP”) and invite them to submit a proposal during Phase

2 below. The District intends to shortlist down to no more than three (3) design build teams.

Phase 2 – Request for Proposals (RFP): Phase 2 consists of the process for awarding the “Best Value” Design-Build contract for the Project, from the proposals received.

Selection of the successful proposer may be based upon factors in the RFP, which may include, but are not limited to:

- a. Attendance at all Mandatory Meetings
- b. Requirements in Education Code Sections 17250.10 et seq.
- c. Preliminary Design Submittal/Proposed Design Approach
 - Meets functional requirements
 - Exterior aesthetics to enhance design
 - Flexible classroom design
 - Life-cycle costs over fifteen (15) or more years
 - Project schedule
- d. Project Team Organization
- e. Understanding of DSA review and approval processes
- f. PC designs that may be applicable
- g. Proposed Price
- h. Schedule
- i. Design Innovation(s), if applicable

The District will award the design-build contract to the proposer whose proposal is determined to have the overall best value to the District, taking into consideration all costs and non-cost factors.

- b. **Experience.** Credit for experience, as one or more of the non-cost evaluative factors in the design-build competition, shall be based on overall experience with design-build, other alternative delivery methods, and high and elementary design and construction experience.

INSTRUCTIONS TO APPLICANTS

- A. **Qualification Submittal.** The applicant (“Applicant”) shall submit eight (8) copies plus one thumb/flash drive of its response by January 4, 2024, to:

Oceanside Unified School District
Bond Construction Management Office, Building E
2111 Mission Avenue
Oceanside, CA 92058
Attn: Nancy Rosenberg, Deputy Bond Program Manager

Qualification submittals received after 3:00 p.m., January 4, 2024, will be rejected as non-responsive and returned unopened without review. In order to be considered “on time,” the RFQ must be dated and signed by an authorized representative of the District confirming receipt by the above-specified deadline.

The District shall not be responsible for, nor accept as a valid excuse for late delivery, any delay in mail service or other method of delivery used by the Applicant. Applicants are encouraged to personally deliver or retain a private courier service to deliver responses directly to the address listed above.

All qualification submittals shall be enclosed in a sealed package(s) plainly marked with the words:

**RFQ #2024-21-083Q
REQUEST FOR QUALIFICATIONS
DESIGN-BUILD QUALIFICATIONS FOR PREFABRICATED BUILDINGS FOR
JEFFERSON MIDDLE SCHOOL**

- B. **Schedule of Events.**

| Event | Dates |
|--|------------------------------|
| Phase 1: Publication of Notice of RFQ | December 7, 2023 |
| Phase 1: Mandatory Pre-Qualification Conference at Jefferson Middle School | December 13, 2023, at 3:00pm |
| Phase 1: Requests for Clarifications to the RFQ Due | December 21, 2023, by 3:00pm |
| Phase 1: Responses to Requests for Clarifications Sent | December 28, 2023, by 3:00pm |
| Phase 1: RFQ Submissions Due | January 4, 2024, by 3:00pm |
| Phase 1: District posts RFQ Shortlist | January 19, 2024 |
| Phase 2: Publication of RFP | January 2024 |
| Phase 2: RFP Submissions Due | February 2024 |
| Phase 2: Design Presentation | March 2024 |
| Phase 2: Board of Education Awards RFP | April 2024 |

- C. **Prequalification Conference.** A pre-qualification conference to discuss this RFQ and to answer questions from prospective DBEs prior to prequalification submittal will be held in open forum at the Oceanside Unified School District located at Jefferson Middle

School, 823 Acacia Ave, Oceanside, CA 92058 on Wednesday, December 13, 2023, at 3:00pm. Please RSVP to Nancy Rosenberg via email at nancy.rosenberg@oside.us by 2:00 P.M. on Tuesday, December 12, 2023, to confirm attendance.

Attendance at the meeting by a representative of the DBE is a prerequisite for submitting a prequalification submittal. Minutes or other records of the conference will not be disseminated, except where material changes to this RFQ are made by District representatives or where answers to questions by District are deferred and later communicated as part of an addendum to this RFQ.

- D. Questions from Applicants.** After the prequalification meeting, questions or comments regarding this RFQ (except to inquire about the number of addenda issued) must be submitted in writing via email and must be received by the District no later than 3:00 p.m. on December 21, 2023. Written questions are to be emailed to **Nancy Rosenberg at nancy.rosenberg@oside.us**.

The District shall not be obligated to answer any questions received after the above-specified deadline or any questions submitted in a manner other than as instructed above.

- E. District Modifications to the Prequalification Questionnaire.** The District expressly reserves the right to modify any portion of the Prequalification Questionnaire or these Instructions prior to the latest date/time for submission of Responses to the Prequalification Questionnaire. Modifications, if any, made by the District to the Prequalification Questionnaire will be by written addenda.

Addenda will be sent by email to those DBEs who attended the prequalification conference. All addenda issued shall become part of the RFQ.

If District staff cannot answer certain questions at the prequalification conference, the District may provide those answers in writing as part of an addendum. In addition, responses to written questions received by the specified deadline after the prequalification conference may be incorporated in an RFQ addendum.

- F. No Oral Clarifications/Modifications.** The District will not provide any oral clarifications or modifications to these Instructions, the Prequalification Questionnaire, or the requirements thereof. No employee, officer, agent, or representative of the District is authorized to provide oral clarifications or modifications to the Prequalification Questionnaire. No Applicant shall rely on any oral clarification or modification to the Prequalification Questionnaire or these Instructions.

- G. Unauthorized Communications.** Unless and except requested to do so in writing by the District or as otherwise permitted by these Instructions, Applicants (including, without limitation, DBE Members, Sub-consultants, and Subcontractors) shall not, prior to completion of the prequalification process, communicate, either verbally or in writing, with: (1) any member of the Selection Committee; (2) any consultant or professional retained by the District for the purpose of providing the District advice or professional services in respect to the Project or the Request for Prequalification or Request for

Proposal process; or (3) any employee or representative of the District or any school located within the District. Ongoing communications unrelated to this Project are permitted.

- H. Pre-contractual Expenses.** Pre-contractual expenses are defined as any expenses incurred by the Applicant in: (1) preparing its submission in response to this RFQ; (2) submitting that response to the District; (3) negotiating with the District any matter related to this RFQ, including a possible contract; or (4) engaging in any other activity prior to the effective date of award, if any, of a contract resulting from this RFQ.

The District shall not, under any circumstance, be liable for any pre-contractual expenses incurred by Applicants, and Applicants shall not include any such expenses as part of their proposals.

- I. Project References.** The District reserves the right, but assumes no obligation, to contact and to interview any persons or organizations identified in Applicant's submittal, including, without limitation, Project References. Applicant assumes sole responsibility for any inaccuracies in the contact information provided by it. Incorrect contact information for a Project Reference provided in response to a request in the Prequalification Questionnaire may, in the sole and absolute discretion of District, result in the Project Reference being stricken.

- J. Interviews.** The District may require Applicants to make an oral presentation to the Selection Committee. If such interviews are conducted, the District's appraisals of the presentations will also be factored into the final scores assigned to the responses. However, Applicants are advised that the RFQ process may proceed without interviews or further discussion.

- K. Applicant Information.** Each Applicant must have the following California General Building Contractor's License, **License Classification: B**, current, active and in good standing with the California Contractor's State License Board on the date and time the Prequalification Questionnaire submittal is due and must submit this Prequalification Questionnaire with all portions completed, including required attachments.

Each prospective Contractor must answer all the questions and provide all requested information, where applicable. Any prospective Contractor failing to do so may be deemed to be not responsive and not responsible with respect to this Prequalification at the sole discretion of the District. All Contractors that have submitted a Prequalification Questionnaire will be notified in writing of achieving status as a potential proposer. The decision of the District is final.

All information submitted for Prequalification evaluation will be considered official information acquired in confidence, and the District will maintain its confidentiality to the extent permitted by law.

It is critical that the Applicant fills out all information required accurately, completely, truthfully and to the best of their knowledge. Ambiguous or incomplete information may

lead to an unfavorable rating and subsequent status as not qualified.

WHERE NECESSARY, APPLICANT TO COPY THE FORMS IN THIS PACKAGE.

- L. Continuing Obligation.** Applicant has the continuing obligation, commencing upon submission of its prequalification submittal, to immediately notify the District, in writing, if it learns that any of the following have occurred: (1) any statement made in its prequalification submittal was false or misleading when initially made; (2) circumstances have occurred since the Applicant submitted its prequalification submittal that, if they had occurred prior to the date that Applicant submitted its prequalification submittal, would have constituted grounds for the automatic disqualification of the Applicant (provided, however, that the obligation set forth in this Section I, Clause 1.2, Part K: Continuing Obligation shall not extend to or include the providing of information that would involve a recalculation of the Applicant's Experience Modifier Rate); or (3) the Applicant has undergone a change in ownership in which ownership of 50% or more of its stock or assets has changed.
- M. No Commitment to Award.** Issuance of this RFQ and receipt of responses does not commit the District to award a contract. The District expressly reserves the right to accept or reject any or all prequalification submittals received in response to this RFQ, or to cancel all or part of this RFQ.
- N. No Warranty by District.** Applicants are solely responsible to satisfy themselves as to the suitability of any information provided by the District that is in the nature of estimates of costs, statements of needs or requirements, projections, budgets, or other information describing the proposed contract or project contemplated by this Request for Prequalification. Nothing stated in these Instructions to Applicants or its attachments shall be construed as implying the creation or existence of any warranty, express or implied, on the part of the District with respect to the accuracy, sufficiency, or completeness of such information.
- O. Informational Summaries.** Portions of these Instructions include summaries of the process that the District currently contemplates in respect to the possible future solicitation of RFP, evaluation of proposals, and award of a design-build contract. Such summaries are provided for the convenience of the Applicants and should not be interpreted as a complete or definitive statement of all Project scope, procedures, conditions, requirements, or standards that may apply to any of the afore-mentioned processes and the District reserves the right, at any time and in the exercise of its sole and absolute discretion, to modify such procedures, conditions, requirements, or standards, by changes, additions, or deletions thereto.

The prequalification questionnaire must be signed under penalty of perjury in the manner designated on the certification page, by individuals with the legal authority to bind all members of the DBE. If any information provided by a DBE becomes inaccurate, the DBE must immediately notify the District and provide updated accurate information in writing, under penalty of perjury.

P. Withdrawal, Resubmission. Prequalification submittals may be withdrawn at any time upon written notice to the District received at the place for receipt of prequalification submittals. Prequalification submittals withdrawn prior to the deadline for receipt thereof as set forth in the RFQ timeline may be resubmitted up to the deadline for submission thereof provided for in the RFQ timeline.

Q. Public Records. All materials submitted in response to the Prequalification Questionnaire are deemed property of the District upon submission to the District. Information submitted by Applicant that is not otherwise a public record under the California Public Records Act shall not be open to public inspection, pursuant to Education Code Section 17250.25.

APPLICANT REPRESENTATIONS

A. **Representations.** Each Applicant, by submitting its prequalification submittal, represents that:

- a. **Compliance with Prequalification Documents.** The Applicant's prequalification submittal is made in compliance with these Instructions To Applicants and its attachments.
- b. **Attendance at Prequalification Conference.** The Applicant attended the mandatory Prequalification Conference.
- c. **Due Authorization.** The persons or entities verifying the information contained in the Applicant's Prequalification Questionnaire are authorized to do so and any such signer that is a corporation is authorized to do business in, and is in good standing under the laws of, the State of California.
- d. **License Status.** The Applicant and its proposed Architect(s) of Record, Principal Engineer(s) and other Subcontractors meet the requirements of the prequalification documents pertaining to licensing.
- e. **Immigration Reform and Control Act.** The Applicant is in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA"), as well as any similar provisions of applicable laws setting forth proscriptions or penalties relating to the employment or hiring of undocumented aliens.
- f. **Labor Compliance.** The Applicant will, if awarded a contract within the classification of contracts provided for in the prequalification documents, comply with all of the applicable provisions of the California Labor Code, including, without limitation, payment of prevailing wages, maintenance and submission of weekly certified payrolls and hiring of apprentices while working onsite. The District does not have a Project Labor Agreement ("PLA").

No contractor or subcontractor may be listed on a bid proposal or awarded a contract for work for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

This Project is subject to compliance monitoring, electronic certified payroll records reporting, and enforcement by the Department of Industrial Relations.

- g. **Skilled and Trained Workforce.** The Applicant agrees to use a skilled and trained workforce, including subcontractors at every tier, pursuant to California Education Code Sections 17250.25(c).

PREQUALIFICATION QUESTIONNAIRE FORMAT AND CONTENT

- A. Presentation.** Submittals shall be on 8½” x 11” paper (except where otherwise indicated), typed, and should not include any unnecessarily elaborate or promotional material. Lengthy narrative is discouraged; presentations, if any, should be brief and concise. A response to this RFQ should be printed on single-sided pages with plastic combed or wire-spiraled binding (please do not submit 3-ring binders), with a 50-page maximum excluding forms and questionnaire. Please mark the cover to clearly identify the Applicant. Tabbed dividers should be used to identify and separate sections of the response to the RFQ which correspond to the contents/format described herein. Each response must conform to the following described format and must include the content described below. Failure of an Applicant to submit its response in a format and with content conforming to the following requirements will be a basis for the District’s rejection of such response to the RFQ for non-responsiveness. Do not include any design concepts, fees, or pricing related to this Project with the RFQ submittals.

Each Applicant must submit **eight (8) printed sets and one (1) flash/thumb drive with a complete submittal** as listed below.

The form, content, and sequence of the response should follow the outline presented below. All type size is to match the forms, which is 12 pt.

B. Qualifications Content.

- A. Cover Letter/Letter of Introduction.** The cover letter shall be addressed to Nancy Rosenberg, MEng, and must, at a minimum, contain the following:
- i. Identification of the offering firm(s), including name, mailing address, telephone, and email of each firm. The District will not accept submittals from a Joint Venture or two (2) firms acting as General Partners. If two (2) firms have paired together as partners or co-venture, clearly indicate which firm will act as the “prime” and which will act as the “consultant and/or sub-consultant.” Any contract awarded will be issued to only the “prime” firm.
 - ii. Brief statement of why your team should be chosen to be awarded a contract.
 - iii. Acknowledgment of receipt of RFQ addenda, if any.
 - iv. Name, title, address, telephone number, fax number, and e-mail address of the contact person during the period of the qualifications process.
 - v. Signature of the person authorized to bind the offering firm to the terms of the proposal.
 - vi. Identification of any information contained in the submittal which the proposer deems to be, and establishes as, confidential or proprietary and wishes to be withheld from disclosure to others under the state Public Records Act (a blanket statement that all contents of the submittal are confidential or proprietary will not be honored by the District).
 - vii. Letter is limited to two (2) pages maximum, 12 pt. type.
 - viii. Design team, in-house or consultant.

ix. Project delivery team, including without limitation, the principal in charge, Design Managers and Senior project Manager(s).

B. Table of Contents. There should be a complete table of contents for material included in the response:

Tab 1: Essential Requirements Questionnaire.

Tab 2: Team Information. Please add sub-tabs as identified in the Table of Contents. List years experience working with teams identified.

Tab 3: Team Member Questions. Please add sub-tabs as identified in the Table of Contents.

Tab 4: Technical Design and Construction Experience. Three (3) to Six (6) Comparable Projects and years of experience working with teams identified.

Tab 5: Certifications.

Tab 6: References.

EVALUATION AND SCORING

- A. Evaluation and Scoring of Responses.** The District shall review and evaluate all responses submitted which conform to the requirements outlined in this RFQ. Submittals that are responsive to the requirements of this RFQ will be evaluated by a Selection Committee. The Selection Committee shall be composed of District staff, administrators, and may include registered architects or engineers and licensed contractors. Failure by Applicant to pass any of the Questions in Part II: Essential Requirements may result in the Applicant being disqualified, and the submittal may not receive further evaluation. Responses shall be evaluated by the Selection Committee using numerical and narrative scoring techniques.
- a. Responsiveness:** Submittals shall first be evaluated for responsiveness (conformance with the RFQ and submittal of complete package). Nonresponsive submittals shall not be further evaluated.
 - b. Prequalification Review:** For submittals that are determined to be responsive, the submittals shall be reviewed and scored in the following order.
 - i. Section I (Letter of Interest):** This document is **not** scored but will be reviewed for content. Letter is to be a maximum of 2 pages in length.
 - ii. Section II (Essential Requirements):** This section contains **pass/fail** questions. Failure to pass this portion may result in disqualification.
 - iii. Section III (Team Member Information):** This section is **NOT** scored and will be used for information only. Team members shall not be substituted after award without written approval from the District.
 - iv. Section IV (Team Member Questions):** This section is **scored** using objective numerical scoring. Teams must meet a minimum scoring requirement in order for the DBE team to qualify for the next phase, Request for Proposal. A passing score is **260** with a maximum score of **290**. Mechanical, Electrical and Plumbing Subcontractors' scores will **NOT** be added to summary score.
 - v. Section V (Technical Design and Construction Experience):**
 - c. References (Project Data Sheets).** DBE team is to submit a list of 3 references based on the Project Data Sheets in Section V listed above. Please provide phone number and email of reference. Listed references may be contacted and asked a uniform series of scored questions; within 7 years of work performed prior to 2023.
 - d. Selection Committee.**
 - i.** Upon completion of all of the above, the District will convene an Selection Committee to establish the final rankings of the top three (3) teams. Each Selection Committee member will receive the submittals, along with scoring and reference information of all firms who meet the minimum requirements. The Selection Committee will review all information provided by each firm.
 - ii.** Rankings: The Selection Committee will meet to review and discuss the information and determine the rankings based on the Applicant's qualifications, professional experience and references.
 - e. Notification.** The District expects to notify the three (3) Applicants by **January**

19, 2024. As described in the RFQ, the District intends to invite the top three (3) Applicants to submit formal responses to the later RFP.

ESSENTIAL REQUIREMENTS

Questionnaire

This Part II consists of pass/fail questions. Failure by Applicant to pass any of the questions in this Part II may result in the Applicant being disqualified, regardless of the potential scores the Applicant could receive for its responses to any other questions in this Questionnaire.

1. Does the General Contractor and each proposed Subcontractor possess a current California contractor’s license for the Project for which it intends to submit a proposal that conforms to the requirements of the RFQ?

Yes No

2. Does the Design Builder have a liability insurance policy with a policy limit of at least \$ [5,000,000] per occurrence and \$[500,000] aggregate from a California admitted company with an A.M. Best rating of not less than an A:VIII?

Yes No

If “Yes”, provide the following information. (Attach a separate page if more than one policy.)

| | |
|------------------------------|--|
| Insurance Company: | |
| Policy Number: | |
| Policy limit per occurrence: | |
| Aggregate policy limit: | |

3. Does the proposed design build team have current workers’ compensation insurance policy as required by the Labor Code or are legally self-insured pursuant to Labor Code Sections 3700 et seq.?

Yes No

If “Yes”, provide the following information. (Attach a separate page if more than one policy)

| | |
|----------------|--|
| Insured: | |
| Carrier: | |
| Policy number: | |

4. Has the latest copy of an audited or reviewed financial statement (no more than two (2) years old), with accompanying notes, been attached for the General Contractor? (A financial statement that is not audited or reviewed may not be acceptable. A letter verifying availability of a line of credit is not a substitute for the required financial statement.)

Yes No

5. Has a notarized statement from an admitted surety insurer (approved by the California Department of Insurance) and authorized to issue bonds in the State of California been attached, which states that the General Contractor’s current bonding capacity is sufficient for the project for which you seek prequalification? (Statement must be from the surety company, not an agent or broker.)

Yes No

6. Has any contractor license held by the General Contractor/Design Build Team or any of its Associates or any of the proposed M/E/P Subcontractors or their Associates, been revoked or suspended within the last five (5) years?

Yes No

7. Has a surety firm completed a contract or paid for completion of a contract on behalf of any DBE Member because they were terminated by the project owner within the last five (5) years?

Yes No

8. Within the last five (5) years, was the General Contractor/Design Build Team or any proposed Subcontractor declared ineligible to bid on a public works contract, to be awarded a public works contract, or to perform as a subcontractor on a public works contract pursuant to either Labor Code Section 1777.1 or Labor Code Section 1777.7?

Yes No

If "Yes", state the beginning and ending dates of the period of debarment: _____

9. Has any DBE Member (contractors, architects, engineers, or others) or any of its Associates, ever been convicted of a crime involving the awarding of a contract for a government project, or the bidding or performance of a government contract within the last five (5) years?

Yes No

10. Do all architects and engineers who are expected to work on the Project possess current California professional licenses for the services which they intend to provide that conform to the requirements of the Request for Prequalification?

Yes No

11. Is each proposed Architect of Record covered by a professional liability insurance policy with a policy limit of at least \$[5,000,000.] per occurrence and \$[500,000] in the aggregate from a California admitted company that provides coverage for work on a design-build contract?

Yes No

If "Yes", provide the name of the insurance company, policy number, and policy limits.

| | |
|------------------------------|--|
| Insurance Company: | |
| Policy Number: | |
| Policy limit per occurrence: | |
| Aggregate policy limit: | |

12. Are all Principal Engineers covered by a professional liability insurance policy with a policy limit of at least \$[5,000,000.] per occurrence and \$[500,000] aggregate from a California admitted company that provides coverage for work on a design-build contract?

Yes No

If “Yes”, provide the name of the insurance company, policy number, and policy limits.

| | |
|------------------------------|--|
| Insurance Company: | |
| Policy Number: | |
| Policy limit per occurrence: | |
| Aggregate policy limit: | |

13. Has any professional license held by any architect who will provide services to the Project been revoked at any time in the last five (5) years?

Yes No

14. Has any professional license held by any engineer who will provide services been revoked at any time in the last five (5) years?

Yes No

15. Does the General Contractor, and each proposed Subcontractor of the Design Build Team seeking prequalification, know and understand their obligations regarding the employment of apprentices on public works under Labor Code Section 1777.5 and California Code of Regulations, Title 8, Section 230.1, and do they intend to comply with these requirements, including the requirement, if applicable, to request the dispatch of apprentices from an apprenticeship program approved by the California Apprenticeship Council?

Yes No

Surety Declaration

Provide this Declaration of your surety(ies) for completion. Do not have the surety submit this information directly to the District.

The undersigned declares under penalty of perjury that all of the above surety information in questions 1-15, is true and correct and that this declaration was executed in _____ County, California, on _____(date).

(Signature)

(Name and Title - Printed or Typed)

(Representing [Surety Name])

(Surety License Number)

(Firm Name)

(Address) (City, State, Zip Code)

(Telephone Number) (Facsimile Number)

(Email Address)

(ATTACH NOTARIZATION OF SURETY REPRESENTATIVE'S SIGNATURE)

Insurance Declaration

Provide this Declaration to your insurance carrier for completion. Do not have the carrier submit this information to the District.

The undersigned declares under penalty of perjury that all the above insurer information in questions 1-15, is true and correct and that this declaration was executed in _____ County, California, on _____(date).

(Signature)

(Name and Title - Printed or Typed)

(Representing [Surety Name])

(Surety License Number)

(Firm Name)

(Address) (City, State, Zip Code)

(Telephone Number) (Facsimile Number)

(Email Address)

Insurance: Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the District Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A: VIII.

(ATTACH NOTARIZATION OF INSURER REPRESENTATIVE'S SIGNATURE)

GENERAL TEAM INFORMATION

A. Design-Build Entity Members

List all individuals and legal entities that are DBE members of the Applicant:

| Trade/Profession (i.e. general contractor, architect, engineer/discipline, MEP subcontractor, etc.) | Company name and address | Classification (i.e. sole proprietor, corporation, partnership, LLC etc.) |
|---|---------------------------------|---|
| | | |
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For each DBE Member listed above that is not a sole proprietorship or corporation (such as, but not limited to, a partnership or other association), please provide a copy of the agreement creating the partnership or other association.

If the DBE is a privately held corporation, limited liability company, partnership, or joint venture, please provide:

- a. A listing of all of the shareholders, partners, or members known at the time of submittal who will perform work on the Project.
- b. A copy of the organizational documents or agreement committing to form the organization.

B. General Contractor

Provide the following information about the General Contractor proposed by the Applicant. If the Applicant will serve as the General Contractor, then provide all information requested for the Applicant itself. Attach additional pages, if necessary, to respond to any Question.

Name of General Contractor: _____
 Date of company formation or incorporation: _____
 State of formation or incorporation: _____
 How many persons does the General Contractor currently employ? _____

1a. If the General Contractor is a corporation, provide the following information for each officer of the corporation and each individual who owns 10% or more of the corporate stock:

| Name and Address | Position | Years with Co. | % Ownership |
|------------------|----------|----------------|-------------|
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1b. If the General Contractor is an individual doing business as a sole proprietorship, complete the following:

| Name and Address of Owner | Years as Owner |
|---------------------------|----------------|
| | |

1c. If the General Contractor is a firm that is a joint venture, partnership, or other association, provide the following for each member of the joint venture, partnership or association:

| Name of Individual or Entity | Position | Years with Co. | % Ownership | Name and address of Principal Contact |
|------------------------------|----------|----------------|-------------|---------------------------------------|
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2. Has there been any change in ownership and/or file for bankruptcy of the General Contractor during the last three (3) years?
 Yes No If "Yes", explain on a separate page

(NOTE: A corporation whose shares are publicly traded is not required to answer this question with regard to public trades.)

3. Is the General Contractor a subsidiary, parent, holding company or affiliate of another construction firm?
 Yes No If "Yes", explain on a separate page

(NOTE: Include information about other firms if one firm owns 50 percent or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm)

4. State the General Contractor's gross revenues for each of the last three (3) fiscal years:

YEAR: 20____ YEAR: 20____ YEAR: 20____
 \$ _____ \$ _____ \$ _____

5. List all California contractor license numbers, classifications, and expiration dates currently held by the General Contractor:

| License Number | Trade Classification | Date Issued | Expiration Date |
|----------------|----------------------|-------------|-----------------|
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6. Has the General Contractor changed names or license numbers in the past five (5) years?
 Yes No If "Yes", explain on a separate page

7. Has any owner, California State License Board ("CSLB") qualified or corporate officer of the General Contractor operated as a contractor under any other name or license number (not listed in 9 above) in the last five (5) years?
 Yes No If "Yes", explain on a separate page

8. Surety Information for General Contractor:
 Bonding Co./Surety: _____
 Surety Agent: _____
 Agency Address: _____
 Telephone: _____

9. List all other sureties (name and full address) that have written bonds for the General Contractor during the last five (5) years, including periods during which each wrote the bonds:

| Surety | Address | Periods of Coverage |
|--------|---------|---------------------|
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10. Can you truthfully state that your firm's contractor's license hasn't been suspended or revoked by the California Contractor's State License Board within the last five (5) years?

Yes No If "Yes", explain on a separate page

11. If the entity submitting this prequalification questionnaire is a Joint Venture, can the Joint Venture entity truthfully state that no member of the Joint Venture has ever had their firm's contractor's license suspended or revoked by the California Contractor's State License Board?

Yes No If "No", explain on a separate page

12. Has a complaint ever been filed with the Contractor's State License Board against your company that required a formal hearing or inquiry?

Yes No

13. Does your firm have experience utilizing CPM logic, Primavera Project Planner or equal scheduling software on your projects and would you utilize this experience on this project?

Yes No

If "No," name the software application(s) used or the software application you would propose for use on this project for scheduling.

14. Does your firm have experience utilizing Prolog Manager or Unifier (Document Control Management software)? If not, which software have you used?

Yes No

C. Architect of Record

Provide the following information about each Architect of Record proposed for prequalification. If the Applicant will serve as an Architect of Record, then provide all information requested for the Applicant itself. Attach additional pages, if necessary, to respond to any Question.

Name of Architect of Record: _____
 Date of company formation or incorporation: _____
 State of formation or incorporation: _____
 How many persons does the Architect of Record’s firm currently employ? _____

1. If the Architect of Record of the Architect of Record’s Firm is different from that of the General Contractor, please answer the following:

1a. If the Architect of Record of the Architect of Record’s Firm is a corporation, provide the following information for each officer of the corporation and each individual who owns 10% or more of the corporate stock:

| Name and Address | Position | Years with Co. | % Ownership |
|------------------|----------|----------------|-------------|
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1b. If the Architect of Record is an individual doing business as a sole proprietorship, complete the following:

| Name and Address of Owner | Years as Owner |
|---------------------------|----------------|
| | |
| | |

1c. If the Architect of Record’s Firm that is a joint venture, partnership, or other association, provide the following for each member of the joint venture, partnership or association:

| Name of Individual or Entity | Position | Years with Co. | % Ownership | Name and address of Principal Contact |
|------------------------------|----------|----------------|-------------|---------------------------------------|
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1d. Has there been any change in ownership of the Architect of Record’s Firm during the last three (3) years?
 Yes No If “Yes”, explain on a separate page

(NOTE: A corporation whose shares are publicly traded is not required to answer this question with regard to public trades.)

- 1e. Is the Architect of Record's Firm a subsidiary, parent, holding company or affiliate of another construction firm?
 Yes No If "Yes", explain on a separate page

(NOTE: Include information about other firms if one firm owns 50 percent or more of another, or if an owner, partner, or Architect of Record's Firm holds a similar position in another firm).

- 1f. Has any corporate officer or owner of the Architect of Record's Firm worked for any other architectural firms in the past five (5) years?
 Yes No If "Yes", explain on a separate page

- 1g. Has the Architect of Record's Firm changed names in the past five (5) years?
 Yes No If "Yes", explain on a separate page

2. Provide the following information for all known architects employed by the Architect of Record of the Architect of Record's Firm who will be designing the Project:

| Architect Name | License Number | Years in Practice |
|----------------|----------------|-------------------|
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3. Attach a copy of the Architect of Record's resume.

D. Mechanical Subcontractor

Provide the following information about each Mechanical Subcontractor proposed for prequalification. Attach additional pages, if necessary, to respond to any Question.

Name of Mechanical Subcontractor: _____

Date of company formation or incorporation: _____

State of formation or incorporation: _____

How many persons does the Mechanical Subcontractor currently employ? _____

- 1a. If the Mechanical Subcontractor is a corporation, provide the following information for each officer of the corporation and each individual who owns 10% or more of the corporate stock:

| Name and Address | Position | Years with Co. | % Ownership |
|------------------|----------|----------------|-------------|
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- 1b. If the Mechanical Subcontractor is an individual doing business as a sole proprietorship, complete the following:

| Name and Address of Owner | Years as Owner |
|---------------------------|----------------|
| | |

- 1c. If the Mechanical Subcontractor is a firm that is a joint venture, partnership, or other association, provide the following for each member of the joint venture, partnership or association:

| Name of Individual or Entity | Position | Years with Co. | % Ownership | Name and address of Principal Contact |
|------------------------------|----------|----------------|-------------|---------------------------------------|
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2. Has there been any change in ownership of the Mechanical Subcontractor during the last three (3) years?

Yes No If "Yes", explain on a separate page

(NOTE: A corporation whose shares are publicly traded is not required to answer this question with regard to public trades.)

3. Is the Mechanical Subcontractor a subsidiary, parent, holding company or affiliate of another construction firm?
 Yes No If "Yes", explain on a separate page

(NOTE: Include information about other firms if one firm owns 50 percent or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm)

4. State the Mechanical Subcontractor's gross revenues for each of the last three (3) fiscal years:

YEAR: 20____ YEAR: 20____ YEAR: 20____
 \$ _____ \$ _____ \$ _____

5. List all California contractor license numbers, classifications, and expiration dates currently held by the Mechanical Subcontractor:

| License Number | Trade Classification | Date Issued | Expiration Date |
|----------------|----------------------|-------------|-----------------|
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6. Has the Mechanical Subcontractor changed names or license numbers in the past five (5) years?
 Yes No If "Yes", explain on a separate page

7. Has any owner, California State License Board ("CSLB") qualified or corporate officer of the Mechanical Subcontractor operated as a contractor under any other name or license number (not listed in 9 above) in the last five (5) years?
 Yes No If "Yes", explain on a separate page

8. Surety Information for Mechanical Subcontractor:
 Bonding Co./Surety: _____
 Surety Agent: _____
 Agency Address: _____
 Telephone: _____

9. List all other sureties (name and full address) that have written bonds for the Mechanical Subcontractor during the last five (5) years, including periods during which each wrote the bonds:

| Surety | Address | Periods of Coverage |
|--------|---------|---------------------|
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E. Plumbing Subcontractor

Provide the following information about each Plumbing Subcontractor proposed for prequalification. Attach additional pages, if necessary, to respond to any Question.

Name of Plumbing Subcontractor: _____

Date of company formation or incorporation: _____

State of formation or incorporation: _____

How many persons does the Plumbing Subcontractor currently employ? _____

- 1a. If the Plumbing Subcontractor is a corporation, provide the following information for each officer of the corporation and each individual who owns 10% or more of the corporate stock:

| Name and Address | Position | Years with Co. | % Ownership |
|------------------|----------|----------------|-------------|
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- 1b. If the Plumbing Subcontractor is an individual doing business as a sole proprietorship, complete the following:

| Name and Address of Owner | Years as Owner |
|---------------------------|----------------|
| | |

- 1c. If the Plumbing Subcontractor is a firm that is a joint venture, partnership, or other association, provide the following for each member of the joint venture, partnership or association:

| Name of Individual or Entity | Position | Years with Co. | % Ownership | Name and address of Principal Contact |
|------------------------------|----------|----------------|-------------|---------------------------------------|
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2. Has there been any change in ownership of the Plumbing Subcontractor during the last three (3) years?
 Yes No If "Yes", explain on a separate page

(NOTE: A corporation whose shares are publicly traded is not required to answer this question with regard to public trades.)

3. Is the Plumbing Subcontractor a subsidiary, parent, holding company or affiliate of another construction firm?
 Yes No If "Yes", explain on a separate page

(NOTE: Include information about other firms if one firm owns 50 percent or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm)

4. State the Plumbing Subcontractor's gross revenues for each of the last three (3) fiscal years:

YEAR: 20____ YEAR: 20____ YEAR: 20____
 \$ _____ \$ _____ \$ _____

5. List all California contractor license numbers, classifications, and expiration dates currently held by the Plumbing Subcontractor:

| License Number | Trade Classification | Date Issued | Expiration Date |
|----------------|----------------------|-------------|-----------------|
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6. Has the Mechanical Subcontractor changed names or license numbers in the past five (5) years?
 Yes No If "Yes", explain on a separate page

7. Has any owner, California State License Board ("CSLB") qualified or corporate officer of the Plumbing Subcontractor operated as a contractor under any other name or license number (not listed in 9 above) in the last five (5) years?
 Yes No If "Yes", explain on a separate page

8. Surety Information for Plumbing Subcontractor:
 Bonding Co./Surety: _____
 Surety Agent: _____
 Agency Address: _____
 Telephone: _____

9. List all other sureties (name and full address) that have written bonds for the Plumbing Subcontractor during the last five (5) years, including periods during which each wrote the bonds:

| Surety | Address | Periods of Coverage |
|--------|---------|---------------------|
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F. Electrical Subcontractor

Provide the following information about each Electrical Subcontractor proposed for prequalification. Attach additional pages, if necessary, to respond to any Question.

Name of Electrical Subcontractor: _____
 Date of company formation or incorporation: _____
 State of formation or incorporation: _____
 How many persons does the Electrical Subcontractor currently employ? _____

1a. If the Electrical Subcontractor is a corporation, provide the following information for each officer of the corporation and each individual who owns 10% or more of the corporate stock:

| Name and Address | Position | Years with Co. | % Ownership |
|------------------|----------|----------------|-------------|
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1b. If the Electrical Subcontractor is an individual doing business as a sole proprietorship, complete the following:

| Name and Address of Owner | Years as Owner |
|---------------------------|----------------|
| | |

1c. If the Electrical Subcontractor is a firm that is a joint venture, partnership, or other association, provide the following for each member of the joint venture, partnership or association:

| Name of Individual or Entity | Position | Years with Co. | % Ownership | Name and address of Principal Contact |
|------------------------------|----------|----------------|-------------|---------------------------------------|
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10. Has there been any change in ownership of the Electrical Subcontractor during the last three (3) years?
 Yes No If "Yes", explain on a separate page

(NOTE: A corporation whose shares are publicly traded is not required to answer this question with regard to public trades.)

11. Is the Electrical Subcontractor a subsidiary, parent, holding company or affiliate of another construction firm?
 Yes No If "Yes", explain on a separate page

(NOTE: Include information about other firms if one firm owns 50 percent or more of another, or if an owner, partner, or officer of your firm holds a similar position in another firm)

12. State the Electrical Subcontractor's gross revenues for each of the last three (3) fiscal years:

YEAR: 20____ YEAR: 20____ YEAR: 20____
 \$ _____ \$ _____ \$ _____

13. List all California contractor license numbers, classifications, and expiration dates currently held by the Electrical Subcontractor:

| License Number | Trade Classification | Date Issued | Expiration Date |
|----------------|----------------------|-------------|-----------------|
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14. Has the Electrical Subcontractor changed names or license numbers in the past five (5) years?
 Yes No If "Yes", explain on a separate page

15. Has any owner, California State License Board ("CSLB") qualified or corporate officer of the Electrical Subcontractor operated as a contractor under any other name or license number (not listed in 9 above) in the last five (5) years?
 Yes No If "Yes", explain on a separate page

16. Surety Information for Electrical Subcontractor:
 Bonding Co./Surety: _____
 Surety Agent: _____
 Agency Address: _____
 Telephone: _____

17. List all other sureties (name and full address) that have written bonds for the Electrical Subcontractor during the last five (5) years, including periods during which each wrote the bonds:

| Surety | Address | Periods of Coverage |
|--------|---------|---------------------|
| | | |
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- A-6. In the last five (5) years has the General Contractor or any of its Associates, been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any public construction project for any reason?

Yes No

If “Yes,” explain on a separate page. State the name of the organization debarred, the year of the event, the owner of the project, and the basis for the action.

- A-7. Has the General Contractor or any of its Associates ever been denied an award of a public construction contract based on a finding by a public agency that they were not a responsible bidder?

Yes No

If “Yes,” on a separate page identify the year of the event, the entity denied the award, the owner, the project, and the basis for the finding by the public agency.

(NOTE: The following two questions refer only to disputes between contractors and owners of projects. You need not include information about disputes with suppliers, other contractors, or subcontractors. You need not include information about “pass-through” disputes in which the actual dispute is between a subcontractor and a project owner.)

- A-8. In the past five (5) years has any claim in excess of \$[25,000] been filed in court or arbitration against the General Contractor or any of its Associates concerning their work on a public construction project?

Yes No

If “Yes,” on a separate page identify the claim(s) by providing the project name, date of the claim, name of the claimant, the name of the entity the claim was filed against, a brief description of the nature of the claim, amount of claim, the court and case number, and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

- A-9. In the past five (5) years has the General Contractor or any of its Associates made any claim in excess of \$[25,000] against a project owner concerning work on a public construction project or payment for a public construction contract and filed that claim in court or arbitration?

Yes No

If “Yes,” on a separate page identify the claim by providing the name of claimant, the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, amount of claim, the court and case number, and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

A-10. In the last five years has any insurance carrier, for any form of insurance, refused to renew the insurance policy for the General Contractor or any of its Associates due to non-payment or contractor losses?

Yes No

If “Yes,” on a separate page give name of the insured; name the insurance carrier, the form of insurance, and the year of the refusal.

A-11. Has the General Contractor or any of its Associates (or any manager of an Associate if the Associate is not a person) ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public entity?

Yes No

If “Yes,” explain on a separate page, including identifying who was found liable or guilty, the court and case number, the name of the public entity, the civil or criminal verdict, the date and the basis for the finding.

A-12. Has the General Contractor or any of its Associates (or any manager of an Associate if the Associate is not a person) ever been convicted of a crime involving any federal, state, or local law related to construction?

Yes No

If “Yes,” explain on a separate page, including identifying who was convicted, the name of the victim, the date of the conviction, the court and case number, the crimes, and the grounds for the conviction.

A-13. Has the General Contractor or any of its Associates (or any manager of an Associate if the Associate is not a person) ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

Yes No

If “Yes,” identify on a separate page, the person or persons convicted, the court and case number, the crimes, and the year convicted.

A-14. During the last five (5) years, has there ever been a period of time when the General Contractor or any of its Associates had no surety bond in place during a public construction project when one was required?

Yes No

If “Yes”, indicate the period during which no surety bonds were in place, name of entity without the surety bond, the name of project owner, and if coverage was denied the date coverage was denied and the name of the company that denied coverage.

A-15. Has California Division of Occupational Safety and Health (“CAL/OSHA”) cited and assessed penalties against the General Contractor or any of its Associates for any “serious,” “willful,” or “repeat” violations of its safety or health regulations in the past five (5) years?

(NOTE: If you have filed an appeal of a citation, and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include information about it.)

Yes No

If “Yes,” on separate page describe the citations, the party against whom the citation was made, date of citation, nature of the violation, project on which the citation was issued, owner of project, and the amount of penalty paid, if any. State the case number and date of any Occupational Safety and Health Appeals Board (“OSHAB”) decision. Note that the existence of any “willful” violations of Part 1 (commencing with Section 6300) of Division 5 of the California Labor Code may constitute grounds for disqualification.

A-16. Has the Federal Occupational Safety and Health Administration cited and assessed penalties against the General Contractor or any of its Associates in the past five (5) years?

(NOTE: If an appeal of the citation has been filed and the Appeals Board has not yet ruled, or if there is a court appeal pending, you need not include information about the citation.)

Yes No

If “Yes,” on a separate page describe the citations, the party against whom the citation was made, date of citation, nature of the violation, project on which the citation was issued, owner of project, and the amount of penalty paid, if any. State the case number and date of any decision.

A-17. Has the EPA, any Air Quality Management District, or any Regional Water Quality Control Board cited and assessed penalties against either the General Contractor or any of its Associates or the owner of a project during the time in which the preceding parties were performing on a contract in the past five years?

(NOTE: If an appeal of the citation has been filed and there is no ruling yet, or if there is a court appeal pending, you need not include information about the citation.)

Yes No

If “Yes,” on separate page describe the citations, the party against whom the citation was made, date of citation, nature of the violation, project on which the citation was issued, owner of project, and the amount of penalty paid, if any. State the case number and date of any decision.

A-18. Does General Contractor have a worker safety program, and if so, describe the program, including how often the General Contractor requires documented safety meetings to be held for construction employees and field supervisors during the course of a project.

A-19. Is the General Contractor's Experience Modification Rate ("EMR") for the most recent three (3) year period an average of 1.00 or less, and does its average total recordable injury or illness rate and its average loss work rate for the most recent three (3) year period not exceed the applicable statistical standards for its business?

Yes No

List the General Contractor's EMR (California workers' compensation insurance) for each of the recent past three (3) premium years:

(NOTE: An EMR is issued to your firm annually by your workers' compensation insurance carrier.)

Year: 20__ EMR: _____

Year: 20__ EMR: _____ Average: _____

Year: 20__ EMR: _____

If your EMR for any of these three years is 1.00 or higher, you may attach a letter of explanation. You may also attach information regarding an alternative dispute resolution system in place pursuant to Labor Code Section 3201.5.

A-20. Within the last five (5) years has there ever been a period when the General Contractor or any of its Associates had employees but was without workers' compensation insurance or state approved self- insurance?

Yes No

If "Yes," please explain the reason for the absence of workers' compensation insurance on a separate page. If "No," please provide a statement by your current workers' compensation insurance carrier that verifies periods of workers' compensation insurance coverage for the General Contractor for the last five years. (If the General Contractor has been in business for less than five years, provide a statement by your workers' compensation insurance carrier verifying continuous workers' compensation insurance coverage for the period that your firm has been in business.)

A-21. Have there been any occasions during the last five (5) years in which the General Contractor or any of its Associates was required to pay either back wages or penalties for failure to comply with the state's prevailing wage laws?

Yes No

If "Yes," attach a separate page, describing the violator, nature of each violation, name of the project, date of its completion, the public agency for which it was constructed, the number of employees who were initially underpaid and the amount of back wages and penalties that were assessed.

A-22. During the last five (5) years, have there been any occasions in which the General Contractor or any of its Associates have been penalized or required to pay back wages for failure to comply with the Federal Davis-Bacon prevailing wage requirements?

Yes No

If "Yes," attach a separate page, describing the violator, nature of each violation, name of the project, date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that were assessed.

A-23. If the General Contractor operates its own State-approved apprenticeship program, provide the following information on a separate page:

- a) Identify the craft or crafts in which you provided apprenticeship training in the past year.
- b) State the year in which each such apprenticeship program was approved, and attach evidence of the most recent California Apprenticeship Council approval(s) of your apprenticeship program(s).
- c) State the number of individuals who were employed by your firm as apprentices at any time during the past three years in each apprenticeship and the number of persons who, during the past three (3) years, completed apprenticeships in each craft while employed by your firm.

A-24. At any time during the last five (5) years, has the General Contractor or any of its Associates been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

Yes No

If "Yes," provide the date of the findings and attach a copy of the final decision.

Date of Findings: _____

B. Architect(s) of Record

Applicant is to provide responses to each of the following questions pertaining to its proposed Architect(s) of Record. Responses will be scored. A failure of any proposed Architect of Record to achieve the overall minimum score required for this Part IV, B. will result in the disqualification of the Applicant. If the Architect of Record is not disqualified, its score will be included in the calculation of the Applicant’s total score for all scored questions in Parts IV, V and References required of this RFQ.

B-1. How many years has the Architect of Record been licensed and practicing in California? _____

B-2. Is the Architect of Record or the Architect of Record’s Firm currently the debtor in a bankruptcy case?

- Yes No

If “Yes,” indicate the case number, bankruptcy court, and the date on which the petition was filed.

_____ _____ _____
Case Number Bankruptcy Court Date Filed

B-3. Was the Architect of Record or the Architect of Record’s Firm in bankruptcy at any time during the last five (5) years? (This question refers only to a bankruptcy action that was not described in answer to question B-2, above)

- Yes No

If “Yes,” indicate the case number, bankruptcy court, and the date on which the petition was filed.

_____ _____ _____
Case Number Bankruptcy Court Date Filed

B-4. In the last five (5) years, has the Architect of Record or the Architect of Record’s Firm, been debarred, disqualified, removed, or otherwise prevented from bidding on, or completing, public construction project for any reason?

- Yes No

If “Yes,” explain on a separate page. State the name of the organization debarred, the year of the event, the owner of the project, and the basis for the action.

B-5. Has the Architect of Record or its Firm ever been denied an award of a public works contract based on a finding by a public agency that they were not a responsible bidder?

- Yes No

If “Yes,” on a separate page, identify the year of the event, the entity denied the award, the owner, the project, and the basis for the finding by the public agency.

- B-6. In the past five years has any claim in excess of \$[25,000] been filed in court or arbitration against the Architect of Record or the Architect of Record's Firm concerning its architectural work on a public construction project?

Yes No

If "Yes," on a separate page identify the claim(s) by providing the project name, date of the claim, name of the claimant, a brief description of the nature of the claim, amount of claim, the court and case number, and a brief description of the status of the claim (pending or, if resolved, a brief description of the resolution).

- B-7. In the past five years has the Architect of Record or the Architect of Record's Firm, made any claim in excess of \$[25,000] against a project owner concerning its architectural work on a public construction project and filed that claim in court or arbitration?

Yes No

If "Yes," on separate page identify the claim by providing the project name, date of the claim, name of the entity (or entities) against whom the claim was filed, a brief description of the nature of the claim, amount of claim, the court and case number, and a brief description of the status of the claim (pending, or if resolved, a brief description of the resolution).

- B-8. In the last five (5) years, has any insurance carrier, for any form of insurance, refused to renew an insurance policy for the Architect of Record or the Architect of Record's Firm, based on non-payment or losses?

Yes No

If "Yes," on separate page give name the insurance carrier, the form of insurance and the year of the refusal.

- B-9. Has the Architect of Record or the Architect of Record's Firm (or any manager of the Architect of Record's Firm if the Architect of Record's Firm is not a person) ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?

Yes No

If "Yes," on a separate page identify who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

- B-10. Has the Architect of Record or the Architect of Record's Firm (or any manager of the Architect of Record's Firm if the Architect of Record's Firm is not a person) ever been convicted of a crime involving any federal, state, or local law related to construction?
- Yes No

If "Yes," on a separate page identify who was convicted, the name of the victim, the date of the conviction, the court and case number, the crimes, and the grounds for the conviction.

- B-11. Has the Architect of Record or the Architect of Record's Firm (or any manager of the Architect of Record's Firm if the Architect of Record's Firm is not a person) ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?
- Yes No

If "Yes," on a separate page identify the person or persons convicted, the court and case number, the crimes and the year convicted.

- B-12. Has the Department of Consumer Affairs taken any disciplinary action against the Architect of Record or the Architect of Record's Firm?
- Yes No

If "Yes", please explain on a separate page.

- B-13. If seeking to prequalify for a District project, has the Architect of Record designed any K-12 schools in the last five (5) years?
- Yes No

If "yes," how many? _____

- B-13. Has the Department of Consumer Affairs taken any disciplinary action against the Architect of Record?
- Yes No

If yes, please explain on a separate page.

TECHNICAL DESIGN AND CONSTRUCTION EXPERIENCE

1. How many design-build projects have the General Contractor and Architect involved in this DBE worked together on? _____
2. List volume of construction and value of largest design-build project which the General Contractor and Architect have worked together on.
Volume: _____ Largest contract: _____
3. Submit Project Data Sheets on a minimum of three (3) **comparable** projects successfully completed within the last seven (7) years constructed in the State of California, involving the DBE. Alternatively, list 3 comparable Projects involving either member of the DBE team.

(A comparable project is defined as having a construction cost at the bid date of at least \$_____ or a total of \$_ for the projects submitted, and the following example building types:

[INSERT EXAMPLES COMPARABLE TO THIS PROJECT]

and

Such projects should have possessed the following example construction challenges:

[INSERT EXAMPLES COMPARABLE TO THIS PROJECT]

- Listed projects must have been managed and constructed under the business name submitted for prequalification. Projects completed by employees for former employers are not acceptable.
- Submit the following Project Data Sheets for each project submitted as evidence of your firm's Contractor expertise.

PROJECT DATA SHEET

(A separate sheet must be prepared for each project submitted.)

- 1. Project Name: _____
- 2. Project Location: _____
- 3. Project Description (Scope of Work Performed): _____
- 4. Construction Type (Delivery Method): _____
- 5. Size (gross square feet): _____
- 6. What was your company's role on this project?
 - Prime (General) Contractor:
 - Subcontractor to GC:
 - 2nd Tier Subcontractor:
 - 3rd Tier Subcontractor:
 - Prime Subcontractor to Owner:
 - Other: _____

List the Business Entity (name) your company used to perform work for this project:

- 7. If the entity submitting this prequalification questionnaire is a Joint Venture, did the Joint Venture entity itself construct and manage this project?
 - Yes No N/A

- 8. How is this project comparable to the District's Project?

- 9. Was the project completed within budget?
 - Cost At Bid: \$ _____
 - Cost At Completion: \$ _____
 - Explanation: _____

- 10. For any differing amount between cost at completion and cost at bid, distribute the sources and/or causes of these changes into the following categories:
 - Document problems: \$ _____
 - Unforeseen conditions: \$ _____
 - Owner generated scope: \$ _____
 - Regulatory agency: \$ _____
 - Other: \$ _____

11. Was construction begun and completed within the last five (5) years?

Yes No

12. Was the project completed within the original contract time or the adjusted contract time?

Yes No

Original Scheduled Completion Date: _____

Time Extensions Granted (Number of Days): _____

Actual Date of Completion: _____

If completion did not occur within the original or the adjusted contract time, indicate elapsed time in whole calendar days between original or adjusted contract time and actual final completion. For projects that have not reached final completion, indicate current status with respect to contract time:

13. Did the project include occupied facilities?

Yes No

14. What communications strategies were used by your firm to assist the project team in mitigating the impacts of construction on the occupied facilities?

15. Was the project for a School District?

Yes No

16. What strategic decisions did your firm contribute to the project which supported the project's success (e.g. value engineering, phasing, innovation, new technology, etc.)?

17. Did the project include adherence to critical path scheduling?

Yes No

18. Did project contain any athletic facilities construction?

Yes No

19. Did the project include California Division of State Architect review and approval?

Yes No

20. Did the project include additional funding through the California High Performance School program?

Yes No

If answer is "Yes," explain: _____

21. Did the Owner assess any back-charges?
 Yes No

If answer is "Yes," explain: _____

22. Did the Owner assess any liquidated damages?
 Yes No

If answer is "Yes," explain: _____

23. Project Executive (Name & Telephone): _____
Qualifications of this Project Executive: _____

24. Project Manager* (Name & Telephone): _____
Qualifications of this Project Manager: _____

25. Project Superintendent* (Name & Telephone): _____
Qualifications of this Project Superintendent: _____

(*Note: The Project Manager and Project Superintendent listed will be considered qualified only if he/she has successfully completed at least two (2) comparable projects.)

26. Project Engineer (Name & Telephone): _____
Qualifications of this Project Engineer: _____

27. Architect of Record (Name & Telephone): _____
Qualifications of this Architect of Record: _____

28. Construction Manager (Name & Telephone): _____
Qualifications of this Construction Manager: _____

29. Did your firm self-perform any of the work?
 Yes No

If "Yes," please specify the trades you self-performed or have the capability to self- perform:

Client Firm Name: _____
Client Contact: _____ Title: _____
Client Address: _____ City, State Zip: _____
Client Phone: _____ Client Fax: _____
Client E-mail: _____

Architect/Engineer Consultants: _____
Architect/Engineer Contact Name: _____ Phone: _____
Architect/Engineer E-mail: _____

(Attach additional pages with other pertinent project information as necessary.)

CERTIFICATIONS

CONTACT INFORMATION & PREQUALIFICATION DECLARATION

Applicant: _____
Applicant Contact Person: _____
Address: _____ Phone: _____
E-mail: _____

1. PREQUALIFICATION DECLARATION

I, (printed name) _____, hereby declare that I am the (title) _____ of (name of firm) _____ submitting this Prequalification Questionnaire; that I am duly authorized to sign this Prequalification Questionnaire on behalf of the above-named firm; and that all information set forth in this Prequalification Questionnaire and all attachments hereto are, to the best of my knowledge, true, accurate and complete as of its submission date.

The undersigned declares under penalty of perjury that all of the prequalification information submitted with this form is true and correct and that this declaration was executed in (county) _____, (state) _____, on (date) _____.

Signature: _____

2. ATTENDANCE AT MANDATORY PREQUALIFICATION CONFERENCE

Did you or a representative of your firm attend the Mandatory Prequalification Conference at the District?

Yes No

Name/names of those attending: _____

Date of Meeting Attended: _____

3. DESIGN-BUILD CERTIFICATION

NOTE: Authorized person(s) with authority to execute this Certification shall sign this Certification on behalf of each of the persons or entities that is a constituent member of the DBE that is the Applicant seeking to be prequalified by the District. Make additional copies of this certification page as needed to provide certification for each such person or legal entity. All members of the DBE must sign.

I, the undersigned ____, as the Design-Build Entity, and attached General Partners, certify and declare under penalty of perjury, that I have read all the foregoing answers to this Prequalification Questionnaire; that all responses are correct and complete of my own knowledge and belief.

Signature: _____

Printed name: _____

Place of Execution: _____

Date: _____

Name of the person or entity* on whose behalf this Certificate is signed: _____

*Name of the DBE (or the DBE Member authorized to represent the DBE) on whose behalf this Certificate is being signed and submitted on behalf of the Applicant.

4. TRADE CONTRACTOR CERTIFICATION REGARDING IRAN CONTRACTING
(Public Contract Code sections 2200 – 2208)

PROJECT NO.: 858-710 – Jefferson Middle School Modernization between Oceanside Unified School District (“District”) and _____ (“Design- Builder” or “Bidder”).

Prior to bidding on or submitting a proposal for a contract for goods or services for a project of one million dollars (\$1,000,000) or more to the District, the Bidder must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code section 2203(b); does not provide goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including providing oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your vendor or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California Law establishes penalties for providing false certifications, including civil penalties equal to the greater of two hundred fifty thousand dollars (\$250,000) or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

[Remainder of page intentionally left blank]

OPTION #1 – CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS; does not provide goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including providing oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

| | |
|---|----------------------------|
| Vendor Name/Financial Institution (Printed) | Federal ID Number (or n/a) |
| By (Authorized Signature) | |
| Printed Name and Title of Person Signing | |
| Date Executed | Executed in |

OPTION #2 - EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a vendor/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or to enter into or renew, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

| | |
|---|----------------------------|
| Vendor Name/Financial Institution (Printed) | Federal ID Number (or n/a) |
| By (Authorized Signature) | |
| Printed Name and Title of Person Signing | |
| Date Executed | Executed in |

5. DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification form is required from all successful bidders 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 Trade 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:

1. 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 that will be taken against employees for violations of the prohibition.
2. Establishing a drug-free awareness program to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The person's or organization's policy of maintaining a drug-free workplace;
 - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - d. The penalties that may be imposed upon employees for drug abuse violations;
3. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by Government Code Section 8355 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 Oceanside Unified School 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: _____

Proper Name of Contractor: _____

Signature of Authorized Person: _____

Print Name: _____

Title: _____

6. CERTIFICATION REGARDING ALCOHOLIC BEVERAVE AND TOBACCO-FREE CAMPUS POLICY

This Drug-Free Workplace Certification form is part of the Contract made by and between the Oceanside School District (hereinafter referred to as the "District") and _____ (hereinafter referred to as the "Design Builder") for 858-710 – Jefferson Middle School Modernization (hereinafter referred to as the "Project").

The Design Builder agrees that it will abide by and implement the District's Alcoholic Beverage and Tobacco-Free 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 Design Builder shall procure signs stating "ALCOHOLIC BEVERAGE AND TOBACCO USE IS PROHIBITED" and shall ensure that these signs are prominently displayed in all entrances to school property at all times.

Date: _____

Name of Design Builder: _____

Signature: _____

Title: _____

7. WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700.

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

- a. By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.
- c. For any county, city, city and county, municipal corporation, public district, public agency or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state, which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702."

CERTIFICATE

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 provisions before commencing the performance on the Work of this Contract.

Date: _____

Name of Design Builder: _____

Signature: _____ Title: _____

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 the contract.

8. CERTIFICATION OF CONTRACTOR AND SUBCONTRACTOR DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION

I am the (title) _____ of (name of firm) _____

Submitting the accompanying Bid Proposal for the Work described as _____.

1. The Bidder is registered as a contractor with the Department of Industrial Relations (“DIR”).
2. The Bidder’s DIR Registration Number is: _____. The expiration date of the Bidder’s DIR Registration is _____, 20__.
3. If the Bidder is awarded the Contract for the Work and the expiration date of the Bidder’s DIR Registration will occur: (i) prior to the expiration of the Contract Time for the Work; or (ii) prior to the Bidder completing all obligations under the Contract for the Work, the Bidder will take all measures necessary to renew the Bidder’s DIR Registration so that there is no lapse in the Bidder’s DIR Registration while performing Work under the Contract.
4. The Bidder, if awarded the Contract for the Work shall remain a DIR registered contractor for the entire duration of the Work.
5. The Bidder has independently verified that each Subcontractor listed in the Expanded List of Subcontractors submitted with the Bidder’s Bid Proposal is currently a DIR contractor.
6. The Bidder has provided the DIR Registration Number for each subcontractor identified in the Bidder’s Expanded List of Subcontractors, or within twenty-four (24) hours of the opening of Bid Proposals for the Work the Bidder will provide the District with the DIR Registration Number for each subcontractor identified in the Bidder’s Expanded List of Subcontractors.
7. The Bidder’s solicitation of subcontractor bids included notice to prospective subcontractors:
 - a. all sub-tier subcontractors must be DIR registered contractors at all times during performance of Work; and (ii) prospective subcontractors may only solicit sub-bids from and contract with lower- tier subcontractors who are DIR Registered contractors.
8. If any of the statements herein are false or omit material facts rendering a statement to be false or misleading, the Bidder’s Bid Proposal is subject to rejection for non-responsiveness.
9. I have personal first-hand knowledge of all of the foregoing.

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

Executed this _____ day of _____, 20__ at (city and state) _____.

Signature: _____ Name: _____

9. NON-COLLUSION DECLARATION TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH PROPOSAL

The undersigned declares:

I am the (title) _____ of (name of firm) _____, 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 proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal. The proposer has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham proposal, or to refrain from proposing. The proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposal. All statements contained in the proposal are true. The proposer 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 proposer 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 proposer.

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 this _____ day of _____, 20____ at (city and state) _____.

Date: _____

Name of Design Builder: _____

Signature: _____

Title: _____

10. SAMPLE CONTRACT

(Actual contract will be sent to awarded firm)

AGREEMENT made as of the day of in the year 202_
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

OCEANSIDE UNIFIED SCHOOL DISTRICT
2111 Mission Ave,
Oceanside, CA 92058

and the Design-Builder: [insert name]
(Name, legal status, address and other information)

For the following Project: [insert name]

The Project Manager:
(Name, legal status, address and other information)

The Owner and Design-Builder agree as follows.

TABLE OF ARTICLES

| | |
|--|---|
| 1 | GENERAL PROVISIONS |
| 2 | COMPENSATION AND PROGRESS PAYMENTS |
| GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT | |
| 4 | WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT |
| 5 | WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT |
| 6 | CHANGES IN THE WORK |
| 7 | OWNER'S RESPONSIBILITIES |
| 8 | TIME |
| 9 | PAYMENT APPLICATIONS AND PROJECT COMPLETION |
| 10 | PROTECTION OF PERSONS AND PROPERTY |
| 11 | UNCOVERING AND CORRECTION OF WORK |
| 12 | COPYRIGHTS AND LICENSES |
| 13 | TERMINATION OR SUSPENSION |
| 14 | CLAIMS AND DISPUTE RESOLUTION |
| 15 | MISCELLANEOUS PROVISIONS |
| 16 | SCOPE OF THE AGREEMENT TABLE OF EXHIBITS |
| A | This AGREEMENT, EXHIBIT A (DESIGN-BUILD AMENDMENT ONCE EXECUTED) |

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Paragraph deleted)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

The Project will consist of two Phases, as further described in Exhibit "A" hereto, and is to design and construct improvements at the [inert location or name of project].

§ 1.1.2 The Owner's anticipated Sustainable Objective for the Project, if any:

The Design-Builder shall be committed to the practice of sustainability by making it a goal to incorporate sustainable concepts in the design and construction of the Project and comply with Leadership in Energy and Environmental Design ("LEED") and Green building practices and the certification process.

§ 1.1.3 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

§ 1.1.4

(Paragraphs deleted)

[Intentionally Deleted]

§ 1.1.5 The Owner's design and construction milestone dates:

.1 Design phase (Phase 1) milestone dates: Schematic drawings:

Design drawings Construction drawings

.2 Establishment of a Guaranteed Maximum Price:

.3 Issuance of Notice to Proceed with Construction (Phase 2)

.4 Substantial Completion date: Increment No. 1:

Increment No. 2:

.5 Punchlist completion:

Increment No. 1

Increment No. 2:

Note: The days established above may be revised to reflect project development and the mutual agreement of the parties.

§ 1.1.6 The Design-Builder shall retain the following Architect, Consultants, and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

.1 Architect

.2 Consultants

.3 Contractors

§ 1.1.7 Additional

(Paragraphs deleted)

§ 1.1.8 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with Applicable Laws, statutes, ordinances, codes, rules and regulations, or lawful orders of Authorities Having Jurisdiction.

§ 1.1.8.1 If the Owner's Criteria conflicts with Applicable Laws, statutes, ordinances, codes, rules and regulations, or lawful orders of Authorities Having Jurisdiction, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.9 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Change Order in accordance with Article 7 of the General Conditions – Design Build.

§ 1.1.10 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 1.1.11 Building Information Models Use and Reliance. Design-Builder shall coordinate efforts with the Project Manager to successfully implement the BIM plan for the Project. Design-Builder will provide personnel, including a BIM Coordinator, and appropriate services to ensure the proper flow of information is provided to enable appropriate input into and output from the BIM, including, but not limited to, importing information into the BIM, providing updated information on changes to the Project Drawings and Specifications during construction, assisting on conflict resolution, coordinating the sharing of information, facilitating file exchange, and other deliverables as assigned to it in the BIM plan. Design-Builder will provide reports and other BIM deliverables as designated by Owner on a recurring basis.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative:

(List name, address and other information.)

[Name] [Title]

Oceanside School District [Address]

Telephone Number:

Email:

[Can insert counsel here, not usual practice in California to list at this stage of the documentation.]

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals and provide the other services described in the Design-Build Documents and in Section 7.11 herein are as follows:
(List name, address and other information.)

The Project Manager is:

The Project Manager shall be copied on all communications from the Design-Builder to the Owner.

§ 1.2.3 The Owner will retain the following consultants and Separate Contractors (collectively, "Owner Consultants"):
(List discipline, scope of work, and, if known, identify by name and address.)

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Telephone:
Email:

Design-Builder shall not furnish a representative over whom Owner has made reasonable and timely objection. Within five (5) Days of Owner's reasonable written request, Design-Builder shall replace any representative over whom Owner has made a reasonable objection.

§ 1.2.5 The Architect, employed by Design-Builder, is identified in Section 1.1.6 above.

§ 1.2.6 Neither the Owner's nor the Design-Builder's representative nor the Architect shall be changed without ten (10) Days' written notice to the other party. The replacement of the Design-Builder's representative shall not unduly delay or disrupt the performance of the Work.

§ 1.3 Binding Dispute Resolution

The method of binding dispute resolution shall be the following:
(Check the appropriate box.)

- Arbitration
- Litigation in a court of competent jurisdiction
- Other: (Specify)

§ 1.3.1 **Limitation on Damages.** Notwithstanding anything contained herein, Design-Builder expressly waives and relinquishes any and all right or entitlement to assert or recover any damages or losses or liabilities arising out of or related in any manner to the District's breach or default of its obligations under this Agreement

§ 1.3.2 **Liquidated Damages:** If the Design-Builder fails to achieve Substantial Completion of the Work within the Contract Time, including adjustments thereto authorized by the contract Documents, the Design Builder shall be subject to the assessment of liquidated damages at the rate of \$2,500 per day. The failure to complete the punchlist within sixty (60) days of its issuance shall subject the Design-Builder to liquidated damages at the rate of \$2,500 per day.

§ 1.4 Definitions

(Paragraphs deleted)

§ 1.4.1 **Applicable Law.** "Applicable Law" or "Applicable Laws" means any and all laws, statutes, rules, regulations, ordinances, codes, permits, or orders of any federal, state, or local agencies having Jurisdiction over the Project, all as in effect as of the date of this Agreement and as amended during the term of this Agreement including those governing labor, equal employment opportunity, safety, and environmental protection.

§ 1.4.2 **Architect.** The "Architect" is the professional architect or engineer employed by the Design-Builder to perform all or part of the Design Services and the Construction Administration Services, as detailed herein. The Architect and its professional Consultants must be qualified to perform the Design Services and the Construction Administration Services and be licensed by the State of California in their respective professions and disciplines.

§ 1.4.3 **As-Built Documents.** "As-Built Documents" means the Drawings, Specifications, and other materials maintained by the Design-Builder that document all addenda, Architect's Supplemental Instructions, Change Orders, responses to Requests for Information, and other postings and markings that record the as-constructed conditions of the Work and all changes made to the Construction Documents during construction.

§ 1.4.4 **Authority/ies Having Jurisdiction.** "Authority Having Jurisdiction" or "Authorities Having Jurisdiction" means a federal, state, local, or other regional department, or an individual such as a fire marshal, building official, electrical inspector, utility provider or other individual having statutory authority.

1.4.45 **Bridging Architect.** Bridging Architect shall mean an architect who is separately retained by the District and who had prepared an initial set of documents for use by the District and the Design-Builder. Such documents may include the following: size, type and desired design character of the Project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layout, or such documents as requested by the District.

§ 1.4.5 **Building Information Model.** "Building Information Model" or "BIM" means the computable, digital, multi-dimensional representation of the physical and functional characteristics of the Project's facilities and their related life-cycle information in Autodesk Revit format and Autodesk Civil 3D, to be used as a repository of design and construction information for use by the Project Team during the design and construction phases of the Project, and for Owner's use throughout the life-cycle of the Project. Design-Builder shall coordinate all efforts with respect to the BIM in accordance with the protocols established pursuant to

Section 1.1.11 above.

§ **1.4.6 Close-out Documents.** "Close-out Documents" means the product brochures, Submittals, product/equipment maintenance and operations instructions, manuals, and other documents/warranties, As-Built Documents, Record Drawings, waiver and release of lien documents, consent of surety, and any other document required of the Design-Builder as a condition to Final Payment.

§ **1.4.7 Confidential Information.** "Confidential Information" shall mean all information, whether or not originated by Owner, which is used in, or a part of, Owner's business and operations and is: (i) proprietary to, about, or created by Owner; (ii) gives Owner some competitive advantage or the opportunity of obtaining such advantage or the disclosure of which could be detrimental to the interests of Owner; (iii) designated as "Confidential Information" by Owner, or from all the relevant circumstances should reasonably be assumed by Design-Builder to be confidential and proprietary to Owner; or (iv) not generally known by Design-Builder. "Confidential Information" shall not include information that: (i) is or becomes available to the public generally, other than as a result of disclosure by Design-Builder in breach of the terms of this Agreement; (ii) becomes available to Design-Builder from a source (other than Owner) which source is not, to the best of Design-Builder's knowledge, subject to any legally binding obligation to keep the same confidential; or (iii) has been independently acquired or developed by Design-Builder.

§ **1.4.8 Construction Administration Services.** "Construction Administration Services" are those certain services provided by Architect pursuant to its agreement with Design-Builder and upon issuance of the Design-Build Amendment, to assist in the administration of the Work under the Design-Build Amendment. Construction Administration Services shall include those designated in the agreement with Design-Builder, and shall at least include, but not be limited to the following: (a) visits to the Site at intervals appropriate to the type and stage of construction progress, but not less than monthly, to inspect the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Design-Build Documents; (b) attendance at regular progress, Pencil Draw, and special meetings scheduled by the Owner; (c) review and certification of Applications for Payment in conjunction with Project Manager; (d) interpretation and clarification of technical intent and scope of the Construction Documents; (e) review of Submittals, as necessary; (f) consulting with Project Manager to review Change Order Requests and pricing; (g) preparing proposed changes to Drawings and Specifications, responses to Requests for Information, and Architect's Supplemental Instructions ("ASIs"); (h) administration and close-out of Design-Builder's Punchlists and participation in Punchlist finalization walks; (i) inspections for certification of Substantial Completion and Final Completion; (j) preparation of final Record Drawings; and (k) review of Design-Builder's submission of final Close-out Documents and other items listed as required for Final Payment as set forth in the Construction General Conditions to this Agreement.

§ **1.4.9 Construction Document(s).** "Construction Document(s)" means, collectively, the Drawings, Specifications, details, Submittals, and other documents prepared by the Design-Builder, by and through its Architect or Architect Consultants, that describe the scope and quality of the Project and the materials, supplies, equipment, systems and other elements required for construction of the Project.

§ **1.4.10 Consultant.** A "Consultant" is a person or entity providing professional services for the Design-Builder directly, or by or through the Architect retained by Design-Builder, for all or a portion of the Work. "Consultant" is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ **1.4.11 Contingency.** The "Contingency" is a separately identified amount agreed to by Owner and Design-Builder included in the Cost of the Work as set forth in **Exhibit A** to be used only in the limited circumstances described in **Exhibit A** and only with Advanced written approval of the Owner. Change Orders shall be limited to those circumstances set forth in **Exhibit A**, and those applicable sections found in the General Conditions.

(Paragraph deleted)

§ **1.4.12 The Contract.** The Design-Build Documents form the "Contract." The Contract includes this Agreement (as modified for the Project) and all other Design-Build Documents, including the General Conditions and other Exhibits hereto. This Agreement and Exhibits represent 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 Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

The Project Manager shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Project Manager's duties.

Conflicts or inconsistencies in the Design-Build Documents shall be resolved as set forth in Section 1.4.18 below. The Contract is also referred to interchangeably throughout the Design-Build Documents as the "**Agreement.**"

§ **1.4.13 Contractor.** A "Contractor" is a person or entity performing any portion of the construction, required in connection with the Work, for the Design-Builder. Contractors shall be lawfully licensed, if required, in the jurisdiction where the Project is located. "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. Notwithstanding any separate references to subcontractors, sub-subcontractors, or suppliers through this Agreement, the term "Contractor" includes subcontractors and suppliers of all tiers.

§ **1.4.14 Contract Sum.** The "Contract Sum" is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

§ **1.4.15 Contract Time.** Unless otherwise provided, the "Contract Time" is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ **1.4.16 Day.** "Day" means calendar day, unless otherwise stated herein.

§ **1.4.17 Design-Build Amendment.** The "Design-Build Amendment" shall be the amendment to the Agreement setting forth the finalized Stipulated Sum. Upon execution of the Design-Build Amendment, the Design-Build Amendment and its Exhibits shall become part of the Design-Build Documents as **Exhibit A.**

§ **1.4.18 Design-Build Documents.** The "Design-Build Documents" consist of this Agreement between Owner and Design-Builder and its attached Exhibits; other

documents listed in this Agreement; Owner provided information and documents, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive. In the event of conflicts or discrepancies among the Design-Build Documents, the Design-Build Documents shall be interpreted on the basis of the following priorities: (a) Modifications (b) this Agreement, (c) **Exhibit A**, once executed, (d) the Drawings and Specifications, (e) any supplemental or special conditions, and (f) any addenda. In case of conflicts between Drawings and Specifications, or within either the Drawings or Specifications, or within the Exhibits attached hereto and to the Design-Build Amendment, the Design-Builder shall provide the better quality or greater quantity of Work and materials unless otherwise directed by a Modification.

§ **1.4.19 Design-Builder.** The "Design-Builder" is the person or entity identified as such in this Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. Design-Builder has been employed to design and engineer, as well as construct, the Work, and the Architect and other members of the design team will be retained by Design-Builder as Consultants, employees or Contractors under the Agreement.

§ 1.4.20 **Design-Builder's Fee.** The "Design-Builder's Fee" is set forth in Section A.1.4.2 of **Exhibit A** and shall be the Design-Builder's sole compensation for profit, main office, and other general overhead and costs not allocated to the Costs of the Work or defined in Design-Builder's General Conditions Costs Schedule.

(Paragraph deleted)

§ 1.4.21 **Design Services.** "Design Services" are those services to be provided by Design-Builder during the "Work Prior to Execution of the Design-Build Amendment" phase as outlined in Section 4.2 below and as supplemented in its agreement with the Architect.

§ 1.4.22 **Drawing(s).** "Drawing(s)" means the plan(s), drawing(s), profile(s), cross-section(s), and supplemental drawing(s), or reproduction(s) thereof, prepared by the Architect and approved by Owner, which show the locations, dimensions, and details of the Work for the Project.

(Paragraph deleted)

§ 1.4.23 **Environmental Laws.** "Environmental Laws" shall mean any and all federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Project or Owner's property, including without limitation the following, as now or hereafter amended: (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613; (ii) the Resource, Conservation and Recovery Act, 42 U.S.C.A.

§ 6901 *et seq.*, as amended by the Used Oil Recycling Act of 1980 (Pub. L. No. 96-463, 94 Stat. 2055 (1980)), the Solid Waste Disposal Act Amendments of 1980 (Pub. L. No. 96-482, 94 Stat. 2334 (1980)), and the Hazardous and Solid Waste Amendments of 1984 (Pub. L. No. 98-616, 98 Stat. 3221 (1984)), and regulations promulgated thereunder; (iii) the Toxic Substances Control Act, 15 U.S.C.A. § 2601 *et seq.*; (iv) Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C.A. § 11001 *et seq.*; (v) Clean Water Act, 33 U.S.C.A. § 1251 *et seq.* and National Pollutant Discharge Elimination System (NPDES) regulations; (vi) the Clean Air Act, 42 U.S.C.A.

§ 7401 *et seq.*; (vii) 2008 Lead Based Paint Renovation, Repair and Painting Program Rule, 40 CFR Part 7445, Subpart E; and (viii) any corresponding state laws or ordinances as are amended from time to time.

§ 1.4.24 **Final Completion.** "Final Completion" shall mean the date when the Work of the Project has been fully performed pursuant to the Design-Build Documents, including completion of any Change Orders and Construction Change Directives, but excluding warranty or repair work.

§ 1.4.25 **General Conditions Costs.** "General Conditions Costs" shall mean the Design-Builder's allowed reimbursable expenses, including dedicated on-Site management, administrative, and supervisory personnel costs, insurance, bonds, equipment, utilities and incidental work, including minor field labor and materials and other on-Site costs and expenses incurred by the Design-Builder in the performance of its administrative, supervisory, and management responsibilities under the Agreement.

§ 1.4.26 **Stipulated Sum.** Stipulated Sum means that certain non-to-exceed amount, proposed and guaranteed by Design-Builder and accepted by Owner, for construction of the Project as specified in the Design-Build Amendment.

§ 1.4.27 **Hazardous Material(s) or Hazardous Substance.** "Hazardous Material(s)" or "Hazardous Substance" shall mean any flammables, explosives, radioactive materials, petroleum-based materials exceeding applicable federal, state, or local regulatory limits, asbestos, polychlorinated biphenyl (PCB), radon, and other toxic substances or related materials, including without limitation substances defined as "hazardous wastes," "hazardous substances," "hazardous materials," "toxic substances," or "solid wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Section 2601, *et seq.*; and any other Applicable Law, including Environmental Laws, and all amendments and revisions thereto. The term "Hazardous Materials" shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils, or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to, asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, fuels, lubricating oils and solvents, urea formaldehyde, flammable materials, explosives, PCBs, radon, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment or which may impair the beneficial use of property.

§ 1.4.28 **Instruments of Service.** "Instruments of Service" are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Architect, Contractor(s), and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, BIM Models, sketches, Drawings, Specifications, digital models and other similar materials.

§ 1.4.29 **Notice to Proceed.** A "Notice to Proceed" is written authorization from the Owner to the Design-Builder specifying the date the Design Services, Preconstruction Services and Construction Work shall begin and any conditions regarding the commencement of such services and/or Work.

§ 1.4.30 **Owner.** The "Owner" is the person or entity identified as such in this Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's designated representative. For the purposes of this Agreement "Owner" shall refer to the Oceanside Unified School District.

§ 1.4.31 **Owner Consultant.** An "Owner Consultant" is a person or entity providing professional services for the Owner directly for a portion of the Work. "Owner Consultant" is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, an Owner Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.32 **Preconstruction Services.** "Preconstruction Services" are those services set forth in Section 4.1 below to be provided by Design-Builder prior to execution of the Design-Build Amendment.

§ 1.4.33 **Project.** The "Project" is identified on the first page of this Contract. The Project includes the total design and construction of the Work performed under the Design-Build Documents, which may be the whole or a part.

§ 1.4.34 **Project Manager.** "Project Manager" means that entity identified in Section 1.2.2, comprised of licensed professionals retained by the Owner to provide general oversight within its professionals' licensed capabilities, including but not limited to project management services for the Project, strategic Project planning, Site planning, operational planning, budgetary impact analysis, scheduling analysis, review and approvals of Applications for Payment, and Project controls, all as detailed in that certain agreement between Owner and Project Manager.

§ 1.4.35 **Project Schedule.** The "Project Schedule" is that certain schedule prepared by Design-Builder to govern the progress and performance of the Work, as more completely described in Section 3.1.9.1 herein.

§ 1.4.36 **Project Team.** "Project Team" means the Owner, Design-Builder, Architect, Project Manager, Owner's designated design consultant(s), any Separate Contractors employed by Owner, and other consultants employed by any of them for the purpose of programming, design, construction, and commissioning of the Project. The constitution of the Project Team may vary at different phases of the Project. The Project Team will be designated by Owner and may be modified from

time to time by Owner.

§ **1.4.37 Quality Assurance.** "Quality Assurance" means the review, inspection and testing of materials and Work by Owner through its Project Manager during construction of the Work to verify Design Builder's compliance with the Design-Build Documents as to performance, effectiveness, and freedom of the Work from defects or errors.

§ **1.4.38 Quality Control.** "Quality Control" means a program of testing, coordination, start-up, operational checkout and commissioning of all items of Work included in the Project by Design-Builder that ensures conformance of the Work with the Design-Build Documents.

§ **1.4.39 Record Drawings.** "Record Drawings" are those final, compiled drawings, prepared by the Architect and approved by the Architect and Design-Builder after review of the As-Built Documents and Design-Builder's notes, drawings, and markings thereupon, wherein Architect verifies, in accordance with its standard of care, the as-built conditions of the Work.

§ **1.4.40 Site.** "Site" means the property on which the Project is located.

§ **1.4.41 Specifications.** The "Specifications" are those portions of the Design-Build Documents prepared by the Architect consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ **1.4.42 Submittal.** A "Submittal" is any submission by the Design-Builder to the Owner for review and approval, demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples.

§ **1.4.43 Substantial Completion.** Design-Builder shall be required to achieve Substantial Completion no later than the date set forth in Section A.2.2 of **Exhibit A**.

§ **1.4.44 Work.** "Work" means the design, construction, and related services required to fully design and construct the Project consistent with Owner's Criteria, Owner's budget, the Design-Build Documents, industry standards, and Applicable Laws. The Work includes, but is not limited to services provided during the "Work Prior to the Execution of the Design-Build Amendment" stage, the services provided by Design-Builder, Architect, Contractors and others during the "Work Following Execution of the Design-Build Amendment" stage, and other services required of Design-Builder as set forth herein.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ **2.1.1** Unless otherwise agreed, payments for Work performed prior to execution of the Design-Build Amendment shall be made monthly, based on the following schedule: No later than the 20th Day of the month (or the next business day if the 20th is not a business day), the Design-Builder shall submit to the Project Manager and Owner, a preliminary draft of that month's Preconstruction and Design Services Invoice in a format to be approved by the Owner. The Owner and/or Project Manager may require modifications to the Invoice and Owner shall notify Design-Builder of such changes within seven (7) days of receipt of the invoice. Invoice Design-Builder shall revise the Invoice in accordance with any objections or recommendations of the Owner or Project Manager that are consistent with the requirements of the Design-Build Documents. Undisputed amounts shall be paid within thirty (30) days of the receipt of the Invoice. The Design-Builder shall also submit with each Preconstruction and Design Services Invoice such supporting documentation as required by Owner, including, but not limited to conditional lien waivers from the Design Builder, Architect, all Consultants and Contractors.

§ **2.1.2** For the Design-Builder's performance of Work during the Pre-Construction Phase of the Work, the Owner shall compensate the Design-Builder for the stipulated sum of \$_____. The Preconstruction stipulated sum will form part of the overall Stipulated Sum for the Work, found in the Amendment to this Agreement.

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ **2.1.3.1** Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors as follows:

- .1 Transportation and authorized travel outside San Diego County and subsistence, but only when approved by Owner in advance in writing;
- .2 Dedicated data and communication services, teleconferences, Project websites, and extranets;
- .3 Permitting and other fees required by Governmental Agencies Authorities Having Jurisdiction;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .7 If required by the Owner, and only with the Owner's prior written approval, the Architect's Consultants' expenses of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect, and/or Architect's Consultants;
- .8 All taxes levied on reimbursable expenses except those taxes from which the Project or Owner is exempt;
- .9 Site office expenses; and
- .10 Registration fees and any other fees charged by Authorities Having Jurisdiction or by other entities as necessary to achieve the Sustainable Objective (if any).

§ **2.1.3.2** Compensation for Reimbursable Expenses shall be paid at cost by the Owner without additional markups or fees.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ **2.1.4.1** Payments are due and payable
(Paragraphs deleted)

Within **thirty (30)** Days after approval of the Design-Builder's Preconstruction and Design Services Invoice by the Owner and the Project Manager. Invoices shall be in such form as prepared by Owner and shall categorize services provided into "Preconstruction Services" and "Design Services" with such level of detail as prescribed by Owner.

§ **2.1.4.2** Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

§ **2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment** For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in **Exhibit A** and accompanying General Conditions.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply, and shall require its Architect, Consultants, and Contractors to comply with any applicable licensing requirements in the jurisdiction where the Project is located. The Design-Builder shall perform the Work in a good and workmanlike manner, in accordance with industry standards, Applicable Laws, the Design-Build Documents, and the Project Schedule. Design-Builder will perform the Work described in the Design-Build Documents consistent with the professional skill, diligence and care ordinarily provided by competent members of the architectural, engineering and construction professions practicing in the area of the location of the Project under the same or similar circumstances (the "Standard of Care"). The Design-Builder will perform its Work as expeditiously as is consistent with the Standard of Care and the orderly progress of the Project. Design-Builder is responsible for the accuracy and sufficiency of all plans, Drawings, and Specifications prepared for the Project by Design-Builder, Architect, any Consultant, and any Contractor it retains for the Project. All architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder.

§ 3.1.2 The Design-Builder's representative who is authorized to act on the Design-Builder's behalf with respect to the Project is set forth in Section 1.2.4. Design-Builder's representative shall be the Design-Builder's primary point of contact during all phases (Preconstruction Services, Design Services, and Construction of the Work) of the Project. Design-Builder's representative shall not be changed without advance written approval from Owner, which shall not be unreasonably withheld.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections, duties, or approvals of the Owner or the Project Manager, or by tests, inspections, duties, or approvals required or performed by persons or entities other than the Design-Builder. In the event of any dispute between Owner and Design-Builder, Design-Builder shall continue performance of the Work, without interruption or delay.

§ 3.1.3.1 **As further describe in the Construction Phase General Conditions**, Design-Builder accepts the level of trust and confidence between the Design-Builder and Owner established by this Agreement. Design-Builder covenants to the Owner that it will exercise the Design-Builder's best skill and judgment in furthering the interests of the Owner on the Project. To that end, Design-Builder agrees that it will furnish efficient Construction Administration (including those services provided by Architect by and through Design-Builder), management services, and supervision to the Project and that it will provide, at all times, an adequate supply of workers and materials to design and construct the Project. Design-Builder shall perform the Work in an expeditious and economical manner consistent with the Owner's interests, in compliance with all Applicable Laws, rules, regulations, and lawful orders of Authorities Having Jurisdiction. If the Design-Builder performs Work contrary to Applicable Laws, rules, regulations, and lawful orders of Authorities Having Jurisdiction, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to such correction, which correction shall be subject to approval by Owner.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any Applicable Laws, rules, regulations, or lawful orders of Authorities Having Jurisdiction. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any Applicable Laws, rules, regulations, or lawful orders of Authorities Having Jurisdiction, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Change Order in accordance with Article 7 of the General Conditions – Design Build.

§ 3.1.3.3 **Agreement of Cooperation.** Design-Builder shall use its best efforts to design and construct the Project in a coordinated, careful and harmonious fashion and in the most efficient and expeditious manner consistent with the Owner's interests, the Project, and Applicable Law. Design-Builder agrees to provide a high degree of cohesion, cooperation, collaboration, coordination and teamwork to the Project. To this end, Design-Builder shall deliver the Work on time and within the Stipulated Sum and will provide cost-effective capital solutions, innovation and resource stewardship while completing the Work under this Agreement, including complete coordination and cooperation with the Owner and Project Manager. Design-Builder shall communicate promptly to Owner any and all concerns that Design-Builder may have with regard to the Work, or services of others on the Project, including, without limitation, any defects or potential defects in planning, design, or construction of the Work, and shall cooperate with Owner and other professionals and experts if errors or omissions are discovered in the Design-Build Documents.

§ 3.1.3.4 **Communication and Reporting.** Design-Builder will establish procedures for effective communication and coordination among the Project Team, Architect, Consultants, Contractors, Owner Consultants, and others regarding the design and construction of the Project, and implement and continuously modify such procedures as necessary. To the extent of an apparent conflict in the sequencing of the Work or services with another service provider, Design-Builder shall report the concern to the Project Manager. Design-Builder shall coordinate delivery and installation of Owner-procured material and equipment and shall cooperate with any commissioning agent, Consultant, vendor, or service provider engaged by Owner.

§ 3.1.4 DESIGN-BUILDER IS RESPONSIBLE TO OWNER FOR ALL ACTS AND OMISSIONS OF DESIGN-BUILDER'S EMPLOYEES, ARCHITECT, CONSULTANTS, CONTRACTORS, AND THEIR AGENTS AND EMPLOYEES, AND ANY OTHER PERSONS PERFORMING ANY OF THE WORK UNDER A CONTRACT WITH DESIGN-BUILDER OR ITS ARCHITECT, CONSULTANTS OR CONTRACTORS, OR ANYONE OVER WHOM DESIGN-BUILDER OR ITS ARCHITECT, CONSULTANTS OR CONTRACTORS EXERCISE CONTROL.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work. Design-Builder shall actively participate in all meetings and/or teleconferences to bring the full measure of Design-Builder's collective experience, expertise and recommendations to the Project as it pertains to the overall Project or to a specific discipline including, but not limited to, all explanatory presentations with the Architect, Consultants, and/or Contractors as may be requested by Owner, and matters concerning the proposed Site use and improvements, selection of materials, and building systems and equipment. Design-Builder shall attend regularly scheduled and any interim Project progress meetings and fully advise the Owner of the Project status including progress, schedule, costs, quality, and proposed changes.

§ 3.1.5.1 Design-Builder shall be responsible for preparing and distributing (on the business day preceding the meeting) to Owner and Project Manager, a written agenda for all meetings, in a form and with such content as reasonably required by Owner, which includes a status report of all pending Submittals, RFIs, known or anticipated impediments to construction, accidents and injuries, pending business/action items (with a designation of who is responsible for each pending item), and all other information required by Section 3.1.8 below. When it appears to Owner or Design-Builder that a contract milestone or completion date cannot be met for reasons not the fault of the Design-Builder, Owner may request a plan and a budget from Design-Builder that will provide input on any schedule revisions and/or increased costs, if any, to accelerate or suspend the Work.

§ 3.1.5.2 Design-Builder represents and warrants to Owner that it and its employees, Consultants, and Contractors are experienced in the type of design and construction necessary to perform and complete the Design Services and Work required under this Agreement. Design-Builder understands the complexity involved in this type of design and construction and the necessity of coordination of its Work with the Owner, Owner Consultants, Separate Contractors, and Authorities Having Jurisdiction.

§ 3.1.6 When Applicable Law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file all documents required to secure approval and receive permits of all Authorities Having Jurisdiction in a manner so as not to delay the Project Schedule. All requests for reimbursement for any direct costs associated with submitting documents to such Authorities Having Jurisdiction and for permit fees shall be included as Reimbursable Expenses and paid pursuant to Section 2.1.3 of this Agreement. The

Design-Builder shall file and obtain approval of the Construction Documents from the California

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a weekly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner and Project Manager, reporting Design-Builder's assessment of the progress of the Work, estimated percentages of completion, and other information identified below:

- .1 Work completed for the period and any discrepancies with its conformance with the Design-Build Documents;
- .2 Project Schedule status and any look-ahead schedules;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to Requests for Information;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports;
- .12 Storage inventory, purchase order status, equipment, and material supply issues identified; and
- .13 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, and upon request by the Owner, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report and Daily Log reporting including weather conditions, any delay impacts, Work performed, number of workers by company by trade, and any other information requested by Owner;
- .2 Equipment utilization report;
- .3 Cost summary, comparing actual costs to updated cost estimates;
- .4 Contractor invoices supporting the costs billed for the period;
- .5 Executed Conditional Waiver and Release on Progress Payment documents for current draws from Design-Builder, Architect, all Consultants, and Contractors; and
- .6 Any other evidence reasonably required by Owner to assist in the confirmation and validation of the Cost of the Work.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 **Project Schedule.** Within **thirty (30)** Days after execution of this Agreement, Design-Builder shall prepare and submit for Owner's information a Project Schedule for the Work. The Project Schedule will include various dates critical to the progress of the Project, including design milestones applicable to the design phases in Design Services set forth in Section 4.2, deliverables to the Owner, mobilization, procurement, installation, testing, inspection, the Required Date of Substantial Completion, the Final Completion date, any interim milestone dates, delivery of Close-out Documents, acceptance of all Work required under this Agreement and the Design-Build Amendment, and any other details required for tracking the progress of the Work. The Project Schedule shall be computerized Critical Path Method (CPM) with fully editable logic with adequate detail so the schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities. The Project Schedule and all monthly updates should address Submittal activities as well as actual field construction activities. The Project Schedule shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by Authorities Having Jurisdiction. All Project Schedule updates shall address the subject of how the Design-Builder intends to address any critical path delays previously encountered.

§ 3.1.9.2 The Design-Builder shall perform the Work in accordance with the most recent schedules submitted to and approved by the Owner. Failure of the Work to proceed in the sequence scheduled by Design-Builder shall not alone serve as the basis for a Claim for additional compensation or time. In the event there is interference with the Work which is beyond its control, Design-Builder shall attempt to reschedule the Work in a manner that will hold resulting additional time and costs to a minimum.

§ 3.1.9.3 Whenever it becomes apparent from the updated Project Schedule or progress report that any critical date previously established by the Project Schedule is more than **ten (10)** Days behind schedule and may not be met, the Design-Builder shall, at the Owner's request, take any or all of the following actions with no increase to the Contract Sum or Contract Time (unless the delay is otherwise approved by Owner with an increase in the Contract Sum or Contract Time via Change Order):

- (a) Increase construction manpower and perform overtime to substantially eliminate the back-log of Work and return the Project to schedule;
- (b) Increase the number of working hours per shift, shifts per Day, working Days per week, the amount of construction equipment, or any combination of the foregoing which will substantially eliminate the back-log of Work and return the Project to schedule;
- (c) Reschedule activities to concurrently accomplish activities, to the maximum degree practicable, in the time required by the Design-Build Documents; and
- (d) Take such other action as may be requested or directed by the Owner to return the Project to schedule.

If the Design-Builder fails to take any of these actions within **three (3)** Days after receiving notice from the Owner, the Owner may in addition to its other rights and remedies (i) take action to attempt to return the Project to schedule, and

(ii) deduct the cost of such actions from the monies due or to become due to the Design-Builder, unless the delay is an Excusable Delay and the Owner requests the Design-Builder to submit a recovery plan to resolve the effects of said delay. Design-Builder shall not be entitled to compensation from the Owner or any increase in the Guaranteed Maximum Price for the scheduled recovery efforts, except as to causes of delay to the critical path as allowed, and not caused by the Design-Builder, its Architect, any Consultant, or any Contractor. No approval or consent by the Owner of any plan for re-sequencing or acceleration of the Work submitted by Design-Builder pursuant to this Section shall constitute a waiver by Owner of any damages or losses which Owner may suffer and for which Design-Builder is liable hereunder by reason of such re-sequencing or the failure of Design-Builder to meet the Required Date of Substantial Completion or other requirements of the Agreement with regard to the Contract Time. The Owner may exercise the rights furnished pursuant to this Section 3.1.9.3 as frequently as the Owner deems necessary to facilitate the Design-Builder's performance of the Work's compliance with the Required Date of Substantial Completion, Final Completion date, and other critical dates set forth in the Design-Build Documents or accepted Project Schedule.

§ 3.1.9.4 **Daily Log.** Unless and until instructed otherwise in writing by Owner, Design-Builder shall prepare a daily log (the "Daily Log") containing: (i) a record for each Day's weather; (ii) a statement of which Days since the previous monthly report are claimed by Design-Builder to be subject of a weather delay; (iii) portions of the Work in progress and accomplished; (iv) identification of Contractors and Consultants on the Site; (v) identification of all equipment on the Site; (vi) problems or anticipated delays that might affect progress of the Work; (vii) all accidents or injuries that may have occurred; and (viii) any other information that may be requested by Owner or Project Manager. The log shall be made available to Owner and Project Manager.

§ 3.1.10 **Certifications.** With each Application for Payment, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the

Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with Applicable Laws, statutes, ordinances, codes, rules and regulations, or lawful orders of Public Agencies having Jurisdiction governing the design of the Project; and (b) that the Owner and the Owner Consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's Project Schedule provided in Section 3.1.9.1, (2) allow the Owner and Project Manager reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule or fails to provide Submittals in accordance with the approved Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed any materials and equipment specified by the Bridging Architect and will provide an explanation in the event the Design-Builder elects to use different materials and equipment, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so if Work is not yet in place, and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner and Project Manager have approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's or Project Manager's approval of the Submittals.

§ 3.1.11.5 All professional Design Services or certifications to be provided by the Design-Builder, including all Drawings, calculations, Specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and the Owner Consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

(Paragraph deleted)

§ 3.1.11.6 Design-Builder shall coordinate all shop drawings and review them for accuracy, completeness, and compliance with Design-Build Documents and shall indicate its approval thereon as evidence of such coordination and review pursuant to Section 3.1.11.2. Shop drawings submitted to the Owner and Project Manager without evidence of the Design-Builder's approval may be returned for resubmission. The Owner or Project Manager will indicate an approval or disapproval of the shop drawings and, if not approved as submitted, shall indicate reasons therefore. Any Work performed before such Owner or Project Manager approval shall be at the Design-Builder's risk. Approval by Owner or Project Manager shall not relieve the Design-Builder from responsibility for any errors or omissions in such drawings or from responsibility for complying with the requirements of this Agreement.

§ 3.1.12 Warranty

§ 3.1.12.1 The Design-Builder warrants to the Owner that the Work will be performed in a good and workmanlike manner and that materials and equipment furnished under the Contract will be of specified quality, recent manufacture, and new. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents, will be complete in all parts and with the required finishes, in accordance with approved practices and customs, and free from defects. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear, and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranties set out in this subsection are in addition to and not exclusive of any other warranties or guarantees set out in other places in the Design-Build Documents, or implied under Applicable Law, or the Design-Builder's obligations under the corrective period set out in Article 11 below. Design-Builder's obligation to perform the Work in a good and workmanlike manner in accordance with the Design-Build Documents is absolute and no actions of Owner or Project Manager shall act to waive Design-Builder's obligations hereunder.

§ 3.1.12.2 Design-Builder shall furnish individual written warranties to the Owner for each product, building component, system or equipment specified to have a written warranty and incorporating the warranty of this Section 3.1.12.2. Such separate warranties shall be deemed to run from Substantial Completion regardless of whether the product, building component, system or equipment was placed into service prior to Substantial Completion.

§ 3.1.12.3 If extended warranties in addition to those required by the Design-Build Documents are available from Consultants, Contractors, manufacturers, or suppliers, Design-Builder shall advise Owner of such availability and the cost thereof and, if requested by Change Order, shall purchase the extended warranty for Owner's benefit, in which event the Change Order shall reflect an increase in the Contract Sum equal to the cost of the extended warranty submitted to and accepted by Owner.

§ 3.1.12.4 All guarantees and warranties of materials and services furnished to Design-Builder or any Consultant, Contractor, manufacturer, or supplier shall be assigned to Owner and be deemed to run for the benefit of the Owner. Design-Builder hereby assigns to Owner the benefits of all guarantees and warranties of all Consultants, Contractors, manufacturers, and suppliers engaged for the Project, but such assignment shall not relieve Design-Builder of its warranty obligations to Owner under the Design-Build Documents or Applicable Law. During the two (2) year period set forth in Section 11.2, Design-Builder shall enforce the Contractors', manufacturers', and suppliers' warranties for the benefit of Owner or its assigns. After expiration of such period, the Design-Builder shall continue to aid Owner in enforcing any continuing warranties assigned to Owner. The Design-Builder further agrees to perform the Work in such a manner so as to preserve any and all such guarantees and warranties. Design-Builder's warranties shall be in addition to any warranties, indemnities, claims, rights, actions or remedies that Owner may have in the Design-Build Documents, or at law, or in equity, for defective Work or breach of the Design-Build Documents, or otherwise provided under any repose period.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Project Manager, and Owner Consultants harmless from loss on account thereof as set forth in Section 3.1.14.3 below, but shall not be responsible for such indemnity, defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such indemnity, defense or loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 GENERAL. TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT AS SET OUT IN SECTIONS 3.1.14.2 AND 3.1.14.3 BELOW, DESIGN-BUILDER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND OWNER, ITS OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES (THE "INDEMNITEES" AND INDIVIDUALLY "INDEMNITEE"), FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING, BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THE WORK OR OTHER ACTIVITIES OF DESIGN-BUILDER, ARCHITECT, ANY CONSULTANT, OR ANY CONTRACTOR, INCLUDING, BUT NOT LIMITED TO (1) THE VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE OR OTHER APPLICABLE LAW BY DESIGN-BUILDER, ARCHITECT, ANY CONSULTANT, OR ANY CONTRACTOR (OR ANY OF THEIR EMPLOYEES) OF ANY TIER; (2) ANY BOND OR LIEN CLAIM ASSERTED BY ARCHITECT, ANY CONSULTANT, OR ANY CONTRACTOR OF ANY TIER FOR WORK OR MATERIALS PROVIDED TO THE PROJECT, TO THE EXTENT PAYMENT HAS BEEN RECEIVED FROM OWNER; (3) BODILY INJURY OR DEATH OF ANY PERSON, OR PROPERTY DAMAGE, INCLUDING LOSS OF USE OF PROPERTY, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF OWNER OR ANY OF THE INDEMNITEES.

§ 3.1.14.2 EMPLOYEE INJURY CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED IN SECTIONS 3.1.14.1 AND 3.1.14.3, DESIGN-BUILDER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER AND ALL INDEMNITEES FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS), ARISING OUT OF, RESULTING FROM, OR ATTRIBUTABLE TO ANY CLAIM OF BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF DESIGN-BUILDER, ARCHITECT, ANY CONSULTANT, OR ANY CONTRACTOR, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY DESIGN-BUILDER, ARCHITECT, ANY CONSULTANT, OR ANY CONTRACTOR, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS' COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE OF OWNER OR ANY INDEMNITEE, IT BEING THE EXPRESSED INTENT OF THE OWNER AND DESIGN-BUILDER THAT, IN SUCH EVENT, THE DESIGN-BUILDER IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER AND INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, WHETHER IT IS ALLEGED TO BE THE SOLE OR CONCURRING CAUSE OF THE BODILY INJURY, SICKNESS, DISEASE OR DEATH OF THE EMPLOYEE. THE INDEMNIFICATION OBLIGATIONS UNDER THIS PARAGRAPH SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR DESIGN-BUILDER UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS. DESIGN-BUILDER SHALL PROCURE LIABILITY INSURANCE COVERING ITS OBLIGATIONS UNDER THIS PARAGRAPH.

(Paragraphs deleted)

§ 3.1.14.3 COPYRIGHT INFRINGEMENT CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED IN SECTIONS 3.1.14.1 AND 3.1.14.2 ABOVE, DESIGN-BUILDER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER AND ANY INDEMNITEE(S) FROM AND AGAINST ANY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS) ARISING OUT OF OR RELATING TO ANY CLAIM AGAINST OWNER OR INDEMNITEES ASSERTING INFRINGEMENT OR ALLEGED INFRINGEMENT OF A PATENT, TRADEMARK, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHT IN CONNECTION WITH THE INSTRUMENTS OF SERVICE FURNISHED BY OR THROUGH DESIGN-BUILDER, ARCHITECT, ANY CONSULTANT, OR ANY CONTRACTOR, EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS, OR EXPENSE IS CAUSED OR IS ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE SOLE OR CONCURRENT NEGLIGENCE OF OWNER OR ANY OF THE INDEMNITEES OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM.

§ 3.1.14.4 In claims against any person or entity indemnified under Section 3.1.14 by an employee of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligations hereunder shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, Architect, a Consultant, or a Contractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.14.5 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under this Section or the Additional Insured requirements herein, such legal limitations are made a part of the contractual obligations and shall operate to amend the obligations to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect. Should any provision in this Agreement be held invalid, unenforceable or contrary to public policy, law, statute or ordinance, then the remainder of the provision, paragraph, Section and/or Agreement shall not be affected thereby and shall remain valid and fully enforceable.

§ 3.1.14.6 Insurance covering the indemnification obligations of Design-Builder under the foregoing paragraphs shall be provided by Design-Builder, but Design-Builder's liability to Owner as provided herein shall not be limited by the amount of the insurance coverage(s) required of and provided by Design-Builder.

§ 3.1.14.7 In the event that any claim, damage, demand, cost, loss, expense or injury arises or is made, asserted or threatened against Owner or any Indemnitee, Owner shall have the right to withhold from any payments due or to become due to Design-Builder an amount sufficient in its judgment to protect and indemnify the Indemnitee from any and all such claims, damages, demands, costs, losses, expenses or injuries (including, without limitation, legal fees and disbursements) except to the extent covered by insurance proceeds.

§ 3.1.14.8 The obligations contained in this Section 3.1.14 shall survive the expiration, completion, abandonment, and/or termination of this Agreement and Final Completion of the Work.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that
.1 assignment is effective only after termination of the Contract by the Owner, pursuant to Section 13 of the General Conditions – Design Build, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 3.1.15.2 When the Owner accepts the assignment of an agreement under this Section 3.1.15.2, the Owner assumes the Design-Builder's rights and obligations under that agreement. Owner shall only be responsible for those obligations of Design-Builder that (i) accrued prior to Owner's exercise of any rights under the conditional assignment and for which Owner has not made payment to Design-Builder, and (ii) accrue subsequent to Owner's exercise of any rights under the conditional assignment. Each agreement shall so limit Owner's liability upon exercise of its rights under the conditional assignment. Nothing contained herein shall waive Design-Builder's obligations that arise out of Work performed under any agreement prior to Owner's acceptance of the assignment. Upon such assignment to the Owner under this Section 3.1.15.2, the Owner may further assign the agreement to a successor design-builder or other entity.

§ 3.1.15.3 Upon such assignment, if the Work has been suspended for more than **ninety (90)** Days, then the compensation of the Architect, Consultant, or Contractor whose agreement has been accepted for assignment by Owner, may be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.4 Notwithstanding the foregoing, in the event of a termination for convenience under Section 13.4 of the General Conditions – Design Build, Design-Builder's rights under each agreement with regard to the respective Architect's, Consultant's, or Contractor's obligation to correct defective or non-conforming Work or with regard to the respective Architect's, Consultant's, or Contractor's warranty obligations for portions of the Work performed by such entity are assigned by the Design-Builder to the Owner in the event of such termination on a non-exclusive basis such that Owner shall also have the right to enforce such obligations.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Article 11 of the General Conditions – Design Build. Insurance shall be maintained at all times during the providing of Preconstruction Services, Design Services, and any construction services and Work by Design-Builder, its Architect, Consultants, and Contractors under this Agreement. Design-Builder will comply, at all times, with all insurance and bonding requirements of Owner. In the event of any failure by Design-Builder to comply with the insurance and bond provisions, Owner may, at its option, on notice to Design-Builder, suspend or terminate this Agreement for cause. Alternatively, Owner may purchase such insurance at Design-Builder's expense.

§ 3.1.17 Neither any oral representation by or oral agreement with the Owner, Project Manager, or any representative, consultant, officer, agent, or employee of either before execution of this Contract shall affect or modify any of Design-Builder's rights or obligations hereunder, all such prior oral representations, understandings, and agreements being superseded by this Contract. Design-Builder is not aware of any facts that make misleading or inaccurate in any material respect any information Owner, Project Manager, or any of their representatives, consultants, officers, agents, or employees have furnished to Design-Builder which would have a material, adverse effect on the Contract Time or Contract Sum, and if, during the course of the performance of the Work, Design-Builder learns of any such facts, it will so advise each of said parties.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 PRECONSTRUCTION SERVICES

§ 4.1.1 **Notice to Proceed.** The Preconstruction Services phase shall be deemed to commence upon the date specified in a Notice to Proceed with Preconstruction Services and shall continue through completion of the Construction Documents and procurement of all major Contractor agreements, until execution of the Design-Build Amendment. Design-Builder is not entitled to reimbursement for any costs incurred for Preconstruction Services performed before issuance of the Notice to Proceed. The listing of Preconstruction Services below should not be construed as a limitation on such services should Design-Builder determine additional services are necessary to fully plan, implement, and timely complete the Work within the Contract Time and Contract Sum. Any such services must be approved by Owner in writing prior to the Services being provided.

The Design-Builder will utilize as resources any documents provided to it by the Bridging Architect, which may include the size, type and designed character of the Project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layout.

Preliminarily, Preconstruction Services include the following:

§ 4.1.2 **General.** Design-Builder shall visit the proposed Site and inspect the existing facilities, systems and conditions to ensure an accurate understanding of the existing conditions as required. The Design-Builder shall participate in Project Team meetings at scheduled intervals during the Preconstruction and Design Phases and shall advise the Owner on proposed Site use and improvements, selection and availability of labor, materials, building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; use of temporary facilities, and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions; identification and resolution of conflicts in the proposed Drawings and Specifications as they evolve; methods of delivery and handling of materials, systems, and equipment; traffic, parking and materials and equipment storage in and around the Site; safety issues and available precautions related to the Work; scheduling issues including phased construction and potential fast track scheduling; and any other matters necessary to accomplish the Project in accordance with the Project Schedule. At the Owner's request, the Design-Builder shall attend public meetings concerning the development, design, scheduling, and Work of the Project.

§ 4.1.3 **Design-Build Consultants.** Within **ten (10)** Days of execution of this Agreement, Design-Builder shall provide to Owner a list of necessary Consultants, design professionals, surveyors, and engineers to assist in the design and construction of the Project and their hourly rates for approval by Owner (which approval shall not be unreasonably withheld). thereafter

§ 4.1.4 **Constructability.** Design-Builder shall implement and conduct a constructability program to identify and document Project costs and schedule savings opportunities. The Design-Builder shall prepare a "Constructability Report" that identifies items that, in the Design-Builder's opinion, may negatively impact construction of the Project. The Constructability Report shall address the overall coordination of Project Drawings, Specifications, and details and identify discrepancies that may generate Change Orders or Claims once Project construction commences. The Constructability Report shall be updated at least monthly during the Preconstruction phase.

§ 4.1.5 Budget and Cost Consultation.

(i) Design-Builder shall commence its Budgeting activities by reviewing any budget or cost estimate prepared by the Bridging Architect. Design-Builder is thereafter responsible for preparing an initial budget updating all procurement and construction cost estimates and distributing them to the Project Team throughout the duration of the Project. In the event the initial budget varies materially from the budget or cost estimate prepared by the Bridging Architect, the Design Builder shall provide the District with a written analysis of the changes.

(ii) The Design-Builder shall provide estimates of construction costs to Owner in cost reports, within **fourteen (14)** Days of completion of the Programming, Schematic Design, Design Development, and Construction Documents phases of the Project. The cost reports for the Design Development and Construction Documents phases shall be detailed estimates derived from cost quantity surveys and based on prices for labor, materials, overhead and profit and organized in Construction Specifications Institute (CSI) division format. The Design-Builder shall provide continuous cost consultation services throughout the duration of the Project, including identification and tracking of decisions that affect the scope or quality of the Project and providing ongoing updates of their cost and budget impact.

(iii) Design-Builder shall promptly identify all variances between estimated costs and actual costs during the construction phase, and shall promptly report such variances to the Project Team along with recommendations for action, but in any event no more than **three (3) business** days after acquiring such information.

§ 4.1.6 Coordination of Design and Construction Documents. Design-Builder shall review all Drawings, Specifications, and other Construction Documents as they are developed by the Architect during the Programming, Schematic Design, Design Development, and Construction Documents design phases of the Project. Design-Builder shall consult with Owner, Architect, and Project Manager on the selection of materials, equipment, component systems, and types of construction used on the Project. Design-Builder will advise Owner on Site use, construction feasibility, availability of labor and materials, procurement time requirements, and construction coordination.

Design-Builder shall advise Owner of any error, inconsistency or omission discovered in the Drawings, Specifications, and other Design-Build Documents and take steps to correct the same as required by the Project Team. Design-Builder shall advise Owner on reasonable adjustments in the Project scope, quality or other options for keeping the Project cost within the Owner's budget.

§ 4.1.7 Construction Planning. Design-Builder shall identify equipment or material requiring extended delivery times and advise Owner on expedited procurement of those items and will advise the Owner on the preparation of performance specifications and requests for technical proposals for the procurement and installation of systems and components and for the procurement of long lead items. Design-Builder shall make recommendations to the Project Team regarding organization of the Construction Documents to facilitate the bidding and awarding of construction contracts in a manner that promotes the interests of the Project and the Owner. The recommendations shall take into consideration such factors as time of performance, type and scope of work, availability of labor and materials, overlapping trade jurisdictions, provisions for temporary facilities, comparisons of factory and on-Site production costs, shipping costs, code restrictions, the Owner's goals for Small Business (SB) and Disabled Veteran Business Enterprise (DVBE) Contractor participation, and other related matters. Design-Builder shall review the Design-Build Documents with the Project Team to eliminate areas of conflict and overlap in the Work to be performed by the various Contractors or Owner's Separate Contractors.

Design-Builder shall develop bidder's interest in the Project and will develop and refine a bid/proposal strategy that addresses the entire scope of the Work for each phase and stage of the Project for approval by Owner and Project Manager. Design-Builder shall provide an analysis of the types and quantities of labor required for the Project, review the appropriate categories of labor required for critical phases or stages, and make recommendations that minimize adverse effects of labor shortages. Design-Builder shall refine, implement and monitor required SB/DVBE contracting plans to promote equal employment opportunity in the provision of goods and services to the Project.

Design-Builder shall provide an analysis of the types and quantities of materials required for the Project, review and monitor the cost of such materials on an on-going basis, and make recommendations to minimize the adverse effects of material shortages and price volatility of materials. Design-Builder shall advise Owner of any tests to be performed, and assist Owner in selecting testing laboratories and consultants, without assuming direct responsibility for the work of such laboratories and consultants. Design-Builder shall consult with and make recommendations to Owner with respect to the acquisition and delivery schedules for fixtures and equipment and include such activities on the Project Schedule.

§ 4.1.8 Safety. Design-Builder shall plan, initiate, maintain, and supervise all safety precautions and programs in connection with the Work of the Project including during Preconstruction Services and Design Services.

Design-Builder shall develop a safety program for the performance of Work during the construction stage which shall be provided to Owner and Project Manager for approval. Design-Builder's safety program shall address activities of all Contractors and Consultants, shall consider any Owner requirements set forth in Article 10 of the General Conditions – Design Build, and shall comply with Applicable Laws.

§ 4.1.9 Scheduling. Design-Builder shall prepare the Project Schedule pursuant to Section 3.1.9 herein for Owner's approval.

§ 4.2 DESIGN SERVICES. Design-Builder shall provide all Design Services as set forth below and those reasonably necessary for a full design of the Project. Information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.2.1 General. Design-Builder has engaged the services of an Architect and other licensed professionals to provide Design Services for the Project in such disciplines as their license permits and as the Project requires.

Design-Builder shall not perform any architectural or engineering services directly unless Design-Builder is licensed in California to perform such services. All Drawings, Specifications, and other design documents shall bear the seal of the licensed professional who prepared them in accordance with the Applicable Laws. All Drawings, Specifications, and other design documents shall be prepared in accordance with the Owner's Criteria and all other requirements of Owner.

§ 4.2.1.1 All Design Services for the Project (by Architect and all of its Consultants performing professional Design Services) shall be performed in conformance with the Standard of Care set forth in Section 3.1.1. Design-Builder shall be solely responsible for all obligations to the Architect and other design professionals and shall pay for the services of the Architect and all other professional service providers out of the Design Services Fee paid to Design-Builder under this Agreement. However, the Owner shall be identified as a third-party beneficiary in all agreements between Design-Builder and Architect, Design-Builder and other professional service providers, and Architect and any of its Consultants. The Architect, Architect's Consultants, and all other professional service providers shall acknowledge that they owe a duty of professional care to the Owner for the Design Services provided for the Project. Nothing in this Agreement shall create any contractual obligation from the Owner to the Architect, Architect's Consultants, or other design professionals not hired directly by the Owner. The Design-Builder shall provide the Owner with a copy of the fully executed contract or agreement authorizing services by any such Consultant or other professional service provider.

§ 4.2.1.2 Design-Builder shall manage Design Services so that the Project, as designed, can be constructed for an amount that is within the Guaranteed Maximum Price. The obligation to design the Project so as to achieve the Owner's design requirements, including its objectives of scope and cost, shall continue from Preconstruction Services through Design Services, and preparation, completion, and acceptance of Construction Documents. Any adjustment to the scope or quality considered necessary to comply with the Owner's design requirements during the design phase shall be mutually agreed upon and shall be considered normal to that process. Approval or acceptance of any Design Services by Owner shall not in any way release Design-Builder from any duty, responsibility or liability for such services, it being understood that Owner is at all times relying upon Design-Builder's skill and knowledge in performing all Preconstruction and Design Services.

4.2.1.3 Owner shall have the right to reject any Design Services it considers defective. Design-Builder shall promptly correct any such defect at Design-Builder's expense. Should any portion of the Work be damaged or defective due to an error or omission in the Design Services, including errors or omissions in any plans, Drawings, Specifications, and other Construction Documents or materials prepared or furnished by Design-Builder, Architect, Architect's Consultants, or any other professional service provider, Design-Builder shall promptly correct any such damage or defect at no additional cost to the Owner. Should the Design-Builder refuse or neglect to correct any such damage or defect within a reasonable time after notice, Owner may cause the damage or defect to be corrected and withhold payment or collect monetary damages equal to the cost of replacing or repairing the defective Work.

§ 4.2.1.4 If the construction cost estimates required under Section 4.1.5, at any required submittal stage, exceed the Owner's budget, the Owner and Design-Builder (and its Architect and Consultants) will work collaboratively to ensure that the construction cost estimates are brought to within the Owner's budget, which may include Owner modifying its budget, discussion and coordination of value engineering recommendations with Owner's Program and budget; mutually agreeable revisions to the program, scope or quality, or any combination of these or other discussions and recommendations. Once a collaborative decision is reached, Design-Builder shall then revise the respective construction design documents as may be necessary. Such revision shall be without increase in the Preconstruction Services Fee or Design Services Fee under except as otherwise expressly provided in this Agreement.

§ 4.2.1.5 The Design Services shall be provided in stages, including Programming, Schematic Design, Design Development, and Construction Documents stages. The Design-Builder shall not proceed to any subsequent stage of Design Services until the Owner has authorized Design-Builder to proceed in writing, except at the Design-Builder's sole financial risk. Each stage of the Design Services will include appropriate input from various disciplines including Architect's Consultants, Owner Consultants and any other party necessary to produce a fully integrated set of Construction Documents upon which the Project may be constructed. These shall include, but not be limited to architectural, landscape, Building Information Modeling (BIM), civil, structural, mechanical, electrical and plumbing engineering services, construction cost estimating, scheduling, and Storm Water Pollution Prevention Plan Design Services, as required.

§ 4.2.2

(Paragraphs deleted)

Programming Phase: During the Programming phase, the Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss, review, and evaluate Owner's Criteria as set forth in Section 1.1, Owner's standards and design requirements, and Owner's expectations as it concerns functional issues that may impact the Project. In addition, the Design-Builder shall review and become familiar with those documents provided to the District by the Bridging Architect. With the approval of the District, Design-Builder may consult with the Bridging Architect to clarify issues raised by the documents and dot provide other supplementing material or analysis as may be needed for the development of the drawings and specifications.

(i) **Kick-Off Meeting:** The Design-Builder shall schedule and oversee a kick-off meeting to include Design-Builder, District, Engineer (where applicable) and sub-consultants. The Project kickoff meeting will introduce key team members to each other, defining roles and responsibilities relative to the Project. Identify and review pertinent information and/or documentation necessary from the District for the completion of Design-Builder's services for the Project. Participants shall review and explain the overall project goals, general approach, tasks, work plan and procedures and deliverable products for the Project.

(ii) **Law and Specifications:** The Design-Builder shall also review Applicable Laws with respect to the design and construction of the Project and shall visit the Site to become familiar with the functional operational requirements of the Project, existing and proposed facilities, systems, and conditions to ensure the Project, as designed, will functionally interface with the existing conditions and Owner's Criteria, including those developed by the Bridging Architect. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria and discuss Owner's program. The preliminary evaluation shall address Owner's expectations, benchmarks, possible alternative approaches to design and construction of the Project, balance scope and budget and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

(iii) **Sustainable Design Goals:** Where applicable, Design-Builder shall meet with the District's Facilities Team to include the establishment of sustainable Design goals for the Project. Design-Builder shall prepare a sustainable Design Checklist.

(iv) **4.2.2.1** After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include:

- .1 allocations of program functions, detailing space and adjacency needs, room-by-room technical requirements, engineering criteria, schedules of medical equipment and functionality, and the function and square foot areas of each room/building;
- .2 Site opportunities, challenges and constraints;
- .3 collateral requirements such as sustainability targets and environmental issues;
- .4 a preliminary estimate of the Contract Sum, and, if necessary, recommendations to adjust to Owner's Criteria so as to be within the Owner's budget;
- .5 a preliminary schedule, in compliance with Section 3.1.9 above, which shall also include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for completion of Programming, Schematic Design, Design Development Documents, Construction Documents, and for the Design-Builder's Proposal; and dates of periodic design review sessions for each phase of design and development of Design-Builder's Proposal with the Owner; and
- .6 any additional items mutually agreed upon by Owner, Project Manager, and Design-Builder including any Project delivery impacts and decisions.

§ 4.2.2.2 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Schematic Design Phase as described in Section 4.2.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

(Paragraph deleted)

§ 4.2.3 Schematic Design

§ 4.2.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.2.2, the Design-Builder shall prepare and submit a Schematic Design to the Owner. In developing the Schematic Design, the Design-Builder shall consider environmentally responsible design alternatives, such as material choices and building orientation, and the value of alternative building systems and equipment, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's Criteria, the Project Schedule, and the budget. The Schematic Design shall be in accordance with zoning requirements of Authorities Having Jurisdiction and all Site stipulations. As part of the Schematic Design requirements, Design-Builder shall prepare a preliminary construction cost estimate for submission to Owner.

(Paragraphs deleted)

§ 4.2.3.2 The Schematic Design shall include a report identifying any deviations from the Owner's Criteria, and shall also include the following:

- .1 Confirmation of the allocations of program functions, including the analysis of any alternative designs;
- .2 Site plan including all utilities;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical (including low voltage systems) and plumbing systems;
- .6 Outline Specifications or sufficient Drawing notes describing construction materials;
- .7 Design criteria for (i) connection to all proposed temporary and permanent on-Site and off-Site utilities, (ii) the proposed heating, ventilation, and air conditioning system and single line layout of conveyance systems, (iii) the proposed electrical system including reserve capacity, and (iv) the proposed structural system, including the rationale for all determinations, all floor and roof design loads, and lateral loads; and
- .8 Basic Material selections
- .9 Preliminary Equipment selections
- .10 Other typical construction details.

The Schematic Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.2.3.3 The Owner shall review the Schematic Design and the Design-Builder's preliminary construction cost estimate and, if acceptable, provide the Design-Builder with written consent to proceed to development Design Development Documents and acceptance of the preliminary construction cost estimate. The

Schematic Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

(Paragraph deleted)

§ 4.2.4 Design Development. Based on the Schematic Design and any adjustments to the Owner's design requirements, the Project Schedule, and any budget limitations provided by Owner, the Design-Builder shall develop sufficient alternative approaches to design and construction of the Project in the Design Development phase and review them with the Project Team. As part of the Design Development Phase, Design-Builder shall prepare a detailed construction cost estimate for submission to Owner. Upon completion of the review process and Owner's written authorization to proceed with the Design Development phase, Design-Builder shall prepare Design Development Documents.

§ 4.2.4.1 The Design Development Documents shall illustrate and describe the development of the approved Schematic Design requirements and shall be refined to establish scaled relationships among the Project components. The Design Development Documents shall consist of Drawings and other documents, including plans, sections, elevations, typical construction details, perspective sketches, narratives of major enclosures, survey of applicable codes, engineering studies, analysis of alternative designs, diagrammatic layouts of building systems, and any value engineering performed or recommended by the Design-Builder to fix and describe the size and character of the Project as to architectural, structural, mechanical, plumbing, and electrical systems, FF&E, and other appropriate elements. The Design Development Documents shall include design criteria for (1) connection to all proposed temporary and permanent on-Site and off-Site utilities; (2) the proposed heating, ventilation and air conditioning system and single line layout of conveyance systems; (3) the proposed electrical system including reserve capacity; (4) the proposed structural system, including the rationale for all determinations, all floor and roof design loads, and lateral loads; and (5) other items as mutually agreed upon between Owner, Project Manager and Design-Builder. The Design Development Documents shall further include functional and operational descriptions for the Project commensurate with the level of design completion, and outline Specifications that identify major materials and systems and establish, in general, their quality levels.

§ 4.2.4.2 Drawings will be reviewed for dimensional and graphical accuracy, consistency between the separate Drawings, and compliance with accessibility and planning issues pursuant to the building codes, accessibility codes, and other applicable regulations. Design-Builder will revise the Drawings based on Owner's pricing comments (if any) and shall establish guidelines for design of program elements. Design Development Documents shall be based upon reliable and accurate calculations that appropriately determine all architectural and engineering components of the Project. Draft Specifications shall be prepared for review and inclusion in the package of Design Development documents, all of which shall be submitted to the Owner and Project Manager, with updated costs estimated, in the "DD Approval Package".

§ 4.2.4.3 Design-Builder shall meet with the Project Team as necessary to thoroughly review the DD Approval Package and the detailed construction cost estimate. During such meeting(s), Design-Builder shall provide input on and advise the Owner of any adjustments to the Owner's budget. Design-Builder shall make such revisions to the documents in the DD Approval Package as required by Owner and Project Manager to finalize the Design Development Documents and to align the design with the Owner's stated requirements and budget. After incorporating revisions to the DD Approval Package as requested by the Project Team, Design-Builder shall resubmit such revised DD Approval Package, electronically in CAD format and in hard copy, along with any required, updated cost estimates (the "Final DD Package"), to the Owner for approval. The Final DD Package shall include two sets of the complete documents in a format and medium acceptable to the Owner and such complete printed sets of the Final DD Package.

§ 4.2.4.4 The Design-Builder shall prepare presentation materials at completion of the Design Development phase in a manner that meets Owner's schedule. Such presentation materials shall be revised and/or supplemented to meet the requirements of this Agreement as reasonably required by Owner. Such materials shall be furnished in electronic format as may be required by the Owner and in hard copy.

§ 4.2.4.5 Design-Builder shall request written approval of the Final DD Package, updated cost estimates, and any adjustments to the Project Schedule so that it may proceed to the Construction Documents phase. When Owner considers all elements of the Design Development phase are met, Owner will issue written authorization for Design-Builder to proceed with the Construction Documents phase.

§ 4.2.5 Construction Documents

§ 4.2.5.1 Based on the Owner's approval of the Design Development Documents, authorization of any adjustments in the Project requirements, Owner's budget and Design-Builder's cost estimates, Design-Builder shall prepare Construction Documents for the Owner's approval.

§ 4.2.5.2 The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work, including, but not limited to all architectural, structural, mechanical, electrical and plumbing Drawings, plans, details, schedules, Site lighting, building lighting and common area lighting plans (electrical), low voltage/security design plans, civil design, landscape design, calculations, energy calculations and technical Specifications, and all fire protection designs, including a performance Specification to allow a design/build program by the fire protection Contractor. Specifications will be based on a 48-division specification model and will be printed on 8 1/2" x 11" book format indicating the actual material selections and other relevant notes. Design-Builder shall make sure that all Drawings and Specifications submitted to Owner for approval are complete, unambiguous, and in compliance with Applicable Laws. Design-Builder shall be responsible for providing certification(s) required by any Authorities Having Jurisdiction. At the Owner's request, Design-Builder shall prepare detailed area calculations in a form acceptable to Owner.

§ 4.2.5.3 As part of the Construction Documents phase, the Design-Builder shall:

- .1 Conduct design team meetings at agreed-upon frequency, for design review and to resolve design coordination issues.
- .2 Coordinate efforts of the design team and incorporate into the design all comments from Design-Builder Consultants.
- .3 Coordinate efforts of the Project Team and incorporate into the design all comments from Owner Consultants.
- .4 Finalize selection and documentation of construction materials and finishes.
- .5 Review document progress with Owner for input and direction, and incorporate Owner-requested revisions.
- .6 Issue progress documents at fifty percent (50%) and ninety-five percent (95%) for Owner's review and approval.
- .7 Submit Construction Documents packages at appropriate stages for permitting as required to meet the Project Schedule.
- .8 Coordinate with Owner and Project Manager to include Owner-directed comments and revisions.

§ 4.2.5.4 Construction Documents will be submitted to Owner, reviewed, and any comments incorporated at fifty percent (50%) and ninety-five percent (95%) such that all such comments are resolved at one hundred percent (100%) completion. The Design-Builder shall provide with each review submitted to Owner a coordination document set with colored overlays of required design disciplines. These shall include, but not be limited to, mechanical, electrical, plumbing, sprinkler, slab penetrations, telecommunications, and instructional technologies support. With the exception of fire sprinkler design, the Design-Builder shall provide all designs and shall not use design performance documents, unless approved by Owner.

§ 4.2.5.5 Construction Document Drawings shall be produced in BIM as part of the Design Services. Owner will define the BIM requirements and the final media for the BIM data. Any Drawing revisions shall be investigated and coordinated with other design documents. Any redesign required as a result of conflict and/or comparison with other design documents, shall be provided by Design-Builder in electronic version and provided to Owner as part of Design Services. All electronic data shall include an organized indexing system and/or a table of contents sufficiently detailed as to each discrete subject matter so as to allow for easy identification and location of each file or page of information. Specifications shall be provided to Owner in both Microsoft Word and in Adobe PDF.

§ 4.2.5.6 The Design-Builder shall incorporate the design requirements of Authorities Having Jurisdiction into the Construction Documents.

§ 4.2.5.7 The Design-Builder shall update the cost estimates prepared in accordance with Section 4.2.4.3. The Design-Builder shall assist the Owner with any decisions made by the Owner prior to completion of Design-Builder's services in the Construction Documents Phase to reduce the estimated cost thereof.

§ 4.2.5.8 No later than the one hundred percent (100%) Construction Documents Deadline set forth in the Project Schedule and based on the approved ninety-five percent (95%) complete Construction Documents, Design-Builder shall prepare and deliver to Owner the proposed one hundred percent (100%) complete Construction Documents and the one hundred percent (100%) complete construction cost estimate review comments. If such cost estimate exceeds the Owner's budget, Design-Builder shall consult with Owner to identify further potential Drawing and/or Specification modifications that bring the cost estimate into compliance with the budget. Approved modifications shall be incorporated into the Construction Documents at no cost to Owner in the event Owner determines, in its sole discretion, that such changes are the responsibility of Design-Builder. Any revisions required to any Drawings after the Drawings are approved by Owner and any Authorities Having Jurisdiction and issued at the "For Construction" phase shall be billed as an additional service.

§ 4.2.5.9 Prior to releasing the Construction Documents "For Construction," the Design-Builder shall provide a document that summarizes all design code requirements and provide written certification that the Construction Documents meet all Applicable Laws and required standards. The Design-Builder shall further certify in writing that no asbestos or lead containing materials have been specified or approved by the Design-Builder for installation into the Project.

§ 4.2.5.10 Design-Builder shall submit all documents required to secure approval of all Authorities Having Jurisdiction. All requests for reimbursement for any direct costs associated with submitting documents to such Authorities Having Jurisdiction and for permit fees shall be included as Reimbursable Expenses. The Design-Builder shall file and obtain approval of the Construction Documents from the California Department of Licensing and Regulations, Architectural Barriers Division.

§ 4.2.5.11 Before proceeding to prepare the Design-Build Proposal, the Design-Builder shall obtain Owner's written acceptance of the final Construction Documents and will reconfirm the alignment of the approved cost estimate with the established final budget. Owner shall provide consent to proceed to the Design-Builder's Proposal phase, unless authority to do so has been previously provided. No Construction Documents shall be issued, delivered, or released for any purpose without the prior written consent of Owner. Unless otherwise instructed by Owner, Design-Builder shall deliver approved Construction Documents to Owner.

§ 4.2.6 Design-Builder represents and warrants to the Owner that all Drawings, Specifications, and other information furnished or provided by Design-Builder shall be free from material errors, defects, and omissions and sufficiently complete so as to, at all times, comply with the Standard of Care. Approval or acceptance of any Design Services by the Owner shall not in any way release Design-Builder from any duty, responsibility or liability for such Design Services, it being understood that Owner is at all times relying upon Design-Builder's skill and knowledge in performing the Design Services.

§ 4.3 Construction Services

§ 4.3.1 **General:** Progressive Design-Build requires the Design-Builder to submit pricing information before the full scope and pricing of the Work can be known. Accordingly, the compensation terms of Phase 1 will be different from the compensation terms for Phase 2.

§ 4.3.2 **Phase 1 Compensation.** The Design-Builder will complete all Design and Pre-Construction Services, including cost of the Design Services, overhead and profit for the Design-Builder, and will be on the basis of a not-to exceed price. Design-Builder will be paid pursuant to monthly invoices based on the hours of Design-Services and the hourly billable rates agreed upon, and set forth in Exhibit 3.

§ 4.3.3 Stipulated Sum Proposal

Prior to commencing any work on Phase 2 of the Project, Design-Builder shall submit a Stipulated Sum Proposal to Owner. Design-Builder shall provide Owner with all documents related to such Stipulated Sum reasonably requested by Owner, which may be reviewed by independent cost estimators on Owner's behalf. If the parties to this Agreement cannot agree on the amount of the Stipulated Sum, the Agreement with the Design-Builder may be terminated, according to Article 13 of the General Conditions – Design Build, herein.

§ 4.3.4 Phase 2 Compensation: Stipulated Sum

During Phase 2 of the Project, Design-Builder will perform and design completion and design services, and all Construction Services, as summarized in the Scope of Work and in the Construction General Conditions, within the Stipulated Sum. The agreed upon Stipulated Sum will cover all labor, equipment, materials, profit, overhead, taxes, and any other expenses to be incurred by the Design Builder during Phase 2. The costs and expenses covered by the Stipulated Sum include the following: (a) Direct cost of the Work; (b) Design-Builder Fee; (c) Insurance premium costs without markup; (d) bond costs without markup; (e) applicable sales tax; (f) any agreed upon contingency; and (g) any agreed upon allowances.

§ 4.3.5 Construction Contingency

Design-Builder may propose within the Stipulated Sum a Construction Contingency in an amount to be approved by Owner and established in in the Agreement. If agreed upon by Owner and included within the Stipulated Sum, a Construction Contingency will be available to the Design-Builder to cover any cost of the Work unanticipated by Design-Builder on the effective date of the Stipulated Sum Amendment, such as unanticipated field conditions that do not constitute a differing site condition and re-sequencing the Work for the good of the Project. Owner will not require the Design-Builder to use the Construction Contingency for Change Order Work. The Construction Contingency shall be subject to the conditions and restrictions found on page 27 of the Request for Proposals, the contents of which are incorporated herein by reference.

§ 4.3.6 **COVID-19.** Design-Builder and its Architect, Consultants, and Contractors will comply with all orders, regulations, or requirements issued by any Authorities Having Jurisdiction regarding COVID-19 that may affect commercial construction in the county where the Project is located. Design-Builder and its Architect, Consultants, and Contractors will employ commercially reasonable efforts to mitigate any delays and/or increased costs related to COVID-19. Notwithstanding the foregoing, Owner has requested that Design-Builder prepare the Design-Build Proposal and the Project Schedule keeping in mind reasonably foreseeable, in accordance with Design-Builder's Standard of Care, delays in deliveries, workforce inefficiencies caused by social distancing protocols, price escalations, and material shortages related to COVID-19 or its aftermath. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Design-Builder, its Architect, or any Consultant or Contractor to comply with the requirements of this Section or to include in the Project Schedule or Design-Build Proposal sufficient time or amounts to address reasonably foreseeable price escalations or materials shortages related to or arising out of COVID-19 within Design-Builder's Standard of Care.

§ 4.3.7 **Acceptance of the Design-Build Proposal.** Owner shall have at least **ninety (90)** Days after receipt of the Design-Build Proposal in which to accept or reject such proposal, unless extended by mutual agreement or in accordance with Section 4.4.4.2. Acceptance of the Design-Build Proposal shall be by written amendment to this Agreement, duly executed by Owner and Design-Builder. The Design-Build Amendment shall include Exhibits supporting the various items of the Design-Build Proposal (as set forth in Section 4.3.1 above) plus any additional information reasonably required by Owner in support of the Design-Build

Amendment. Upon execution of the Design-Build Amendment, the Design-Build Amendment and its Exhibits shall become part of the Design-Build Documents as **Exhibit A**.

§ 4.3.8 Rejection of the Design-Build Proposal. If Owner, in its discretion, is unwilling to approve the Design-Build Proposal, Owner may, at its election, take one or more of the following actions:

.1 terminate this Agreement by providing the Design-Builder with notice of termination in accordance with Article 13 of the General Conditions – Design Build. Promptly after such termination, upon receipt of final conditional lien waivers documents from the Design-Builder, its Contractors and others performing Work, and the receipt of all documents reasonably requested by Owner, Owner shall pay the Design-Builder for services performed and authorized in writing by Owner to the point of termination, as full payment for all Work and services performed by the Design-Builder, which shall be the exclusive and total amount due the Design-Builder in connection with this Agreement and the termination thereof pursuant to this Section; or

.2 direct the Design-Builder to continue to participate in value engineering exercises so that the Design-Builder can submit another Design-Build Proposal at a reduced cost. Owner shall review the revised Design-Build Proposal submitted and advise Design-Builder of the acceptance or rejection of the revised Design-Build Proposal within **thirty (30)** Days of approval/rejection by the Owner's governing body. If approved, Owner will notify the Design-Builder. If rejected, Owner shall have the right to proceed or to terminate this Agreement as set forth herein. If Owner does not accept or reject the revised Design-Build Proposal within the aforementioned period of time, Design-Builder may notify the Owner of its intention to terminate this Agreement, or, if the parties agree, may to continue value engineering efforts for that period of time agreed to establish another revised Design-Build Proposal.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

(Paragraphs deleted)

§ 5.1 *[Intentionally deleted. The Construction Documents phase is set forth in Section 4.2.5 above.]*

§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2 below, construction shall not commence prior to execution of the Design-Build Amendment and Owner's issuance of a Notice to Proceed for Construction Work.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Build Proposal.

§ 5.2.3 Design-Builder shall supervise and direct the Work and shall perform the Work in a good and workmanlike manner and in the most expeditious and economical manner consistent with the interests of Owner. Design-Builder shall exercise the degree of care, skill and diligence in the performance of the Work in accordance with and consistent with industry standards for similar projects and circumstances; shall utilize its best skill, efforts and judgment in furthering the interests of Owner; and shall furnish efficient business administration and supervision to the Project in accordance with Section 3.1.1 and the Standard of Care. The Design-Builder shall be solely responsible for, and shall be subject to assessment of Liquidated Damages in and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract. The Specific duties of the Design-Builder are set forth in the Construction General Conditions.

5.2.3 Liquidated Damages:

a. **Substantial Completion:** If the Design-Builder fails to achieve substantial completion of the Work within the Contract Time, including adjustments thereto in accordance with the Contract Documents, the Design-Builder shall be subject to the assessment of liquidated damages, in the amount of FIFTEEN HUNDRED DOLLARS (\$1,500) per days from the scheduled date of Substantial Completion until Substantial Completion is achieved.

b. **Delayed Completion of Punchlist Items:** If the Design-Builder fails to complete all punchlist items noted upon Substantial Completion within the time established for completion of the Punchlist Items, the Design-Builder shall be subject to the assessment of Liquidated Damages in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) per day from the scheduled completion until all Punchlist Items are completed.

ARTICLE 6 MISCELLANEOUS PROVISIONS

§ 6.1 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 6.2 Interpretation

§ 6.2.1 In the interest of brevity, the Design-Build 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.

§ 6.2.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 6.2 Attorneys' Fees and Severability. If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, each party shall bear its own reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in such proceeding.

§ 6.3 Partial Invalidity. The invalidity of any part or portion of the Design-Build Documents shall not impair or affect in any manner whatsoever the validity, enforceability or effect of the remainder of the Design-Build Documents. To any provision or portion thereof in this Agreement or the Design-Build Documents is held to be void, invalid, or unenforceable, then the remainder of this Agreement will not be affected thereby and will remain fully enforceable and the parties agree that to the extent possible, any provision that is determined void, voidable, invalid or unenforceable will be reformed to the minimum extent necessary to make it valid and enforceable and will be enforced and enforceable as reformed.

§ 6.4 Survival. All provisions of the Contract that by their nature survive termination of this Contract or Final Completion of the Work, including, without limitation, all warranties, indemnities, indemnity obligations, confidentiality obligations, and obligations to arbitrate or litigate disputes, shall remain in force and effect after Final Completion or any termination of the Contract.

§ 6.5 Multiple Counterparts. This Contract may be executed in multiple original counterparts, each of which shall be of equal dignity. Faxed or electronically scanned signatures shall be sufficient for the execution and delivery of this Contract.

§ 6.6 RESERVED.

§ 6.7 Independent Contractor. In performing its obligations hereunder, Design-Builder shall be deemed an independent contractor and not an agent or employee of Owner.

OWNER:

DESIGN-BUILDER:

OCEANSIDE UNIFIED SCHOOL DISTRICT

(Signature)

(Signature)

(Printed name and title)

(Printed name, title, and license number, if required)

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GENERAL CONDITIONS

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RECITALS

The documents included in the Request for Proposals and the Design-Builder's Proposal, incorporated herein, and designated as part of the Contract Documents are provided by the District to establish the scope, level of quality and design intent, and the reporting procedures for the development and construction of the entire Project. The Design-Builder shall comply with the Contract Sum, the Contract Time, the Preliminary Schedule or approved Contract Schedule as applicable, the Project Program, the performance specifications, the building massing, building heights and setbacks, public spaces, landscape design, and the general architectural character of the building described in the Criteria Documents. By incorporating the Design-Builder's Proposal as a part of this Contract, the District does NOT accept any provision of the Design-Builder's Proposal that is not in conformance with the criteria of the Request for Proposals.

In consideration of the mutual agreements, covenants and conditions set forth below, and the Recitals set forth above, the adequacy of which is hereby acknowledged, Design-Builder and District agree as follows:

ARTICLE 1. GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 APPLICABLE CODE REQUIREMENTS

The term "Applicable Code Requirements" means, but is not limited to, all laws, statutes, the most recent State of California building codes, city ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over District, Design-Builder, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work. See also Article 3.7 of the General Conditions.

1.1.2 APPLICATION FOR PAYMENT

The term "Application for Payment" means the submittal from Design-Builder wherein payment for certain portions of the completed Work is requested in accordance with Article 9 of the General Conditions.

1.1.3 ARCHITECT OF RECORD

The term "Architect of Record" means the Design Professional identified in the Special Conditions that is licensed in the State of California and employed or commissioned by the Design-Builder to prepare design documents and construction documents.

1.1.4 BENEFICIAL OCCUPANCY

The term "Beneficial Occupancy" means the District's occupancy or use of any part of the Work in accordance with Article 9 of the General Conditions.

1.1.5 CEQA

The term "CEQA" means the California Environmental Quality Act, Public Resources Code Section 21000 et seq.

1.1.6 CERTIFICATE FOR PAYMENT

The term "Certificate for Payment" means the form signed by District's Representative attesting to the Design-Builder's right to receive payment for certain completed portions of the Work in accordance with Article 9 of the General Conditions.

1.1.7 CERTIFICATE OF SUBSTANTIAL COMPLETION

See Article 9.7 of the General Conditions.

1.1.8 CHANGE ORDER

See Article 7 of the General Conditions.

1.1.9 CHANGE ORDER REQUEST

The term "Change Order Request" means a proposal for a Change Order submitted by the Design-Builder to the District, either at the request of the District or at the Design-Builder's own initiative.

1.1.10 CLAIM

See Article 4.3 of the General Conditions.

1.1.11 CONSTRUCTION DOCUMENTS

The term "Construction Documents" means the plans and specifications prepared by the Design-Builder for the Project, and approved by the District. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents. All amendments and modifications to the Plans and Specifications must be approved by the District in writing.

1.1.12 CONSTRUCTION WORK

The term "Construction Work" means that portion of the Work consisting of the provision of labor, materials, furnishings, equipment, and services in connection with the construction of the Project as set forth in the Contract Documents.

1.1.13 CONTRACT

The term "Contract" shall have the meaning identified in Article 1.4.12 of the Agreement.

1.1.14 CONTRACT DOCUMENTS

The term "Contract Documents" means all documents listed in Article 1.4.18 of the Agreement.

1.1.15 CONTRACT MILESTONE

The term "Contract Milestone" means any requirement in the Contract Documents that reflects a planned point in time for the start or completion of a portion of the Work measured from i) the date of any of the Notices to Proceed, or ii) the date of another Contract Milestone defined in the Contract Documents, as applicable.

1.1.16 CONTRACT SCHEDULE

The term "Contract Schedule" means the graphical representation of a practical plan, in accordance with the Specifications, to perform and complete the Work within the Contract Time. The detailed requirements for the Contract Schedule are stated in Article 3 of the General Conditions.

1.1.17 CONTRACT SUM

The term "Contract Sum" means the amount of compensation stated in the Agreement, Exhibit A, for the performance of the Work. This term is also the total extended guaranteed maximum price described in the Price Proposal Form, as may be adjusted during negotiations between the parties. This amount may be adjusted by Change Order.

1.1.18 CONTRACT TIME

The term "Contract Time" means the number of days set forth in the Agreement, Exhibit A within which Design-Builder must achieve Final Completion of the Work, as adjusted by Change Order.

- 1.1.19 COST OF EXTRA WORK
See Article 7.3 of the General Conditions.
- 1.1.20 CRITERIA DOCUMENTS
The term "Criteria Documents" means, but is not limited to, the portions of the Contract Documents which constitute an outline of design requirements, Scope of Work, Project Program, Performance Specifications and Drawings.
- 1.1.21 DAY
The term "day," as used in the Contract Documents, shall mean calendar day, unless otherwise specifically provided.
- 1.1.22 DEFECTIVE WORK
The term "Defective Work" means Work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of District's Representative, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.
- 1.1.23 DESIGN-BUILDER
The term "Design-Builder" means the person or firm identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.
- 1.1.24 DESIGN-BUILDER FEE
See Article 7.3 of the General Conditions.
- 1.1.25 DESIGN DEVELOPMENT PHASE
The term "Design Development Phase" shall mean the period of time set forth in the Agreement beginning with the issuance of the Notice to Proceed.
- 1.1.26 DESIGN MATERIALS
The term "Design Materials" shall mean any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design-Builder: (1) to the District under the Contract Documents; or (2) developed or prepared by or for the Design-Builder specifically to discharge its duties under the Contract Documents.
- 1.1.27 DESIGN PROFESSIONAL
The term "Design Professional" shall mean individuals or entities that will provide Design-Builder with the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.
- 1.1.28 DESIGN WORK
The term "Design Work" shall mean the portion of the Work consisting of the design services and design deliverables required to be provided in connection with the design of the Project as set forth in the Contract Documents.
- 1.1.29 DRAWINGS
The term "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams. The Drawings are listed in the List of Drawings.
- 1.1.30 EQUIPMENT MANUFACTURER
The term "Equipment Manufacturer" shall mean any Separate Contractor that fabricates and/or supplies any District-provided equipment which is installed in the Project by the Design-Builder.
- 1.1.31 EXCUSABLE DELAY
The term "Excusable Delay" means a delay that entitles the Design-Builder to an adjustment of the Contract Time but not an adjustment of the Contract Sum, pursuant to Articles 7 and 8 of the General Conditions.
- 1.1.32 EXTRA WORK
The term "Extra Work" means Work beyond or in addition to the Work required by the Contract Documents.
- 1.1.33 CONSTRUCTION CHANGE DIRECTIVE
See Article 7.4 of the General Conditions.
- 1.1.34 FINAL COMPLETION
The term "Final Completion" means the date at which the Work has been fully completed in accordance with the requirements of the Contract Documents pursuant to Article 9.8 of the General Conditions.
- 1.1.35 GUARANTEE TO REPAIR PERIOD
See Article 12.2 of the General Conditions.
- 1.1.36 GOVERNMENTAL APPROVALS
The term "Governmental Approvals" means those governmental (including agency) actions required to be obtained by the District and necessary for the completion of the Project.
- 1.1.37 HAZARDOUS MATERIAL
The term "Hazardous Material" means any substance or material identified as hazardous under any California or federal statute governing handling, disposal and/or cleanup of any such substance or material.
- 1.1.38 INDEMNIFIED PARTIES
The term "Indemnified Parties" means the District, members of its Board of Trustees, and District's agents, officials, officers, representatives, consultants, employees, and authorized volunteers.
- 1.1.39 MAXIMUM ACCEPTANCE COST
The term "Maximum Acceptance Cost" means the amount identified as such in the Request for Proposals.
- 1.1.40 PROJECT
The term "Project" means the total design and construction of the Work under the Contract and all other work, labor, equipment, and materials necessary to accomplish the Project. The Project may include design or construction work performed by District or by Separate Contractors.
- 1.1.41 PROJECT SITE
The term "Project Site" or "Project site" or "Site" or "site" means lands and facilities upon which the Work pertaining to physical construction operations is performed, including such access and other lands and facilities designated in the Contract Documents for use by Contractor.

1.1.42 SEPARATE CONTRACTOR

The term "Separate Contractor" means a person, or firm, under separate contract with the District performing other work related to the Project.

1.1.43 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

See Article 3.19 of the General Conditions.

1.1.44 SPECIFICATIONS

The term "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.45 SUBCONTRACTOR

The term "Subcontractor" means a person or firm that has a contract with Design-Builder or with a Subcontractor of the Design-Builder to perform a portion of the Work. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

1.1.46 SUBSTANTIAL COMPLETION

See Article 9.7 of the General Conditions.

1.1.47 SUPERINTENDENT

The term "Superintendent" means the person designated by Design-Builder to represent Design-Builder at the Project site, in accordance with Article 3 of the General Conditions.

1.1.48 TIER

The term "tier" means the contractual level of a Subcontractor or supplier or consultant with respect to Design-Builder. For example, a first-tier Subcontractor is under subcontract with Design-Builder, a second-tier Subcontractor is under subcontract with a first-tier Subcontractor, and so forth.

1.1.49 UNEXCUSABLE DELAY

The term "Unexcusable Delay" means a delay that does not entitle the Design-Builder to an adjustment of the Contract Sum and does not entitle the Design-Builder to an adjustment of the Contract Time.

1.1.50 UNILATERAL CHANGE ORDER

See Article 7.2 of the General Conditions.

1.1.51 DISTRICT

The term "District" or "the District" means Oceanside Unified School District, Owner of the Project.

1.1.52 DISTRICT'S BUILDING OFFICIAL

The term "District's Building Official," or "Certified Building Official," means the individual the District has designated to act in the capacity of the "Building Official" as defined by the California Building Standards Code. The District's Building Official shall determine whether the Work complies with Applicable Code Requirements and shall determine whether and when it is appropriate to issue a Certificate of Occupancy.

1.1.53 DISTRICT'S REPRESENTATIVE

The term "District's Representative" means the person identified as such in the Agreement.

1.1.54 DISTRICT'S RESPONSIBLE ADMINISTRATOR

The term "District's Responsible Administrator" means the person, or his or her authorized designee, who is authorized to execute the Change Orders, Construction Change Directives, and other applicable Contract Documents on behalf of the District.

1.1.55 WORK

The term "Work" means all labor, materials, equipment, tools, and services, including Design Professional services, and other requirements of the Contract Documents as modified by Change Order, whether completed or partially completed, provided or to be provided by Design-Builder to fulfill Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

1.2 OWNERSHIP AND USE OF CONTRACT DOCUMENTS

1.2.1 The Contract Documents, and all copies thereof, furnished to, or provided by, Design-Builder are the property of the District. The District and Design-Builder explicitly agree that all materials and documents developed in the performance of this Contract are the property of the District. The District shall have the right to use all drawings, designs, specifications, notes and any other documentation and other work developed in the performance of this Contract for the Project, or in connection with the Project, including without limitation future additions, alterations, connections, repairs, information, reference, use or occupancy and the right to re-use details of the design on any other District work, all without the Design-Builder's consent and at no additional cost to the District.

1.2.2 District shall defend, indemnify and hold harmless Design-Builder, its officers, agents and employees from any costs or claims for damages arising from District's use on other projects of the Contract Documents, the Drawings and Specifications, or the designs depicted in them, if any of the foregoing have been provided to the District by the Design-Builder.

1.2.3 Notwithstanding Article 1.2.2 above, District shall not defend, indemnify or hold harmless Design-Builder, its officers, agents, or employees from any costs or claims asserted or imposed by any person or entity claiming that District's use of the Contract Documents, the Drawings and Specifications, or the designs depicted in them, is contrary to or in violation of any copyright, patent, trade secret, trade name, trademark, or any proprietary, contractual or legal right pertaining to their use.

1.3 INTERPRETATION

1.3.1 The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Work by the Design-Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Design-Builder shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.

1.3.2 In the case of conflict between terms of the Contract Documents, the following order of precedence shall apply:

.1 The Agreement shall control over the Special Conditions.

.2 The Special Conditions shall control over the General Conditions.

.3 The General Conditions shall control over the Exhibits.

.4 Where no order of precedence is stated, the more expansive of the requirements shown or specified shall be controlling.

1.3.3 The District and Design-Builder acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the Proposal Documents upon which the Design-Builder based its response(s) to the Request for Proposals. The District and Design-Builder explicitly agree that documents having the higher quality requirements control over any conflicting requirements of other documents.

1.3.4 Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control Design-Builder in dividing the

Work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3.5 Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; any non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.3.6 The Contract Documents may 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. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.3.7 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and

vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity, whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

ARTICLE 2. DISTRICT

2.1 FEE AND PERMIT REQUIREMENTS

2.1.1 Permits and licenses necessary for prosecution of the Work shall be secured and paid for by Design-Builder, unless otherwise specified in the Contract Documents.

2.1.2 Design-Builder shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under jurisdiction of public agencies other than the District.

2.1.3 The Design-Builder shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as the District's responsibility pursuant to the Contract Documents.

2.1.4 Before acceptance of the Project, the Design-Builder shall submit all licenses, permits, certificates of inspection, and required approvals to the District.

2.1.5 Design-Builder shall include all copies of the contract documents in their base contract proposal, and supply both digital and printed copies to the District at each review level and as requested by the District.

2.2 ACCESS TO PROJECT SITE

2.2.1 District shall provide, as reasonably required by the Work, but in no event later than the date designated in the Construction Notice to Proceed, access to the lands and facilities upon which the construction Work is to be performed, including such access to other lands and facilities designated in the Contract Documents for use by Design-Builder. To the extent that the site is an active school site and students and staff will be on-site during all demolition and construction, safety of the students is paramount. District shall review the schedule and proposed sequencing before Design-Builder can proceed.

2.3 DISTRICT'S RIGHT TO STOP THE WORK

2.3.1 If Design-Builder fails to correct Defective Work as required by Article 12.2 of the General Conditions or fails to perform the Work in accordance with the Contract Documents, District or District's Representative may direct Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Design-Builder. Design-Builder shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such order. District and District's Representative have no duty or responsibility to Design-Builder or any other party to exercise the right to stop the Work.

2.4 DISTRICT'S RIGHT TO CARRY OUT THE WORK

2.4.1 If Design-Builder fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the design or construction phases, to maintain the Contract Schedule, or otherwise fails to comply with any material term of the Contract Documents, and, after receipt of written notice from District, fails within **[two (2)]** days, excluding Saturdays, Sundays and legal holidays, or within such additional time as the District may specify, to correct such failure, District may, without prejudice to other remedies District may have, correct such failure at Design-Builder's expense. In such case, District shall be entitled to deduct from payments then or thereafter due Design-Builder the cost of correcting such failure, including, without limitation, compensation for the additional services and expenses of District's consultants made necessary thereby. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, Design-Builder shall pay the additional amount to District.

2.5 DISTRICT'S RIGHT TO REPLACE DISTRICT'S REPRESENTATIVE

2.5.1 District may at any time and from time to time, without prior notice to or approval of Design-Builder, replace District's Representative with a new District's Representative. Upon receipt of notice from District informing Design-Builder of such replacement and identifying the new District's Representative, Design-Builder shall recognize such person or firm as District's Representative for all purposes under the Contract Documents.

ARTICLE 3. DESIGN-BUILDER

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY DESIGN-BUILDER; SINGLE POINT RESPONSIBILITY OF DESIGN-BUILDER

3.1.1 Design-Builder is responsible for examination of the site and all underground utilities, comments submitted by the District, and quality of the Contract Documents. Errors, inconsistencies, and omissions are the responsibility of the Design-Builder.

3.1.2 Design-Builder is responsible for the design and construction of the Project and shall provide all services pursuant to this Contract in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project (including its contracting mode). The Design-Builder shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies, or omissions in the Construction Documents. Design-Builder shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to Design-Builder before commencing the Work. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to District's Representative.

3.1.3 If Design-Builder performs any design and/or construction activity which it knows, or should know, involves an error, inconsistency, or omission referred to in Articles 3.1.1 and 3.1.2 above, without notifying and obtaining the written consent of the Division of the State Architect ("DSA") and District's Representative, Design-Builder shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.

3.1.4 The District does not assume any obligation to employ the Design-Builder's services or pay Design-Builder royalties of any type as to future programs that may result from the Work performed under this Contract.

3.1.5 Design-Builder shall be responsible for all plotting, printing, copying, and distribution cost of any and all documents required in connection with the Work.

3.1.6 Design-Builder agrees that it has single point responsibility for the design and construction of this Project.

3.2 DESIGN, SUPERVISION, AND CONSTRUCTION PROCEDURES

3.2.1 Design-Builder shall supervise, coordinate, and direct the Work using Design-Builder's best skill and attention. Design-Builder shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work, including, but without limitation, landscape and site work, utilities, and building systems.

3.2.2 Design-Builder shall be responsible to District for acts and omissions of Design-Builder's agents, employees, and Subcontractors, and their respective agents and employees.

3.2.3 Design-Builder shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by acts or omissions of District or District's Representative in the administration of the Contract, or by tests, inspections, or approvals required, or performed, by persons or firms other than Design-Builder.

3.2.4 Design-Builder shall be responsible for internal review of all portions of the Work, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work. District shall be responsible for required materials testing and procuring the inspector of record.

3.2.5 To facilitate communications and the management of the design process, the Design-Builder shall establish and maintain a local office for the duration of the design process.

3.2.6 The Design-Builder is not required to produce the entire Construction Documents package in the local office; however, the Design-Builder shall provide the appropriate management and design staff in the local office to provide the District with the current status of, and the capability to properly update, the design documents and submit any changes to DSA for approval prior to installation.

3.2.7 The Design-Builder is required to deliver to the District, if requested, any and all design materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock-ups, and other information developed, prepared, furnished, or delivered in the prosecution of the design work.

3.2.8 Design-Builder shall at all times participate in the CEQA mitigation process and ensure performance as required in the Contract Documents.

3.2.9 Design-Builder is responsible for preparation of the Construction Documents for the entire Project.

3.2.10 Design-Builder is responsible for construction of the entire Project as required by the Contract Documents.

3.2.11 Design-Builder shall at all times maintain good discipline and order among its employees and subcontractors. Design-Builder shall provide competent, fully qualified personnel to perform the Work.

3.3 LABOR AND MATERIALS

3.3.1 Unless otherwise provided in the Contract Documents, Design-Builder shall provide and pay for all professional services, other services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other things 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.

3.4 DESIGN-BUILDER'S WARRANTY

3.4.1 Design-Builder warrants to District that all labor, materials, equipment, and furnishings used in, or incorporated into, the Construction Work shall be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all Work shall be free of liens, claims, and security interests of third parties; that the Work shall be of the highest quality and free from defects; and that all Work shall conform with the requirements of the Contract Documents. If required by District's Representative, Design-Builder shall furnish satisfactory evidence of compliance with this warranty. Further, the type, quality, and quantum of such evidence shall be within the sole discretion of the District's Representative. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

3.5 TAXES

3.5.1 Design-Builder shall pay all sales, consumer, use, income, payroll and similar taxes for the Work or portions thereof provided by Design-Builder.

3.6 INSPECTION FEES FOR PERMANENT UTILITIES

3.6.1 All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by the District. Design-Builder shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by the District. Design-Builder may either request reimbursement from the District for such fees, or shall be responsible for arranging and coordination with District for the payment of such fees.

3.7 APPLICABLE CODE REQUIREMENTS

3.7.1 Design-Builder shall perform the Work in accordance with the following Applicable Code Requirements and all code requirements listed in the Scope of Work:

.1 All laws, statutes, the most recent building codes, ordinances, rules, regulations, Division of State Architect, and lawful orders of all public authorities having jurisdiction over District, Design-Builder, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work.

.2 Applicable sections in the State of California Labor Code and applicable statutes regarding DIR Registrations, etc.

.3 All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

3.7.2 Design-Builder shall comply with and give notices required by all Applicable Code Requirements, including all environmental laws and all notice requirements under the State of California Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code Section 25249.5 and applicable sections that follow). Design-Builder shall promptly notify District's Representative in writing if Design-Builder becomes aware during the performance of the Work that the Contract Documents are at variance with Applicable Code Requirements.

3.7.3 If Design-Builder performs Work which it knows or should know is contrary to Applicable Code Requirements, without prior notice to District and District's Representative, Design-Builder shall be responsible for such Work and any resulting damages including, without limitation, the costs of correcting Defective Work.

3.7.4 In accordance with Revenue and Taxation Code Section 107.6, the Contract Documents may create a possessory interest subject to personal property taxation for which Design-Builder shall be responsible.

3.7.5 Pursuant to Section 7103.5 of the Public Contract Code, in entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Design-Builder 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. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Contract or any subcontract. This assignment shall be made and become effective at the time the District makes final payment to the Design-Builder, without further acknowledgment by the parties.

3.7.6 Pursuant to Public Contract Code Section 9201, the District shall provide Design-Builder with timely notification of the receipt of any third-party claim relating to the Contract. District is entitled to recover its reasonable costs incurred in providing such notification.

3.7.7 Document Retention and Examination:

3.7.7.1 In accordance with Government Code Section 8546.7, records of both the District and the Design-Builder shall be subject to examination and audit by the California State Auditor for a period of three (3) years after final payment.

3.7.7.2 Design-Builder shall make available to the District any of the Design-Builder's other documents related to the Project immediately upon request of the District.

3.7.7.3 In addition to the State Auditor rights above, the District shall have the right to examine and audit all books, estimates, records, contracts, documents, bid documents, subcontracts, and other data of the Design-Builder (including computations and projections) related to negotiating, pricing, or performing the modification in order to evaluate the accuracy and completeness of the cost or pricing data at no additional cost to the District, for a period of four (4) years after final payment.

3.7.8 The Design-Builder shall maintain emergency first aid treatment for his or her employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 et seq.), and California Code of Regulations, Title 8, Division 1, Chapter 4.

3.7.9 In accordance with Article 14.1.3.1 herein, pursuant to Labor Code Section 1735 and other applicable provisions of law, the Design-Builder and its subcontractors shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status on this Project. The Design-Builder shall take affirmative action to ensure that employees are treated during employment or training without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

3.7.10 In accordance with the provisions of the Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the Labor Code. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the Contractor for the Project shall be returned to the District. The Design-Builder shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

3.7.11 No contractor or subcontractor may be listed on a bid proposal or be awarded a contract for a public works project unless they are registered with the DIR pursuant to Labor Code Section 1725.5 [with limited exceptions under Labor Code Section 1771.1(a)]. This project is subject to compliance monitoring, electronic certified payroll records reporting, and enforcement by the DIR.

3.7.12 Pursuant to Section 7028.15 of the Business and Professions Code and Section 3300 of the Public Contract Code, all bidders must possess proper licenses for performance of this Contract. Subcontractors must possess the appropriate licenses for each specialty subcontracted. Pursuant to Section 7028.15 of the Business and Professions Code, the District shall consider any proposal submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be nonresponsive, and the District shall reject the proposal. The District shall have the right to request, and Bidders shall provide within **five (5)** calendar days, evidence satisfactory to the District of all valid license(s) currently held by that Bidder and each of the Bidder's subcontractors, before awarding the Contract.

3.7.13 Pursuant to Section 81703 of the Education Code, Design-Builder acknowledges and agrees that all performance specifications and any plans shall be prepared by a design professional duly licensed or registered in this state to perform the services required by the Field Act, as defined in Section 17281.

3.7.14 Design-Builder shall be responsible for familiarity with the Americans with Disabilities Act ("ADA") (42 U.S.C. § 12101 et seq.) The Work shall be performed in compliance with ADA regulations.

3.8 SUPERINTENDENT

3.8.1 Design-Builder shall employ a competent Superintendent satisfactory to District who shall be in attendance at the Project site at all times during the performance of the Construction Work. Superintendent shall represent Design-Builder, and communications given to, and received from, Superintendent shall be binding on Design-Builder. Failure to maintain a Superintendent on the Project site at all times while Work is in progress shall be considered a material breach of this Contract, entitling District to terminate the Contract or, alternatively, issue a stop Work order until the Superintendent is on the Project site. If, by virtue of issuance of said stop Work order, Design-Builder fails to complete the Contract on time, Design-Builder shall be assessed Liquidated Damages in accordance with the Agreement.

3.8.2 The Superintendent approved for the Project must be able to read, write and verbally communicate in English. The Superintendent approved shall not be replaced without approval by the District. The Superintendent may not perform the Work of any trade, pick-up materials, or perform any Work not directly related to the supervision and coordination of the Construction Work at the Project site when Work is in progress. In addition, the Design-Builder shall provide all Key Personnel shown in the Exhibits for the time periods stipulated.

3.9 TOXIC MATERIALS

3.9.1 The Design-Builder is responsible for unforeseen site conditions and toxic materials to the extent described in the Contract Documents and/or that could be reasonably inferred by the Design-Builder based on its experience and expertise on similar projects in urban areas.

3.9.2 If the Project requires the use of imported soils, the Design-Builder shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California law, including, but not limited to, the California Health and

Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Design-Builder must notify the District of the source of material and comply with the state and regional Water Quality Control Board Resolution and policies and, when applicable, with the guidelines of the Department of Toxic Substances Control ("DTSC").

3.10 HAZARDOUS MATERIALS

3.10.1 The Design-Builder agrees that it is solely responsible for investigating and performing remedial actions on all hazardous materials and other related environmental requirements located on the Project site. For the purposes of this Contract, Hazardous Materials shall also include, but are not limited to, Underground Storage Tanks. Any Hazardous Materials that are encountered beyond those described in the Contract Documents or Proposal Documents, or which reasonably could not have been discovered within the time permitted, may properly be the subject of a Change Order Request. The District agrees that the Design-Builder cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site. "Underground Storage Tank" shall have the definition assigned to that term by Section 9001 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6991, and also shall include: any tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.

3.10.2 The District shall not be responsible for any Hazardous Material brought to the site by the Design-Builder.

3.10.3 If the Design-Builder: (i) introduces and/or discharges a Hazardous Material onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a Hazardous Material identified in the Contract Documents, the Design-Builder shall hire a qualified remediation contractor at Design-Builder's sole cost to eliminate the condition as soon as possible. Under no circumstance shall the Design-Builder perform Work for which it is not qualified. District, in its sole discretion, may require the Design-Builder to retain at Design-Builder's cost an independent testing laboratory.

3.10.4 If the Design-Builder encounters a Hazardous Material which may cause foreseeable injury or damage, Design-Builder shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify District (and promptly thereafter confirm such notice in writing).

3.10.5 Subject to Design-Builder's compliance with Article 3.10.4, the District shall verify the presence or absence of the Hazardous Material reported by the Design-Builder, except as qualified under Section 3.10.2 and 3.10.4, and, in the event such material or substance is found to be present, verify that the levels of the hazardous material are below California Division of Occupational Safety and Health ("Cal/OSHA") Permissible Exposure Levels and below levels which would classify the material as a state of California or federal hazardous waste. When the material falls below such levels, Work in the affected area shall resume upon direction by the District. The Contract Time and Sum shall be extended appropriately as provided in Articles 7 and 8.

3.10.6 The District shall indemnify and hold harmless the Design-Builder from and against claims, damages, losses and expenses, arising from a Hazardous Material on the Project site, if such Hazardous Material: (i) was not shown on the Contract Documents or Information Available to Bidders; (ii) was not brought to the site by Design-Builder; and (iii) exceeded Cal/OSHA Permissible Exposure Levels or levels which would classify the material as a state of California or federal hazardous waste. The indemnity obligation in this Article shall not apply to:

.1 Claims, damages, losses or expenses arising from the breach of contract, negligence, or willful misconduct of Design-Builder, its suppliers, its Subcontractors of all tiers, and/or any persons or entities working under Design-Builder; and

.2 Claims, damages, losses or expenses arising from a Hazardous Material subject to Article 3.10.3.

3.10.7 In addition to the requirements in Article 3.28, Design-Builder shall indemnify and hold harmless the District from and against claims, damages, losses, and expenses, arising from a Hazardous Material on the Project site, if such Hazardous Material exceeded Cal/OSHA Permissible Exposure Levels or levels which would classify the material as a state of California or federal hazardous waste, and was either i) shown on the Contract Documents or Information Available to Bidders; or (ii) brought to the site by Design-Builder. Nothing in this paragraph shall obligate the Design-Builder to indemnify District in the event of the sole negligence of the District, its officers, agents, or employees.

3.11 CONSTRUCTION DOCUMENTS

3.11.1 Construction Documents

.1 Upon receipt of the Notice to Proceed, the Design-Builder shall instruct the Architect of Record to commence the design of the building systems and the preparation of the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. The District's review of the construction documents shall be conducted in accordance with the approved Contract Schedule with procedures set forth in Article 3.16 of the General Conditions relating to Schedule. Such review shall not relieve the Design-Builder from its responsibilities under this Contract. Such review shall not be deemed an approval or waiver by the District of any deviation from, or of the Design-Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted by the Design-Builder and approved by the District.

.2 However, it is acknowledged by the parties hereto that inherent in a design-build concept, bridging or otherwise, the production and review of Construction Documents shall be approved by DSA prior to any work commencing. The Design-Build team has the option to complete the Work in increments if DSA approves the process. The Design-Builder shall limit the Construction Document packages for construction to a reasonable number, not more than allowed by DSA that stipulated in the Special Conditions, unless approved in writing by the District. Contract Schedule shall indicate the times for the District to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.

.3 The Design-Builder shall submit completed packages of the Construction Documents for review by the District and the DSA at the times indicated on the Contract Schedule and as defined in the Scheduling Specification. Review meetings between the Design-Builder and the District to review the Construction Document packages shall be scheduled and held so as not to delay the Work. After reviewing the Construction Documents package for conformance to the Criteria Documents, the District shall issue a Construction Notice to Proceed to the Design-Builder.

.4 The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to the District for review. Design-Build team shall get all approvals and permits required by the Air Pollution Control District if completing any hazardous material removal.

.5 At any stage of the Project, if the latest cost estimate, whether submitted by the Architect of Record, Design Professional of Record, or any other party, is [three percent (3%)] or more over budget, Design-Builder, if requested to do so by the District, shall instruct the Architect of Record and/or Design Professionals of Record to revise all applicable Construction Documents to the District's satisfaction, at no additional cost to the District.

3.11.2 Shop Drawings, Product Data, Samples, Materials, and Equipment

.1 Shop drawings means drawings submitted to Design-Builder by subcontractors, manufacturers, suppliers, or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (e.g., form, fit, and attachment details) of materials or equipment.

.2 Design-Builder shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the

Contract Documents and the Design-Builder's Construction Documents, and shall indicate its approval thereon as evidence of such coordination and review. All submittals shall be finalized only after District has approved the information.

.3 Materials and equipment incorporated in the Work shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.

.4 The Design-Builder shall submit shop drawings approved by the Architect of Record and samples of submittals that relate to finish materials and products.

.5 Any variation in quality must be approved by the District.

3.11.3 Field Engineering

.1 The Design-Builder shall retain and pay expenses of a civil engineer or land surveyor to establish on the Site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be licensed in the State of California.

.2 The Design-Builder shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction and shall require the engineer or surveyor to replace control points which become lost or destroyed.

.3 All field engineering required for laying out the Work and establishing grades for earthwork operations shall be furnished by the Design-Builder at its expense. Layout shall be done by a registered civil engineer approved by the District Representative. Any required "as-built" drawings of the Work shall be prepared by the registered civil engineer.

3.11.4 Geotechnical and Survey

.1 The District has provided the Design-Builder with a preliminary geotechnical report which includes supporting data, findings, and recommendations; and also, with a legal description and a project survey that are included in the Contract Documents. Additional borings may be required for DSA submittal and approval. These geotechnical borings shall be completed by the District, and the Architect of Record shall submit the report to the California Geological Survey for review and approval. The Design Work shall be consistent with both the findings and recommendations of the geotechnical report and legal description and project survey.

.2 The Design-Builder shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation Work.

.3 When a soils investigation report for the Project site is available, such report shall not be a part of the Contract Documents. Any information obtained from such report as to subsurface soil condition, or to elevations of existing grades or elevations of underlying rock, is approximate only and is not guaranteed. Design-Builder acknowledges that any soils investigation report (including any borings) was prepared for purposes of design only and Design-Builder is required to examine the site before submitting its bid and must make whatever tests it deems appropriate to determine the underground condition of the soil.

3.12 MONTHLY REPORTS

3.12.1 The Design-Builder shall prepare and submit to the District both the Construction Documents Phase and the Construction Phase monthly reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by the District. Reports shall be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the Design-Builder's projected progress for the forthcoming month.

3.13 OTHER REPORTS

3.13.1 The Design-Builder shall cooperate with the District in preparing, or causing to be prepared, all or part of periodic project reports, including daily reports, required by the DSA and other state or federal agencies.

3.14 NOTICES OF LABOR DISPUTE

3.14.1 If Design-Builder has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of the Work, Design-Builder shall immediately give notice including all relevant information to the District.

3.14.2 Design-Builder agrees to insert the substance of this Article in any subcontract to which a labor dispute may delay the timely performance of the Work, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or Design-Builder, as the case may be, of all relevant information concerning the dispute.

3.15 GUARANTEE

3.15.1 The Design-Builder unconditionally guarantees the Work shall be completed in accordance with the requirements of the Contract Documents and shall remain free of defects in workmanship and materials for a period of two (2) years minimum from the date of Final Completion, unless a longer guarantee period is specifically called for in the Contract Documents. The Design-Builder shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material, within the guarantee period specified in the Contract Documents, without any expense whatsoever to the District; ordinary wear and tear and abuse excepted.

3.15.2 The Design-Builder further agrees, within [fourteen (14)] days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by the District, of any work not in accordance with the requirements of the Contract Documents or any defects in the Work, that the Design-Builder shall commence and execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If the District finds that the Design-Builder fails to perform any of the work under the guarantee, the District may elect to have the work completed at the Design-Builder's expense and the Design-Builder shall pay costs of the work upon demand. The District shall be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the Design-Builder's refusal to pay the above costs.

3.15.3 Notwithstanding the foregoing Article 3.15.2, in the event of an emergency constituting an immediate hazard to health or safety of District employees, property, or licensees, the District may undertake, at the Design-Builder's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by work of the Design-Builder not being in accordance with the requirements of the Contract Documents.

3.15.4 Design-Builder shall furnish the District with all warranty and guarantee documents prior to final acceptance of the Project by the District.

3.15.5 This Article shall not limit the District's rights under this Contract or with respect to latent defects, gross mistakes, or fraud. The District specifically reserves all rights related to defective work, including, but not limited to, the defect claims pursuant to California Code of Civil Procedure Section 337.15.

3.16 SCHEDULES REQUIRED OF DESIGN-BUILDER

3.16.1 The Schedule prepared by the Design-Builder during the Design Phase shall illustrate all Contract Milestones and Schedule Activities. The Design-Builder shall develop its required Contract schedules for review and approval by District based on and consistent with such Preliminary Schedule.

3.16.2 At the request of the District, Design-Builder shall submit an updated Contract Schedules to District's Representative in the form and within the time limits required by the Contract Documents, or, if no such time period is specified, within a reasonable period of time. District's Representative shall determine acceptability of the Contract Schedule and updated Contract Schedules within the time limits required by the Contract Documents, or if no such time period is specified, within a reasonable period of time. If District's Representative deems the Contract Schedule or updated Contract Schedule unacceptable, it shall specify in writing to Design-Builder the basis for its objection.

3.16.3 The Contract Schedule and updated Contract Schedules shall represent a practical plan to complete the Work within the Contract Time. Schedules showing the Work completed in less than the Contract Time as reflected in the Preliminary Schedule may be acceptable if judged by District's Representative to be practical. Schedules showing the Work completed beyond the Contract Time may be submitted under the following circumstances:

.1 If accompanied by a Change Order Request seeking an adjustment of the Contract Time consistent with the requirements of Article 8.4 for Adjustment of the Contract Time for Delay; or

.2 If the Contract Time has passed, or if it is a practical impossibility to complete the Work within the Contract Time, then the updated Contract Schedule or Fragnet Schedule shall show completion at the earliest practical date.

District's Representative shall timely review the updated Contract Schedule or Fragnet Schedule submitted by Design-Builder. If District's Representative determines that additional supporting data are necessary to fully evaluate the updated Contract Schedule or Fragnet Schedule, District's Representative shall request such additional supporting data in writing. Such data shall be furnished no later than **ten (10)** days after the date of such request. District's Representative shall render a decision promptly and in any case within **thirty (30)** days after the later of the receipt of the updated Contract Schedule or Fragnet Schedule or the deadline for furnishing such additional supporting data. Failure of District's Representative to render a decision by the applicable deadline shall be deemed a decision denying approval of the updated Contract Schedule or Fragnet Schedule. Acceptance of any schedule showing completion beyond the Contract Time by District's Representative shall not change the Contract Time and is without prejudice to any right of the District. The Contract Time, not the Contract Schedule, shall control in the determination of liquidated damages payable by Design-Builder under Article 1.3.2 of the Agreement and in the determination of any delay under Article 8 of the General Conditions.

3.16.4 If a Contract Schedule showing the Work completed in less than the Contract Time is accepted, Design-Builder shall not be entitled to extensions of the Contract Time for Excusable Delays or to adjustments of the Contract Sum for Compensable Delays until such delays extend the Final Completion of the Work beyond the expiration of the Contract Time.

3.16.5 Design-Builder shall prepare and keep current, to the reasonable satisfaction of District's Representative, a schedule of submittals, as required by the Specifications, and that is coordinated with the Contract Schedule.

3.16.6 The Contract Schedule and the updated Contract Schedules shall meet the following requirements:

.1 Schedules must be suitable for monitoring progress of the Work.

.2 Schedules must provide necessary data about the timing of District decisions and District furnished items.

.3 Schedules must be in sufficient detail to demonstrate adequate planning of the Work.

.4 Schedules must represent a practical plan to perform and complete the Work within the Contract Time.

3.16.7 District's Representative's review of the form and general content of the Contract Schedule and updated Contract Schedules is for the purpose of determining if the above-listed requirements have been satisfied.

3.16.8 Design-Builder shall plan, develop, supervise, control, and coordinate the performance of the Work so that its progress and the sequence and timing of Work shall permit its completion within the Contract Time, any Contract milestones, and any Contract phases.

3.16.9 In preparing the Preliminary Contract Schedule, the Contract Schedule, and updated Contract Schedules, Design-Builder shall obtain such information and data from Subcontractors as may be required to develop a reasonable and appropriate schedule for performance of the Work and shall provide such information and data to the District's Representative upon request. Design-Builder shall continuously obtain from Subcontractors information and data about the planning for and progress of the Work and the delivery of equipment, shall coordinate and integrate such information and data into updated Contract Schedules, as appropriate, and shall monitor the progress of the Work and the delivery of equipment.

3.16.10 Design-Builder shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier.

3.16.11 Design-Builder shall cooperate with District's Representative in the development of the Contract Schedule and all associated updates.

3.16.12 District's Representative's acceptance of and/or its review of comments about any schedule or scheduling data shall not relieve Design-Builder from its sole responsibility to plan for, perform, and complete the Work within the Contract Time. Acceptance of and/or review comments about any schedule shall not transfer responsibility for any schedule to District's Representative or District nor imply their agreement with (1) any assumption upon which such schedule is based, or (2) any matter underlying or contained in such schedule. Failure of District's Representative to discover errors or omissions in schedules that it has reviewed, or to inform Design-Builder that Design-Builder, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule, shall not relieve Design-Builder from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

3.17 AS-BUILT DOCUMENTS

3.17.1 Design-Builder shall maintain one (1) set of as-built drawings and specifications, which shall be kept up-to-date during the Work of the Contract. All changes which are incorporated into the Work which differ from the documents as drawn and written and approved shall be noted on the as-built set. Set shall be reviewed monthly. Notations shall reflect the actual materials, equipment and installation methods used for the Work; each revision shall be initialed and dated by Superintendent. Prior to filing of the Notice of Completion, each drawing and the specification cover shall be signed by Design-Builder and dated, attesting to the completeness of the information noted therein. As-built Documents shall be turned over to the District's Representative and shall become part of the Record Documents.

3.18 DOCUMENTS AND SAMPLES AT PROJECT SITE

3.18.1 Design-Builder shall maintain the following at the Project site:

.1 One (1) set of DSA approved documents including drawings and specifications.

.2 One (1) as-built copy of the Contract Documents, in good order and marked to record current changes and selections made during construction.

.3 The current Approved Contract Schedule.

.4 Shop Drawings, Product Data, and Samples.

.5 All other required submittals.

These documents shall be available to District's Representative and shall be delivered to District's Representative for submittal to District upon the earlier of Final Completion or termination of the Contract.

3.19 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.19.1 Definitions:

.1 "Shop Drawings" are drawings, diagrams, schedules, and other data specially prepared for the Work by Design-Builder or a Subcontractor to illustrate some portion of the Work.

.2 "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Design-Builder to illustrate or describe materials or equipment for some portion of the Work.

.3 "Samples" are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work shall be judged.

3.19.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which submittals are required, how Design-Builder proposes to conform to the information given and the design concept expressed in the Contract Documents.

3.19.3 Design-Builder shall review, approve, and submit to District's Representative Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of District or of Separate Contractors. Submittals made by Design-Builder that are not required by the Contract Documents may be returned without action by District's Representative.

3.19.4 Design-Builder shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been reviewed by District's Representative and no exceptions have been taken by District's Representative. Such Work shall be in accordance with approved submittals and the Contract Documents.

3.19.5 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, Design-Builder represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and Shop Drawings for related Work.

3.19.6 If Design-Builder discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, Design-Builder shall notify District's Representative and receive instruction before proceeding with the affected Work. Design-Builder shall be responsible to correct to the satisfaction of District, any conflicts, omissions, or errors in Shop Drawings or other submittals.

3.19.7 Design-Builder shall not be relieved of responsibility for deviations from requirements of the Contract Documents by District's Representative's review of Shop Drawings, Product Data, Samples, or similar submittals, unless Design-Builder has specifically informed District's Representative in writing of such deviation at the time of submittal and District's Representative has given written approval of the specific deviation. Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by District's Representative's review, acceptance, comment, or approval thereof.

3.19.8 Design-Builder shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by District's Representative on previous submittals.

3.19.9 District shall review first resubmittal of Shop Drawing at its cost. District reserves the right to reduce the Contract Sum by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

3.20 USE OF SITE AND CLEAN UP

3.20.1 Design-Builder shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents. Design-Builder shall not unreasonably encumber the Project site with materials or equipment.

3.20.2 Design-Builder shall, during performance of the Work, keep the Project site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by Design-Builder. Design-Builder shall remove all excess dirt, waste material, and rubbish caused by the Design-Builder; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Work.

3.20.3 Personnel of Design-Builder and Subcontractors shall not occupy, live upon, or otherwise make use of the Project site during any time that Work is not being performed at the Project site, except as otherwise provided in the Contract Documents.

3.21 CUTTING, FITTING, AND PATCHING

3.21.1 Design-Builder shall do all cutting, fitting, or patching of the Work required to make all parts of the Work come together properly and to allow the Work to receive or be received by work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents. All work shall be coordinated with the District and Site and be scheduled after school hours.

3.21.2 Design-Builder shall not endanger the Work, the Project, or adjacent property by cutting, digging, or otherwise. Design-Builder shall not cut or alter the work of any Separate Contractor without the prior consent of District's Representative.

3.22 ACCESS TO WORK BY DISTRICT

3.22.1 District, District's Representative, their consultants, and other persons authorized by District shall at all times have access to the Work wherever it is in preparation or progress. Design-Builder shall provide safe and proper facilities for such access and for inspection.

3.23 ROYALTIES AND PATENTS

3.23.1 The Design-Builder shall include in its bid amount the patent fees or royalties on any patented article or process furnished or used in the Work. Design-Builder shall assume all liability and responsibility arising from the use of any patented, or allegedly patented, materials, equipment, devices or processes used in or incorporated with the Work, and shall defend, indemnify and hold harmless the District and the Indemnified Parties from and against any and all liabilities, demands, claims, damages, losses, costs and expenses, of whatsoever kind or nature, arising from such use.

3.24 DIFFERING SITE CONDITIONS

3.24.1 If Design-Builder encounters any of the following conditions at the site, Design-Builder shall immediately notify the District's Representative in writing of the specific differing conditions before they are disturbed and before any affected Work is performed, and permit investigation of the conditions:

.1 Subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or if not indicated in this Contract, in the Information Available to Bidders; or

.2 Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

3.24.2 Design-Builder shall be entitled to access the Unspecified Allowance described in the Price Proposal Form. If the Unspecified Allowance is exhausted, Design-Builder may be entitled to an adjustment to the Contract Sum, in addition to an adjustment in Contract Time as the result of extra costs and/or delays resulting from a materially differing site condition. The options described in this paragraph are available only if Design-Builder fulfills the following conditions:

.1 Design-Builder fully complies with Article 3.24.1 above; and

.2 Design-Builder fully complies with Article 4 of the General Conditions (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

3.24.3 Adjustments to the Contract Sum and/or Contract Time shall be subject to the procedures and limitations set forth in Articles 7 and 8 of the General Conditions.

3.25 CONCEALED, UNFORESEEN, OR UNKNOWN CONDITIONS OR EVENTS

3.25.1 Except and only to the extent provided otherwise in Articles 3.24, 7, and 8 of the General Conditions, by signing the Agreement, Design-Builder agrees:

.1 To bear the risk of concealed, unforeseen or unknown conditions and events, if any, which may be encountered in performing the Contract; and

.2 That Design-Builder's Price Proposal Form for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of concealed, unforeseen, or unknown conditions and events, Design-Builder understands that, except and only to the extent provided otherwise in Articles 3.24, 7, and 8 of the General Conditions, concealed, unforeseen, or unknown conditions shall not excuse Design-Builder from its obligation to achieve full completion of the Work within the Contract Time, and shall not entitle the Design-Builder to an adjustment of the Contract Sum.

3.25.2 If, as the result of concealed, unforeseen, or unknown conditions or events, the District issues a Change Order or Construction Change Directive that changes design details from those details depicted in the Criteria Documents, Design-Builder shall be entitled, subject to compliance with all the provisions of the Contract, including those set forth in Articles 4, 7, and 8 of the General Conditions, to an adjustment of the Contract Sum and/or Contract Time, for the cost and delay resulting from implementing the changes to the design. Except as provided in this Article 3.25.2, or as may be expressly provided otherwise in the Contract, there shall be no adjustment of the Contract Sum and/or Contract Time as a result of concealed, unforeseen, or unknown conditions or events.

3.25.3 Design-Builder shall, as a condition precedent to any adjustment in Contract Sum or Contract Time under this Article 3.25.3, fully comply with Article 4 of the General Conditions (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

3.26 INFORMATION AVAILABLE TO BIDDERS

3.26.1 Any information provided pursuant to Request for Proposals is subject to the following provisions:

.1 The information is made available for the convenience of Proposers and is not a part of the Contract.

.2 The Design-Builder may rely on written descriptions of physical conditions included in the information to the extent such reliance is reasonable.

.3 Other components of the information, including but not limited to recommendations, may not be relied upon by Design-Builder. District shall not be responsible for any interpretation of or conclusion drawn from the other components of the information by the Design-Builder.

3.27 LIABILITY FOR AND REPAIR OF DAMAGED WORK

3.27.1 Design-Builder shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake or otherwise) prior to District's acceptance of the Project as fully completed, except that Design-Builder shall not be liable for earthquake in excess of magnitude 3.5 on the Richter Scale, tidal wave, or flood, provided that the damages or losses were not caused in whole or in part by the negligent acts or omissions of Design-Builder, its officers, agents or employees (including all Subcontractors and suppliers of all tiers). As used herein, "flood" shall have the same meaning as in the builder's risk property insurance.

3.27.2 Design-Builder shall promptly repair and replace any Work or materials damaged or destroyed for which the Design-Builder is liable under Article 3.27.1 above.

3.28 INDEMNIFICATION

3.28.1 Design-Builder shall indemnify, defend, and hold harmless District, the Indemnified Parties, District's Representative, District's Representative's consultants, and their respective directors, officers, agents, and employees from and against losses (including, without limitation, the cost of repairing Defective Work and remedying the consequences of Defective Work) arising out of, resulting from, or relating to the following:

.1 The failure of Design-Builder to perform its obligations under the Contract.

.2 The inaccuracy of any representation or warranty by Design-Builder given in accordance with or contained in the Contract Documents.

.3 Any claim of damage or loss by any Subcontractor against District arising out of any alleged act or omission of Design-Builder or any other Subcontractor, or anyone directly or indirectly employed by Design-Builder or any Subcontractor.

.4 Any claim of damage or loss resulting from Hazardous Materials introduced, discharged, or disturbed by Design-Builder, as required per Article 3.10.

3.28.2 The District shall not be liable or responsible for any accidents, loss, injury (including death), or damages happening or accruing during the term of the performance of the Work herein referred to or in connection therewith, to persons and/or property, and Design-Builder shall fully indemnify, defend, and hold harmless

and protect the District and the Indemnified Parties from and against the same as provided in Article 3.28.1 above. In addition to the liability imposed by law upon the Design-Builder for damage or injury (including death) to persons or property by reason of the negligence of the Design-Builder, its officers, agents, employees or Subcontractors, which liability is not impaired or otherwise affected hereby, the Design-Builder shall defend, indemnify, hold harmless, release, and forever discharge the District and the Indemnified Parties from and against and waive any and all responsibility of same for every expense, liability, or payment by reason of any damage or injury (including death) to persons or property suffered or claimed to have been suffered through any negligent act, omission, or willful misconduct of the Design-Builder, its officers, agents, employees, or any of its Subcontractors, or anyone directly or indirectly employed by either of them or from the condition of the premises or any part of the premises while in control of the Design-Builder, its officers, agents, employees, or any of its Subcontractors, or anyone directly or indirectly employed by either of them, arising out of the performance of the Work called for by this Contract. Design-Builder agrees that this indemnity and hold harmless shall apply even in the event of negligence of District and the Indemnified Parties, regardless of whether such negligence is contributory to any claim, demand, loss, damage, injury, expense, and/or liability; but such indemnity and hold harmless shall not apply (i) in the event of the sole negligence of District, its officers, agents, or employees; or (ii) to the extent that the District shall indemnify and hold harmless the Design-Builder for Hazardous Materials pursuant to Article 3.10.6.

3.28.3 In claims against any person or entity indemnified under this Article 3.28 that are made by an employee of Design-Builder or any Subcontractor, a person indirectly employed by Design-Builder or any Subcontractor, or anyone for whose acts Design-Builder or any Subcontractor may be liable, the indemnification obligation under this Article 3.28 shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

3.28.4 The indemnification obligations under this Article 3.28 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

3.28.5 Design-Builder shall indemnify District from and against losses resulting from any claim of damage made by any Separate Contractor against District arising out of any alleged acts or omissions of Design-Builder, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.

3.28.6 Design-Builder shall indemnify Separate Contractors from and against losses arising out of the negligent acts, omissions, or willful misconduct of Design-Builder, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.

3.28.7 Design-Builder shall indemnify, defend, and hold harmless District and the Indemnified Parties (collectively, "Indemnitee"), against all liability, demands, claims, costs, damages, injury including death, settlements, and expenses (including without limitation, interest, and penalties) incurred by Indemnitee arising out of the performance of services or Design-Builder's other obligations under this Contract, but only in proportion to and to the extent such losses are caused by or result from (1) the negligent acts or omissions of Design-Builder, its officers, agents, employees, subcontractors, consultants, or any person or entity for whom Design-Builder is responsible (collectively, "Indemnitor"); (2) the breach by Indemnitor of any of the provisions of this Contract; or (3) willful misconduct by Indemnitor.

.1 The indemnification obligations under this Article 3.28 shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty; or (2) the losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. The obligation to defend shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the losses. Indemnitor's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for Indemnitees shall be reimbursed by District except to the extent such defense costs arise, under principles of comparative fault, from Indemnitor's (a) negligent acts or omissions; (b) breach of any of the provisions of this Contract; or (c) willful misconduct.

.2 Design-Builder shall indemnify, defend, and save harmless Indemnitee from and against all loss, cost, expense, royalties, claims for damages or liability, in law or in equity, including, without limitation, attorney's fees, court costs, and other litigation expenses that may at any time arise or be set up for any infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark or any other proprietary right of any person or entity in consequence of the use on the Project by Indemnitee of the Design Materials or Construction Documents (including any method, process, product, concept specified or depicted) supplied by Indemnitor in the performance of this Contract.

3.28.8 Nothing in this Contract, including the provisions of this Article 3, shall constitute a waiver or limitation of any rights which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

ARTICLE 4. ADMINISTRATION OF THE CONTRACT

4.1 ADMINISTRATION OF THE CONTRACT BY DISTRICT'S REPRESENTATIVE

4.1.1 District's Representative shall provide administration of the Contract as provided in the Contract Documents and shall be the representative of District. District's Representative shall have authority to act on behalf of District only to the extent provided in the Contract Documents.

The District shall designate, from time to time, one or more representatives authorized to act on the District's behalf with respect to the Project, together with the scope of his/her respective authority. Functions for which this Contract provides shall be performed by the District may be delegated by the District only by written notice to the Design-Builder from the District. The Design-Builder shall not be entitled to rely on directions (nor shall it be required to follow the directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to this Contract. Directions and decisions made by District's Representative within his/her respective authority shall be binding on the District.

4.1.2 During the term of this Contract, District's Representative shall have the right to review Design-Builder's Design Professionals' Work at such intervals as deemed appropriate by District's Representative. However, no actions taken during such review or site visit by District's Representative shall relieve Design-Builder of any of its obligations of single-point responsibility for the design and construction of this Project nor form the basis for a Claim if such actions extend the Contract's completion date beyond the Contract Time.

4.1.3 District's Representative shall not have control over, shall not be in charge of, and shall not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely Design-Builder's responsibility.

4.1.4 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, District and Design-Builder shall communicate through District's Representative. Except when direct communication has been specifically authorized in writing by District's Representative, communications by Design-Builder with District's consultants and District's Representative's consultants shall be through District's Representative. Communications by District and District's Representative with Subcontractors shall be through Design-Builder. Communications by Design-Builder and Subcontractors with Separate Contractors shall be through District's Representative. Design-Builder shall not rely on oral or other non-written communications.

4.1.5 Based on District's Representative's Project site visits, review of Design Work, and evaluations of Design-Builder's Applications for Payment, District's Representative shall recommend amounts, if any, due Design-Builder and shall issue Certificates for Payment in such amounts.

4.1.6 District's Representative shall have the authority to reject the Work, or any portion thereof, which does not conform to the Contract Documents. District's Representative shall have the authority to stop the Work, or any portion thereof. Whenever District's Representative considers it necessary, or advisable, for implementation of the intent of the Contract Documents, District's Representative shall have the authority to require additional inspection or testing of the Work in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of District's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise or to not exercise such authority shall give rise to a duty or responsibility of District or District's Representative to Design-Builder or any person or entity claiming under or through Design-Builder.

4.1.7 District's Representative shall have the authority to conduct inspections as provided in the Contract Documents, to take Beneficial Occupancy, and to determine the dates of Substantial Completion and Final Completion; shall receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by Design-Builder; and shall issue a final Certificate for Payment upon Design-Builder's compliance with the requirements of the Contract Documents.

4.1.8 District's Representative shall be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by Design-Builder. Should Design-Builder discover any conflicts, omissions, or errors in the Construction Documents or the Contract Documents; have any questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; then, before proceeding with the Work affected, Design-Builder shall notify District's Representative in writing and request interpretation or clarification. District's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions shall be made with reasonable promptness. Should Design-Builder proceed with the Work affected before receipt of a response from District's Representative, any portion of the Work that is not done in accordance with District's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and Design-Builder shall be responsible for all resultant losses.

4.2 DESIGN-BUILDER CHANGE ORDER REQUESTS

4.2.1 The Design-Builder was provided an Allowance as part of the Contract Amendment. Requests for compensation beyond the amount of the Allowance will be strictly restricted to the conditions and limitations set forth below. Requests for Change Orders will be guided by the general proposition that Change Orders will be limited to circumstances that could not have been anticipated by the Design-Builder in the exercise of due diligence. The conditions under which the Design-Builder may be eligible for a Change Order is as follows:

- a District change in scope;
- b. Force Majeure events;
- c. Differing site conditions;
- d. Delays in the shipment of materials or supplies;
- e. District suspension of Work;
- f. Changes in applicable law, provided that Design Builder cooperates with District in mitigating the adverse impact of any change in the law;
- g. Unreasonable and unanticipated delays in the government approvals, beyond the control of the Design-Builder; and
- h. District prevention or disruption of Design-Builder's ability to access the site or any portion thereof.

Conditions precedent to obtaining an adjustment of the Contract Sum and/or Contract Time payment of money or other relief with respect to the Contract Documents, for any other reason, are:

4.2.1.1 Timely submission of a Change Order Request that meets the requirements of Articles 4.2.2.1 and

4.2.2.2 below; and

4.2.1.2 If requested, timely submission of additional information requested by the District's Representative pursuant to Article 4.2.2.3 below.

4.2.2 Change Order Request:

4.2.2.1 A Change Order Request shall be deemed timely submitted if, and only if, it is submitted within **seven (7)** days of the date the Design-Builder discovers, or reasonably should discover, the circumstances giving rise to the Change Order Request, unless additional time is allowed in writing by District's Representative for submission of the Change Order Request, provided that if:

.1 The Change Order Request includes compensation sought by a Subcontractor; AND

.2 The Design-Builder requests in writing to the District's Representative, within the seven (7) day time period, additional time to permit Design-Builder to conduct an appropriate review of the Subcontractor Change Order Request, then the time period for submission of the actual Change Order Request shall be extended by the number of days specified in writing by the District's Representative.

4.2.2.2 A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment of the Contract Sum, Contract Time, and/or other monetary relief. If the Design-Builder requests an adjustment to the Contract Sum or other monetary relief, the Design-Builder shall submit the following with the Change Order Request:

.1 A completed Cost Proposal in the form contained in the Exhibits meeting the requirements of Article 7 of the General Conditions;

OR

.2 A partial Cost Proposal and a declaration of what required information is not then known to Design-Builder. If Design-Builder failed to submit a completed Cost Proposal with the Change Order Request, Design-Builder shall submit a completed Cost Proposal meeting the requirements of Article 7 within **seven (7)** days of the date the Design-Builder submitted the Change Order Request unless additional time is allowed by the District's Representative.

4.2.2.3 Upon request by District's Representative, Design-Builder shall submit such additional information as may be requested by District's Representative for the purpose of evaluating the Change Order Request. Such additional information may include but is not limited to:

.1 If Design-Builder seeks an adjustment of the Contract Sum or other monetary relief, actual cost records for any changed or extra costs (including, without limitation, payroll records, material and rental invoices and the like) shall be submitted by the deadline established by the District's Representative, who may require such actual cost records to be submitted and reviewed, on a daily basis, by the District's Representative and/or representatives of the District's Representative.

.2 If Design-Builder seeks an adjustment of the Contract Time, written documentation demonstrating Design-Builder's entitlement to a time extension under Article 8.4, which shall be submitted within **fifteen (15)** days of the date requested unless the District's Representative requires an earlier submission. If requested, Design-Builder may submit a Fragnet in support of its request for a time extension. The District may, but is not obligated to, grant a time extension on the basis of a Fragnet alone, which, by its nature, is not a complete schedule analysis. If deemed appropriate by District Representative, Design-Builder shall submit a more detailed schedule analysis in support of its request for a time extension.

.3 If Design-Builder seeks an adjustment of the Contract Sum or other monetary relief for delay, written documentation demonstrating Design-Builder's entitlement to such an adjustment under Article 7.3.9 of the General Conditions, which shall be submitted within **fifteen (15)** days of the date requested.

.4 Any other information requested by the District's Representative for the purpose of evaluating the Change Order Request, which

shall be submitted by the deadline established by the District's Representative.

4.2.3 District's Representative shall make a decision on a Change Order Request within a reasonable time after receipt of the Change Order Request. In the event the Change Order Request is submitted pursuant to Article 8.4.1, the District's Representative shall promptly review and accept or reject it within [thirty (30)] days. A final decision is any decision on a Change Order Request which states that it is final. If District's Representative issues a final decision denying a Change Order Request in whole or in part, Design-Builder may contest the decision by filing a timely Claim under the procedures specified in Article 4.4 of the General Conditions.

4.2.4 Design-Builder may file a written demand for a final decision by District's Representative on all or part of any Change Order Request as to which the District's Representative has not previously issued a final decision pursuant to Article 4 of the General Conditions. Such written demand may not be made earlier than the 30th day after submission of the Change Order Request. Within [thirty (30)] days of receipt of the demand,

District's Representative shall issue a final decision on the Change Order Request. The District's Representative's failure to issue a decision within the [thirty (30)] day period shall be treated as the issuance, on the last day of the [thirty (30)] day period, of a final decision to deny the Change Order Request in its entirety.

4.3 CLAIMS

4.3.1 The term "Claim" means a separate demand by the Design-Builder, sent by registered mail or certified mail with return receipt requested, for one of the following: (1) a time extension for relief from penalties for delay; (2) payment of money or damages for work done by or for Design-Builder and payment for which is not otherwise expressly provided; or (3) payment disputed by the District. Notwithstanding any other language in the Contract Documents, claims between the District and the Design-Builder shall be resolved pursuant to the provisions of the Public Contract Code Sections 9201 et seq. and 20104 et seq. as summarized herein, and any other applicable laws.

4.3.2 A Claim arises upon the issuance of a written final decision denying in whole or in part Design-Builder's Change Order Request pursuant to Article 4.2 of the General Conditions.

4.3.3 A Claim must include the following:

- .1 A statement that it is a Claim and a request for a decision pursuant to Article 4.5 of the General Conditions;
- .2 A detailed factual narrative of events fully describing the nature and circumstances giving rise to the Claim, including, but not limited to, necessary dates, locations, and items of work affected;
- .3 A certification, executed by Design-Builder, that the Claim is filed in good faith;
- .4 A certification, executed by each Subcontractor claiming not less than five percent (5%) of the total monetary amount sought by the claim, that the Subcontractor's portion of the Claim is filed in good faith;
- .5 A statement demonstrating that a Change Order Request was timely submitted as required by Article 4.2 of the General Conditions;
- .6 If a Cost Proposal or declaration was required by Article 4.2 of the General Conditions, a statement demonstrating that the Cost Proposal or the declaration was timely submitted; and
- .7 A detailed justification for any remedy or relief sought by the Claim, including to the extent applicable, the following:

.1 If the Claim involves Extra Work, an estimate of the costs must include the amounts claimed, including the items specified in Article 7.3.2 of the General Conditions. The cost breakdown must be provided even if the costs claimed have not been incurred when the Claim is submitted. To the extent costs have been incurred when the Claim is submitted, the Claim must include actual cost records (including, without limitation, payroll records, material and rental invoices and the like) demonstrating that costs claimed have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a month during any periods costs are incurred. A cost record shall be considered current if submitted within [thirty (30)] days of the date the cost reflected in the record is incurred. At the request of the District's Representative, claimed extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged Extra Work on a daily basis). The cost breakdown must include an itemization of costs for i) labor, including workers' names, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information; ii) materials stored or incorporated in the work, including invoices, purchase orders, location of materials either stored or incorporated into the work, dates materials were transported to the project or incorporated into the work, and other pertinent information; and iii) itemization of machinery and equipment, including make, model, hours of use, dates of use, and equipment rental rates of any rented equipment.

.2 Design-Builder shall be responsible for all errors and omissions contained within the Construction Documents.

.3 If the Claim involves an extension of the Contract Time, written documentation demonstrating the Design-Builder's entitlement to a time extension under Article 8.4 of the General Conditions, including the specific dates for which a time extension is sought and the specific reasons for entitlement of a time extension.

.4 If the Claim involves an adjustment of the Contract Sum for delay, written documentation demonstrating the Design-Builder's entitlement to such an adjustment under Article 7.3.9 of the General Conditions, including, but not limited to, a detailed time impact analysis of the Contract Schedule. The Contract Schedule must demonstrate Design-Builder's entitlement to such an adjustment under Article 7.3.9 of the General Conditions.

4.4 ASSERTION OF CLAIMS

4.4.1 Claims by Design-Builder shall be first submitted to District's Representative for decision.

4.4.2 Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by District's Representative, Design-Builder shall not cause any delay, cessation, or termination in or of Design-Builder's performance of the Work, but shall diligently proceed with performance of the Work in accordance with the Contract Documents.

4.4.3 Design-Builder shall submit a Claim in writing, together with all supporting data specified in Article 4.3.3 of the General Conditions, to District's Representative as soon as possible but not later than [thirty (30)] days after the date the Claim arises under Article 4.3.2 of the General Conditions, provided that after written notification to the District's Representative within such time period, the time period for submission of the Claim shall be extended by the number of days specified in writing by the District's Representative where the Claim includes compensation sought by a Subcontractor and the Design-Builder requests an extension of time to permit it to discharge its responsibilities to conduct an appropriate review of the Subcontractor claim. Any untimely Claim shall be deemed waived.

4.4.4 Design-Builder agrees that strict compliance with the requirements of Articles 4.2, 4.3, and 4.4 of the General Conditions are conditions precedent to Design-Builder's right to an informal conference to meet and confer to resolve a Claim, mediate a Claim, or arbitrate or litigate a Claim. Design-Builder specifically agrees to assert no Claims via an informal conference, mediation, arbitration or litigation unless there has been strict compliance with Articles 4.2, 4.3, and 4.4 of the General Conditions. The failure of Design-Builder to strictly comply with the requirements of Articles 4.2, 4.3 and 4.4 of the General Conditions constitutes a failure by Design-Builder to exhaust its administrative remedies with the District, thereby denying any court or arbitration panel of jurisdiction to adjudicate the Claim.

4.5 DECISION OF DISTRICT'S REPRESENTATIVE ON CLAIMS

4.5.1 District's Representative shall timely review Claims submitted by Design-Builder and provide a written response within [forty-five (45)] days of receipt of the Claim. If District's Representative determines that additional supporting data are necessary to fully evaluate a Claim, District's Representative shall request such additional supporting data in writing within [thirty (30)] days of receipt of the Claim. Such data shall be furnished no later than [ten (10)] days after the date of such request. Failure of District's Representative to render a decision by the applicable deadline shall be deemed a decision denying the Claim on the date of the deadline, unless, upon receipt of a Claim, Design-Builder and District mutually agree to extend the time periods provided herein, or unless otherwise extended by law. The decision of District's Representative shall be final and binding unless appealed in accordance with Articles 4.5.2, 4.6, and 4.7 of the General Conditions.

The District's Representative's decision on a Claim or dispute shall include a written statement both identifying all disputed and undisputed portions of the Claim and substantially including the following:

"This is a decision under Article 4.5 of the General Conditions of your Contract. If you are dissatisfied with the decision, and if you complied with the procedural requirements for asserting Claims specified in Article 4 of the General Conditions of your Contract, you may have the right to demand in writing an informal conference to meet and confer for settlement of any remaining issues in dispute, following which, if still dissatisfied, you may demand in writing a further resolution via nonbinding mediation, after which you have the right to arbitrate or litigate this decision. If you fail to take appropriate action within [fifteen (15)] days of the date of this decision, the decision shall become final and binding and not subject to further appeal."

4.5.2 If either Design-Builder or District disputes District's Representative's decision on a Claim, then, within [fifteen (15)] days after the decision of District's Representative on the Claim, or, if no decision has been issued, within [fifteen (15)] days from the date of the applicable deadline in Article 4.5.1 for District Representative to render a decision, such party (the "Disputing Party") must provide written notice demanding an informal conference to meet and confer. District shall schedule the conference within [thirty (30)] days upon receipt of the notice demanding an informal conference. The parties shall attempt in good faith to resolve any controversy or Claim arising out of or relating to this Contract by negotiation at the conference.

4.6 MEDIATION

4.6.1 Within [ten (10)] business days following the informal conference to meet and confer stated in Article 4.5.2, if the Claim or any portion of the Claim remains in dispute, the District shall provide a written statement identifying the disputed and undisputed portions of the Claim. Within [thirty (30)] days of receipt of the statement, if either Design-Builder or District disputes any portion of the Claim, then the Disputing Party must provide written notice to the non-disputing party demanding non-binding mediation. The Design-Builder and the District shall share the associated costs equally and shall mutually agree to a mediator within [ten (10)] business days. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim, with each party bearing the fees and costs of its respective mediator. Mediation shall include, but not be limited to, neutral evaluation, a dispute review board, or other negotiation or evaluation through an independent third party or board. The Design-Builder and the District may mutually agree to waive any individual mediation in writing and proceed to arbitration or litigation pursuant to this Contract.

4.6.2 Either Party to this Agreement may demand mediation pursuant to Public Contract Code section 9204 and may engage in the process and timelines contained therein.

4.7 LITIGATION AND ARBITRATION

4.7.1 Either party may provide a written notice of its election to arbitrate, or provide written notice of its election to litigate, the Claim within [thirty (30)] days after the mediation pursuant to Article 4.6.1, or, if the parties mutually agreed in writing to waive mediation, within [thirty (30)] days after the agreement is signed by both parties.

4.7.2 If a notice of election to arbitrate or litigate is not given by either party within [thirty (30)] days pursuant to Article 4.7.1, District's Representative's decision on the Claim shall be final and binding and not subject to appeal or challenge.

4.7.3 If the Disputing Party gives timely notice of its election to arbitrate the District's Representative's decision on a Claim, Disputing Party shall have the right, within [one hundred twenty (120)] days after a Notice of Completion, or a Notice of Cessation, as applicable, is filed for the Contract, to make a demand for arbitration in accordance with Article 4.7. Failure to perfect a Claim for which a timely election to arbitrate has been made by the timely filing of a demand for arbitration and timely payment of all applicable and required fees to the American Arbitration Association ("AAA") shall result in the District's Representative's decision on said Claim becoming final and binding and not subject to appeal or challenge. If the Disputing Party makes a timely demand for arbitration, and the amount of the Claim in question, when combined with all other Claims, if any, which are the subject of previously filed demands for arbitration that have not been resolved by settlement or arbitration award, is One Hundred Thousand Dollars (\$100,000) or more, then the other party may elect to litigate all such Claims by filing a written notice with the AAA within thirty (30) days after its receipt of notice from the AAA of the Disputing Party's demand for arbitration of the Claim that raises the total amount of Claims subject to arbitration to One Hundred Thousand Dollars (\$100,000) or more. If the other party fails to give notice of its election to litigate within such thirty (30) day period, it shall be deemed to have consented to arbitration and waived the right to litigate. If, after commencement of arbitration, the amount of unresolved Claims in arbitration are allowed to be increased to One Hundred Thousand Dollars (\$100,000) or more, through an AAA-allowed amendment or otherwise, either party may elect to litigate within thirty (30) days following the date that the electing party first receives written notification from the AAA that total Claims in arbitration equal or exceed One Hundred Thousand Dollars (\$100,000). If neither party gives notice of its election to litigate within such thirty (30) day period as applicable, then both parties shall be deemed to have consented to arbitration and waived the right to litigate.

4.7.4 A demand for arbitration pursuant to Article 4.7.3 of the General Conditions shall be in writing and shall include a copy of the Claim presented to District's Representative pursuant to Article 4.4 of the General Conditions, a copy of the decision of District's Representative pursuant to Article 4.5 of the General Conditions, if any, a copy of the District's written statement identifying the portion of the Claim that remained in dispute following the informal conference pursuant to Article 4, and a summary of the remaining portions of the Claim in dispute. The demand shall state the amount in controversy, if any, and state the remedy sought. The demand shall identify the District's Responsible Administrator as the representative of the responding party and the Office of the General Counsel as counsel for the responding party. The demand shall be filed with the AAA and shall not be deemed to have been made until all applicable fees have been paid to the AAA by the demanding party. Copies of the demand and attachments shall be sent to District's Responsible Administrator as the representative of the responding party and the District's Office of General Counsel as attorney for the responding party, at the addresses set forth in the Project Directory, at the time the demand for arbitration is initiated with the AAA.

4.7.5 Except as modified by this Article 4.7, arbitration shall be initiated and conducted in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. The following additional modifications shall be made to the aforesaid AAA rules:

.1 Civil discovery shall be permitted for the production of documents and taking of depositions. Other discovery may be permitted at the discretion of the arbitrator. All disputes regarding discovery shall be decided by the arbitrator.

.2 District's Representative and/or District's consultants, shall, if required by agreement with District, upon demand by District, join in and be bound by the Arbitration. District's Representative and District's consultants shall have the same rights in any arbitration proceeding as are afforded by the AAA rules to Design-Builder and District.

.3 Design-Builder's sureties shall be bound by any arbitration award and may join in any arbitration proceeding.

.4 Except as provided in Articles 4.7.5.2. and 4.7.5.3 above, no Subcontractor or other person shall have a right or obligation to join in, or be a party to, any arbitration proceeding provided for in this Article 4 either directly, by joinder, by consolidation or actions, by counterclaim or cross-claim, or otherwise without the express written consent of District, Design-Builder, and the joining party.

.5 If more than one demand for arbitration is made by a party with respect to Claims referred to District's Representative, all such Claims shall be consolidated into a single arbitration unless the parties otherwise agree in writing.

.6 If total Claims are less than Fifty Thousand Dollars (\$50,000), AAA expedited procedures as modified by this Article 4 shall apply. If total Claims are between Fifty Thousand Dollars (\$50,000) and One Hundred Thousand Dollars (\$100,000), they shall be heard by a single arbitrator who shall be an attorney. If total Claims are in excess of One Hundred Thousand Dollars (\$100,000) and are submitted to arbitration, either by agreement or by failure to elect litigation, **the controversy shall be heard by a panel of three (3) arbitrators, one of whom shall be an attorney.**

.7 No arbitrator shall be appointed and no discovery may be commenced prior to the date of Final Completion unless District and Design-Builder otherwise agree.

.8 The exclusive forum for determining arbitrability shall be the Superior Court of the State of California. The AAA shall not submit to any arbitrator any matter concerning the arbitrability of the dispute if the arbitrability is contested.

.9 If the expedited procedures of the AAA are applicable, the AAA shall submit simultaneously to each party an identical list of seven (7) proposed arbitrators drawn from the National Panel of Commercial Arbitrators, and each party may strike three (3) names from the list on a peremptory basis and return the list to the AAA within **ten (10)** days from the date of receipt.

4.7.6 Unless District and Design-Builder otherwise agree in writing, the arbitration decision shall be binding upon the parties, made under and in accordance with the laws of the State of California, supported by substantial evidence, and in writing. If the total of all Claims or cross-Claims submitted to arbitration is in excess of Fifty Thousand Dollars (\$50,000), the award shall contain the basis for the decision, findings of fact, and conclusions of law. Any arbitration award shall be subject to confirmation, vacation, or correction under the procedures and on the grounds specified in the California Code of Civil Procedure, including, without limitation, Section 1296. The expenses and fees of the arbitrators and the administrative fees of the AAA shall be divided among the parties equally. Each party shall pay its own counsel fees, witness fees, and other expenses incurred for its own benefit.

4.7.7 District may, but is not required to, assert as a counterclaim any matter arising out of the claims asserted by Design-Builder in the arbitration. District's failure to assert any such counterclaim in the arbitration shall be without prejudice to the District's right to assert the counterclaim in litigation or other proceeding.

4.7.8 Any litigation shall be filed in the Superior Court of the State of California for the County of Alameda.

4.8 WAIVER

4.8.1 A waiver of, or failure by, District or District's Representative to enforce any requirement in this Article 4 in connection with any Claim shall not constitute a waiver of, and shall not preclude the District or District's Representative from enforcing, such requirements in connection with any other Claims.

4.8.2 The Design-Builder agrees and understands that no oral approval, either express or implied, of any Claim shall be binding upon District unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 5. SUBCONTRACTORS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Pursuant to Education Code section 81704, all subcontracts that were not listed by the Design-Builder in accordance with Education Code Section 81703 shall be awarded by the Design-Builder in accordance with the design-build process set forth by District in the Design-Build package.

The Design-Builder shall do all of the following: (1) Provide public notice of the availability of work to be subcontracted; and (2) Provide a fixed date and time on which the subcontracted work will be awarded.

If the District elects to award a project pursuant to Education Code section 81704, retention proceeds withheld by the District from the Design-Builder shall not exceed five percent (5%) if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

In a contract between the Design-Builder and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the Contract between the District and the Design-Builder. If the Design-Builder provides written notice to any subcontractor who is not a member of the Design-Builder, prior to or at the time the bid is requested, that a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the Design-Builder, then the Design-Builder may withhold retention proceeds in excess of the percentage specified in the Contract between the District and the Design-Builder from any payment made by the Design-Builder to the subcontractor.

In accordance with the provisions of applicable state law, Design-Builder may be permitted to substitute securities in lieu of the withholding from progress payments. Substitutions shall be made in accordance with Section 22300 of the Public Contract Code.

5.1.2 Design-Builder shall submit to the District's Representative, after selecting Subcontractors, an updated Expanded List of Subcontractors, along with their respective addresses, telephone numbers, e-mail addresses, and contractor's license numbers. The Expanded List of Subcontractors shall be provided with Design-Builder's proposal submittal. Failure to identify Subcontractors within the time period(s) above shall commit the Design-Builder to carrying out the Construction Work with its own forces.

5.1.3 The District has the right to request all documentation that supports the Design-Builder's selection of a Subcontractor. The District shall have the right of final approval as to the qualification(s) of a Subcontractor to perform its designated scope of work. Within the District's sole discretion, any Subcontractor may be deemed not qualified to perform work on the Project if District or District's Representative determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason.

5.1.4 The Subcontractors listed by Design-Builder shall only be substituted in strict accordance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.) and upon the written consent of the District. Only upon compliance with the Subletting and Subcontracting Fair Practices Act, and with the written consent of the District, shall a substitution be made.

5.1.5 Any increase in the cost of the Work resulting from the replacement or substitution of a Subcontractor pursuant to above Article 5.1.4 or as required by the District or District's Representative pursuant to above Article 5.1.3, shall be borne solely by Design-Builder. Design-Builder shall not be entitled to any increase in Contract Sum or an extension of Contract Time due to such replacement or substitution.

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 Any part of the Work performed for Design-Builder by a first-tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Design-Builder by the terms of the Contract Documents, to assume toward Design-Builder all the obligations and responsibilities which Design-Builder assumes towards District by the Contract Documents, and to perform such portion of the Work in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of District under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof shall not prejudice such rights. Design-Builder shall cause each such subcontract to expressly include the

following requirements:

.1 Subcontractor waives all rights that Subcontractor may have against District for damages caused by fire or other perils covered by builder's risk property insurance carried by Design-Builder or District, except for such rights Subcontractor may have to the proceeds of such insurance held by District under Article 11 of the General Conditions.

.2 District, and entities and agencies designated by District, shall have access to and the right to audit and the right to copy, at District's cost, all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Subcontractor shall preserve all such records and other items for a period of at least three (3) years after Final Completion.

.3 Subcontractor recognizes the rights of District under Article 5.3 of the General Conditions, Contingent Assignment of Subcontracts, and agrees, upon notice from District that District has elected to accept said assignment and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by District, to execute a written agreement confirming that Subcontractor is bound to District under the terms of the subcontract.

.4 Design-Builder is responsible for reviewing and coordinating the Work of and among his Subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors, or omissions.

5.2.2 Upon the request of District, Design-Builder shall promptly furnish to District a true, complete, and executed copy of any subcontract.

5.2.3 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and District, except when, and only to the extent that, District elects to accept the assignment of the subcontract with such Subcontractor pursuant to Article 5.3 of the General Conditions, Contingent Assignment of Subcontracts.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 Design-Builder hereby assigns to District all its interest in first-tier subcontracts now or hereafter entered into by Design-Builder for performance of any part of the Work. The assignment shall be effective upon acceptance by District in writing and only as to those subcontracts which District designates in writing. District may accept said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Design-Builder's rights under the Contract Documents. Such assignment is part of the consideration to District for entering into the Contract with Design-Builder and may not be withdrawn prior to Final Completion.

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 District reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of the Work which have been deleted by Change Order. Design-Builder shall cooperate with District's forces and Separate Contractors.

6.1.2 District shall provide coordination of the activities of District's forces and of each Separate Contractor with the Work of Design-Builder. Design-Builder shall participate with District and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. Design-Builder shall make necessary revisions to the Contract Schedule after such joint review.

6.2 MUTUAL RESPONSIBILITY

6.2.1 Design-Builder shall afford District and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. Design-Builder shall connect, schedule, and coordinate its construction and operations with the construction and operations of District and Separate Contractors as required by the Contract Documents.

6.2.2 If a portion of the Work is dependent upon the proper execution or results of other construction or operations by District or Separate Contractors, Design-Builder shall inspect such other design, construction, or operations before proceeding with that portion of the Work. Design-Builder shall promptly report to District's Representative apparent discrepancies or defects which render the other design, construction, or operations unsuitable to receive the Work. Unless otherwise directed by District's Representative, Design-Builder shall not proceed with the portion of the Work affected until apparent discrepancies or defects have been corrected. Failure of Design-Builder to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by District or Separate Contractors is suitable to receive the Work, except as to defects not then reasonably discoverable.

6.3 DISTRICT'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between Design-Builder and Separate Contractors as to the responsibility under their respective contracts for maintaining the Project site and surrounding areas free from waste materials and rubbish, District may clean up and allocate the cost between those firms it deems to be responsible.

ARTICLE 7. CHANGES IN THE WORK

7.1 CHANGES

7.1.1 District may, from time to time, order or authorize additions, deletions, and other changes in the Work by Change Order or Construction Change Directive without invalidating the Contract and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to District.

7.1.2 Design-Builder may request a Change Order under the procedures specified in Article 4.2 of the General Conditions.

7.1.3 A Construction Change Directive may be issued by District, does not require the agreement of Design-Builder, and shall be valid with or without the signature of Design-Builder.

7.1.4 Design-Builder shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant Change Order or Construction Change Directive.

7.2 CHANGES DEFINITIONS

7.2.1 A Change Order is a Contract Document which has been signed by both District and Design-Builder, and states their agreement, as applicable, to any of the following:

.1 A change in the Work.

- .2 The amount of an adjustment of the Contract Sum.
- .3 The amount of an adjustment of the Contract Time.
- .4 A modification to any other Contract term or condition.

7.2.2 A "Unilateral Change Order" may also be issued by District, without Design-Builder's signature, where District determines that a change in the Work requires an adjustment of the Contract Sum or Contract Time as District believes to be properly due Design-Builder, even though no agreement has been reached between District and Design-Builder with regard to such change in the Work.

7.2.3 A "Construction Change Directive" is a Contract Document issued by the District that orders the Design- Builder to perform Work. A Construction Change Directive may, but need not, constitute a change in the Work and may, but need not, entitle Design-Builder to an adjustment of the Contract Sum or Contract Time.

7.3 CHANGE ORDER PROCEDURES

7.3.1 Design-Builder shall provide a Change Order Request and Cost Proposal pursuant to Article 4.2 of the General Conditions and this Article 7.3. Adjustments of the Contract Sum resulting from Extra Work and deductive Work shall be determined using one of the methods described in this Article 7.3. Adjustments of the Contract Time shall be subject to the provisions in Article 8 of the General Conditions. Design-Builder's obligation to provide Cost Proposals shall be subject to the following:

.1 The obligation of Design-Builder to provide Cost Proposals is not Extra Work, and shall not entitle the Design-Builder to an adjustment of the Contract Sum or Contract Time.

.2 The failure of Design-Builder to timely provide a Cost Proposal pursuant to Article 4.2 of the General Conditions and this Article 7.3.1 is a material breach of the Contract. Design-Builder shall be responsible for any delay in implementing a change for which Design-Builder failed to timely provide a Cost Proposal consistent with the requirements of Article 4.2 of the General Conditions and this Article 7.3.1.

7.3.2 The term "Cost of Extra Work" as used in this Article 7.3 shall mean actual costs incurred or to be incurred by Design-Builder and each Subcontractor regardless of tier involved, to the extent not otherwise disallowed under Article 7.3.3, and shall be limited to the following (to the extent the Design-Builder demonstrates that the costs are both reasonable and actually incurred, if such costs have been incurred):

.1 Straight-time wages or salaries for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of performance of the Extra Work.

.2 Fringe Benefits and Payroll Taxes for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of performance of the Extra Work.

.3 Overtime wages or salaries, specifically authorized in writing by District's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of performance of the Extra Work.

.4 Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by District's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, incurred as a result of performance of the Extra Work.

.5 Costs of materials and consumable items which are furnished and incorporated into the Extra Work, as approved by District's Representative. Such costs shall be charged at the lowest price available to the Design-Builder but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to District and Design-Builder shall make provisions so that they may be obtained.

.6 Sales taxes on the costs of materials and consumable items which are incorporated into and used in the performance of the Extra Work pursuant to Article 7.3.2.5 above.

.7 Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by District's Representative, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall not exceed the current Equipment Rental Rates published by the California Department of Transportation for the area in which the work is performed. Such rental rates are found at <https://dot.ca.gov/programs/construction/equipment-rental-rates-and-labor-surchargel>. Design-Builder shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.

.8 Additional costs of royalties and permits due to the performance of the Extra Work.

.9 Cost for revisions in the Design Development Documents or Construction Documents, when such revisions are inconsistent with approvals or instructions previously given by District. Revisions made necessary by adjustments in District's program or project budget such costs to be computed at the hourly rates specified in the Design Professional Rate Schedule in the Exhibits.

.10 The cost for Insurance and Bonds shall not exceed two percent (2%) of items .1 through .9 above.

District and Design-Builder may agree upon rates to be charged for any of the items listed in this Article 7.3.2. Such agreed upon rates shall be subject to audit pursuant to Article 15.9 of the General Conditions. Design- Builder shall promptly refund to District any amounts (including associated mark-ups) in excess of the actual costs of such items.

7.3.3 Cost of Extra Work shall not include any of the following:

- .1 Supervision.
- .2 Superintendent(s).
- .3 Assistant Superintendent(s).
- .4 Project Engineer(s).
- .5 Project Manager(s).
- .6 Scheduler(s).
- .7 Estimator(s).
- .8 Small tools (Replacement value does not exceed [Three Hundred Dollars (\$300)].)
- .9 Office expenses including staff, materials and supplies.
- .10 On-site or off-site trailer and storage rental and expenses.
- .11 Site fencing.
- .12 Utilities including gas, electric, sewer, water, telephone, facsimile, and copier equipment.
- .13 Data processing personnel and equipment.
- .14 Federal, state, or local business income and franchise taxes.
- .15 Overhead and Profit.

- .16 Costs and expenses of any kind or item not specifically and expressly included in Article 7.3.2 above.
.17 Costs in Article 7.3.2.9 in excess of the hourly rates included in the Design Professional Rate Schedule.

7.3.4 The term "Design-Builder Fee" shall mean the full amount of compensation, both direct and indirect (including, without limitation, all overhead and profit), to be paid to Design-Builder for its own Work and the Work of all Subcontractors, for all costs and expenses not included in the Cost of Extra Work, whether or not such costs and expenses are specifically referred to in Article 7.3.3 above. The Design-Builder Fee shall not be compounded.

The Design-Builder Fee shall be computed as follows when the change impacts the Construction Work, or for the portion of the change that is related to Construction Work:

- .1 Fifteen percent (15%) of the cost of that portion of the Extra Work to be performed by the Design-Builder with its own forces.
.2 Fifteen percent (15%) of the cost of that portion of the Work to be performed by a Subcontractor with its own forces, plus five percent (5%) for the Design-Builder. Total combined Design-Builder and Subcontractor fee shall not exceed twenty percent (20%).
.3 Fifteen percent (15%) of the cost of that portion of the Work to be performed by a sub-subcontractor with its own forces, or any lower tier of Subcontractor, plus five percent (5%) for the Subcontractor, plus five percent (5%) for the Design-Builder. Total combined Design-Builder, Subcontractor and all sub-subcontractor fee shall not exceed twenty-five percent (25%).
.4 Notwithstanding the foregoing, the Design-Builder Fee for additional Design Work under Article 7.3.2.9 of the General Conditions shall be five percent (5%) of the cost of such additional Design Work performed by a Design Professional. The cost of such additional Design Work shall be computed using the hourly rates in the Exhibits. The fee for the Design Professional Subcontractors shall be the overhead/profit rate specified in the Design Professional Rate Schedule.

7.3.5 Compensation for Extra Work shall be computed on the basis of one or more of the following:

- .1 Where the Work involved requires revisions to the Design Development Documents or the Construction Documents when such revisions are inconsistent with approvals or instructions previously given by District, including revisions made necessary by adjustments in District's program or project budget, by application of the hourly rates reflected in the Design Professional Rate Schedule.
.2 Where Article 7.3.5.1 above is not applicable, a mutually agreed upon lump sum supported by a Cost Proposal pursuant to Article 7.3.1 of the General Conditions.
.3 If District and Design-Builder cannot agree upon a lump sum, by Cost of Extra Work plus Design-Builder Fee applicable to such Extra Work.

7.3.6 As a condition to Design-Builder's right to an adjustment of the Contract Sum, pursuant to Article 7.3.5 above, Design-Builder must keep daily detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including time cards and invoices. Such records and documentation shall be submitted to and approved by District's Representative on a daily basis.

7.3.7 For Work to be deleted by Change Order, the reduction of the Contract Sum shall be computed on the basis of one or more of the following:

- .1 Unit Prices stated in the Contract Documents.
.2 Unit Prices agreed upon by District and Design-Builder.
.3 Where Unit Prices are not applicable, a lump sum agreed upon by District and Design-Builder, based upon the actual costs that would have been incurred in performing the deleted portions of the Work, as calculated in accordance with Articles 7.3.2 and 7.3.3 above and supported by a Cost Proposal pursuant to Article 7.3.1 above.

7.3.8 If any one Change involves both Extra Work and Deleted Work in the same portion of the Work, a Design-Builder Fee shall not be allowed if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, a Design-Builder Fee shall be allowed only on the difference between the two amounts.

7.3.9 The Contract Sum shall be adjusted for a delay if, and only if, Design-Builder demonstrates that all of the following four (4) conditions are met:

- .1 Condition Number One: The delay results in an extension of the Contract Time pursuant to Article 8.4.1 of the General Conditions.
.2 Condition Number Two: The delay is caused solely by one or more of the following:
.1 An error or omission in the Contract Documents caused by District and not as a result of Design-Builder's failure to conform to Criteria Documents, performance standards, Construction Documents, or Contract Documents; or
.2 The District's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Design-Builder; or
.3 The District's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Design-Builder; or
.4 The failure of the District (including the District acting through its consultants, Design Professionals, Separate Contractors, or the District's Representative) to perform any Contract obligation where the failure to so perform is not the result of any default or misconduct of the Design-Builder.
.5 A materially differing site condition pursuant to Article 3.24 of the General Conditions.
.3 Condition Number Three: The delay is not concurrent with a delay that is caused by an event other than those listed in Article 7.3.9.2 above.
.4 Condition Number Four: The delay is not caused, in whole or in part, by an event which occurs during the performance of Design Development.

7.3.10 For each day of delay that meets all four (4) conditions prescribed in Article 7.3.9 above, the Contract Sum shall be adjusted by the daily rate included in the Agreement, Exhibit A, and specifically identified as the rate to be paid to Design-Builder for Compensable Delays as agreed upon for the applicable Phase. Pursuant to Article 9.7.5 of the General Conditions, said daily rate shall not apply to delays occurring after Substantial Completion.

7.3.11 Except as provided in Articles 7 and 8, Design-Builder shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

7.3.12 If for any reason one or more of the conditions prescribed in Article 7.3.9 above is held legally unenforceable, the remaining conditions must be met as a condition to obtaining an adjustment of the Contract Time under Article 7.3.10 above.

7.4 CONSTRUCTION CHANGE DIRECTIVES

7.4.1 Construction Change Directives issued by the District's Representative shall be subject to the following:

.1 A Construction Change Directive may state that it does or does not constitute a change in the Work.

.2 If the Construction Change Directive states that it does not constitute a change in the Work and the Design-Builder asserts that the Construction Change Directive constitutes a change in the Work, in order to obtain an adjustment of the Contract Sum or Contract Time for the Work encompassed by the Construction Change Directive, Design-Builder must follow all procedures set forth in Article 4 of the General Conditions, starting with the requirement of submitting a timely Change Order Request within **seven (7)** days of Design-Builder's receipt of the Construction Change Directive. Failure to strictly follow those procedures is a bar to any Claim for an adjustment of the Contract Sum or Contract Time arising from performance of the Work described in the Construction Change Directive.

.3 If the Construction Change Directive states that it does constitute a change in the Work, the Work described in the Construction Change Directive shall be considered Extra Work and the Design-Builder shall be entitled to an adjustment of the Contract Sum and Contract Time, calculated under and subject to Design-Builder's compliance with the procedures for verifying and substantiating costs and delays in Articles 7 and 8 of the General Conditions.

.4 In addition, if the Construction Change Directive states that it does constitute a change in the Work, the Construction Change Directive may or may not contain District's estimate of adjustment of Contract Sum and/or Contract Time. If the Construction Change Directive contains an estimate of adjustment of Contract Sum or Contract Time, the Construction Change Directive is subject to the following:

.1 The Design-Builder shall not exceed the District's estimate of adjustment to Contract Sum or Contract Time without written authorization by District's Representative.

.2 If the Design-Builder asserts that the change in the Work encompassed by the Construction Change Directive may entitle Design-Builder to an adjustment of Contract Sum or Contract Time in excess of the District's estimate, in order not to be bound by District's estimate Design-Builder must follow all procedures set forth in Article 4 of the General Conditions, starting with the requirement of submitting a timely Change Order Request within **seven (7)** days of Design-Builder's receipt of the Construction Change Directive. Failure to strictly follow those procedures is a bar to any Claim for an adjustment of the Contract Sum or Contract Time, in excess of the District's estimate, arising from performance of the Work described in the Construction Change Directive.

7.4.2 Upon receipt of a Construction Change Directive, Design-Builder shall promptly proceed to perform the Work as ordered in the Construction Change Directive notwithstanding any disagreement by the Design-Builder concerning whether the Work is extra.

7.5 WAIVER

7.5.1 A waiver of, or failure by, District or District's Representative to enforce any requirement in this Article 7, including, without limitation, the requirements in Articles 7.3.6, 7.3.8, 7.3.9, 7.3.10, 7.3.11, or 7.3.12 in connection with any adjustment of the Contract Sum, shall not constitute a waiver of, and shall not preclude the District, or District's Representative, from enforcing such requirements in connection with any other adjustments of the Contract Sum.

7.5.2 The Design-Builder agrees and understands that no oral approval, either express or implied, of any adjustment of the Contract Sum by District or its agents shall be binding upon District unless and until such approval is ratified by execution of a written change order.

ARTICLE 8. CONTRACT TIME

8.1 COMMENCEMENT OF THE WORK

8.1.1 The date of commencement of the Work shall be set forth in the applicable Notice to Proceed. The date of commencement of the Work shall not be postponed by the failure of Design-Builder, Subcontractors, or of persons or firms for whom Design-Builder is responsible, to act.

8.2 PROGRESS AND COMPLETION

8.2.1 By signing the Agreement:

.1 Design-Builder represents to District that the Contract Time is reasonable for performing the Work and that Design-Builder is able to perform the Work within the Contract Time.

.2 Design-Builder agrees that District is purchasing the right to have the Design-Builder present on the Project site for the full duration of the Contract Time applicable to the Construction Phase, even if Design-Builder could finish the Contract in less than the Contract Time.

8.2.2 Design-Builder shall not, except by written agreement and/or written instruction from District, commence operations on the Project site or elsewhere prior to the effective date of insurance, required by Article 11 of the General Conditions to be furnished by Design-Builder. The dates of commencement and Final Completion of the Work shall not be changed by the effective date of such insurance.

8.2.3 Design-Builder shall proceed expeditiously with adequate forces and shall achieve Final Completion of the Work within the Contract Time. If District's Representative determines and notifies Design-Builder that Design-Builder's progress is such that Design-Builder shall not achieve Final Completion of the Work within the Contract Time, Design-Builder shall immediately, and at no additional cost to District, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that Design-Builder shall achieve Final completion of the Work within the Contract Time. Upon receipt of such notice from District's representative, Design-Builder shall immediately notify District's Representative of all measures to be taken to ensure Final Completion of the Work within the Contract Time. Design-Builder shall reimburse District for any extra costs or expenses (including the reasonable value of any services provided by District's employees) incurred by District as the result of such measures.

8.3 DELAY

8.3.1 Except and only to the extent provided otherwise in Articles 7 and 8 of the General Conditions, by signing the Agreement, Design-Builder agrees:

.1 To bear the risk of delays to the Work; and

.2 That Design-Builder's Proposal for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of delays to the Work, Design-Builder understands that, except and only to the extent provided otherwise in Articles 7 and 8 of the General Conditions, the occurrence of events that delay the Work shall not excuse Design-Builder from its obligation to achieve Final Completion of the Work within the Contract Time, and shall not entitle the Design-Builder to an adjustment of the Contract Sum.

8.4 ADJUSTMENT OF THE CONTRACT TIME FOR DELAY

8.4.1 Subject to Article 8.4.2 below, the Contract Time shall be extended for each day of delay for which Design-Builder demonstrates that all of the following three (3) conditions have been met; a time extension shall not be granted for any day of delay for which Design-Builder fails to demonstrate compliance with the three

(3) conditions:

.1 Condition Number One: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying Final Completion of the Work to a date that is beyond the Contract Time.

.2 Condition Number Two: Within **seven (7)** days of the date the Design-Builder discovers or reasonably should discover an act, error, omission, or unforeseen condition or event causing the delay is likely to have an impact on the critical path of the Project (even if the Design-Builder has not yet been delayed when the Design-Builder discovers or reasonably should discover the critical path impact of the act, error, omission, or unforeseen condition or event giving rise to the delay), the Design-Builder submits a timely and complete Change Order Request that meets the requirements of Article 4.2 of the General Conditions. Rain Days: In cases of excessive rain days, as set by the Special Conditions, Design Builder will be entitled to a schedule extension without compensation.

.3 Condition Number Three: The delay is caused by an event or circumstance listed in Article 4.2, above.

.8.5 COMPENSATION FOR DELAY

8.5.1 To the maximum extent allowed by law, any adjustment of the Contract Sum as the result of delays shall be limited to the amounts specified in Article 7 of the General Conditions. Such adjustment shall, to the maximum extent allowed by law, constitute payment in full for all delay-related costs (including costs for disruption, interruption and hindrance, general conditions, on and off-site overhead and profit) of Design-Builder, its Suppliers and Subcontractors of all tiers and all persons and entities working under or claiming through Design-Builder in connection with the Project.

8.5.2 By signing the Agreement, the parties agree that the District is buying the right to do any or all of the following, which are reasonable and within the contemplation of the parties:

.1 To order changes in the Work, regardless of the extent and number of changes, including without limitation:

.1 Changes to correct errors or omissions caused by District, if any, in the Contract Documents.

.2 Changes resulting from the District's decision to change the scope of the Work subsequent to execution of the Contract.

.3 Changes due to unforeseen conditions.

.2 To suspend the Work or any part thereof.

.3 To delay the Work, including without limitation, delays resulting from the failure of the District or the District's Representative to timely perform any Contract obligation and delays for District's convenience.

8.6 WAIVER

8.6.1 A waiver of, or failure by, District or District's Representative to enforce any requirement in this Article 8, including without limitation the requirements in Article 8.4 above, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the District or District's Representative from enforcing, such requirements in connection with any present or future delays.

8.6.2 Design-Builder agrees and understands that no oral approval, either express or implied, of any time extension by District or its agents shall be binding upon District unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 9. PAYMENTS AND COMPLETION

9.1 COST BREAKDOWN AND PERIODIC ESTIMATES

9.1.1 Within **ten (10)** days after receipt of the Notice to Proceed, Design-Builder shall submit to District's Representative a Cost Breakdown of the Contract Sum. The Cost Breakdown shall itemize as separate line items the cost of each work activity and all associated costs, including, but not limited to, warranties, as-built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The total of all line items shall equal the Contract Sum. The Cost Breakdown, when approved by the District's Representative, shall become the basis for determining the cost of work performed for Design-Builder's Applications for Payment.

The District shall have the right to adjust any estimate of quantity and to subsequently correct any error made in any estimate for payment.

Design-Builder shall certify, under penalty of perjury, that all cost breakdowns and periodic estimates accurately reflect the Work on the Project.

9.2 PROGRESS PAYMENT

9.2.1 District agrees to pay monthly to Design-Builder, subject to Article 9.4 of the General Conditions, an amount equal to ninety-five percent (95%) of the sum of the following:

.1 Cost of the Construction Work in permanent place as of the date of the Design-Builder's Application for Payment.

.2 Cost of materials not yet incorporated in the Construction Work, subject to Article 9.3.5 of the General Conditions.

.3 Less amounts previously paid.

Five percent (5%) of the amount shall be retained by the District until Final Completion and shall be released pursuant to Article 9.8. Under this Article 9.2.1, District may, but is not required to, pay Design-Builder more frequently than monthly.

9.2.2 After Substantial Completion and subject to Article 9.4.3 of the General Conditions, District shall make any of the remaining progress payments in full.

9.3 APPLICATION FOR PAYMENT

9.3.1 On or before the tenth (10th) day of the month or such other date as is established by the Contract Documents, Design-Builder shall submit to District's Representative an itemized Application for Payment, for the cost of the Work in permanent place, as approved by District's Representative, which has been completed in accordance with the Contract Documents, less amounts previously paid. The Application for Payment shall be prepared as follows:

.1 Use the form contained in the Exhibits;

- .2 Itemize in accordance with the Cost Breakdown as applicable;
- .3 Include such data substantiating Design-Builder's right to payment as District's Representative may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Article 9.5 of the General Conditions, a certification of the market value of all such securities as of a date not earlier than **[five (5)]** days prior to the date of the Application for Payment, as applicable; and

.4 Itemize retention.

9.3.2 Applications for Payment shall not include requests for payment on account of (1) changes which have not been authorized by Change Orders, or (2) amounts Design-Builder does not intend to pay a Subcontractor because of a dispute or other reason.

9.3.3 If required by District, an Application for Payment shall be accompanied by (1) a summary showing payments that shall be made to Subcontractors covered by such Application and conditional releases upon progress payment or final payment, and (2) unconditional waivers and releases of claims and stop payment notices from each Subcontractor listed in the preceding Application for Payment covering sums disbursed pursuant to that preceding Application for Payment.

9.3.4 Design-Builder warrants that, upon submittal of an Application for Payment, all Work, for which Certificates for Payment have been previously issued and payment has been received from District, shall be free and clear of all claims, stop payment notices, security interests, and encumbrances in favor of Design-Builder, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.

9.3.5 At the sole discretion of District, District's Representative may approve for inclusion in the Application for Payment the cost of materials not yet incorporated in the Construction Work but already delivered and suitably stored either at the Project site or at some other appropriate location acceptable to District's Representative. In such case, Design-Builder shall furnish evidence satisfactory to District's Representative (1) of the cost of such materials; and (2) that such materials are under the exclusive control of Design-Builder. Only materials to be incorporated in the Work shall be considered for payment. Any payment shall not be construed as acceptance of such materials nor relieve Design-Builder from sole responsibility for the care and protection of such materials; nor relieve Design-Builder from risk of loss of such materials from any cause whatsoever; nor relieve Design-Builder from its obligation to complete the Work in accordance with the Contract; nor act as a waiver of the right of District to require fulfillment of all terms of the Contract. Nothing contained within this Article 9.3.5 shall be deemed to obligate District to agree to payment for any non-incorporated materials or any part thereof, payment being in the sole and absolute discretion of District.

9.4 CERTIFICATE FOR PAYMENT

9.4.1 If Design-Builder has submitted an Application for Payment in accordance with Article 9.3 above, District's Representative shall, not later than **[five (5)]** working days after the date of receipt of the Application for Payment, issue to District, with a copy to Design-Builder, a Certificate for Payment for such amount as District's Representative determines to be properly due.

9.4.2 If any such Application for Payment is determined not to be in accordance with Article 9.3 above, District shall inform Design-Builder as soon as practicable, but not later than **[five (5)]** working days after receipt. Thereafter, Design-Builder shall have **[three (3)]** days to revise and resubmit such Application for Payment; otherwise District's Representative may issue a Certificate for Payment in the amount that District's Representative determines to be properly due without regard to such Application for Payment.

9.4.3 Approval of all or any part of an Application for Payment may be withheld, a Certificate for Payment may be withheld, and all or part of a previous Certificate for Payment may be nullified and that amount withheld from a current Certificate for Payment on account of any of the following:

- .1 Defective Work not remedied.
- .2 Third-party claims against Design-Builder or District arising from the acts or omissions of Design-Builder or Subcontractors.
- .3 Stop payment notices.
- .4 Failure of Design-Builder to make timely payments due Subcontractors.
- .5 A reasonable doubt that the Work can be completed for the balance of the Contract Sum then unpaid.
- .6 Damage to District or Separate Contractor for which Design-Builder is responsible.
- .7 Reasonable evidence that the Work shall not be completed within the Contract Time, and that the unpaid balance of the Contract Sum would not be adequate to cover District's damages for the anticipated delay.
- .8 Failure of Design-Builder to maintain and update as-built documents.
- .9 Failure of Design-Builder to submit schedules or their updates as required by the Contract Documents.
- .10 Failure to provide conditional or unconditional releases from any Subcontractor or supplier, if such waiver(s) have been requested by District's Representative.
- .11 Performance of Work by Design-Builder without properly processed Shop Drawings.
- .12 Liquidated damages assessed in accordance with the Agreement.
- .13 Failure to provide updated Reports of Subcontractor Information and Self-Certifications, as applicable.
- .14 Failure to provide a Final Distribution of Contract Dollars with final Application for Payment.
- .15 Any other failure of Design-Builder to perform its obligations under the Contract Documents.

9.4.4 Subject to the withholding provisions of Article 9.4.3 of the General Conditions, District shall pay Design-Builder the amount set forth in the Certificate for Payment no later than **[thirty (30)]** days after the issuance of the Certificate for Payment.

9.4.5 Neither District nor District's Representative shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

9.4.6 Neither a Certificate for Payment nor a progress payment made by District shall constitute acceptance of Defective Work.

9.5 DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RETENTION INTO ESCROW

9.5.1 At the request and expense of Design-Builder, a substitution of securities may be made for any monies retained by District under Article 9.2 to ensure

performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each Certificate for Payment shall be deposited by Design-Builder with a state or federally chartered bank in the State of California ("Escrow Agent"), which shall hold such securities pursuant to the escrow agreement referred to in Article 9.5.3 until retention is due in accordance with Article 9.8. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. Design-Builder shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

9.5.2 Alternatively to Article 9.5.1 above, and at the request and expense of Design-Builder, District shall deposit retention directly with Escrow Agent. Design-Builder may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by Escrow Agent upon the same terms provided for securities deposited by Design-Builder. Design-Builder and its surety shall bear the risk of failure of the Escrow Agent selected.

9.5.3 A prerequisite to the substitution of securities in lieu of retention or the deposit of retention into escrow shall be the execution by Design-Builder, District, and Escrow Agent of an Escrow Agreement for Deposit of Securities in Lieu of Retention and Deposit of Retention in the form contained in the Exhibits. The Design-Builder shall submit the Selection of Retention Options and the Escrow Agreement for Deposit of Securities in Lieu of Retention and Deposit of Retention not later than the date when fifty percent (50%) of the Work has been completed. The terms of such Escrow Agreement are incorporated into the requirements of this Article 9.5.

9.5.4 The form for Deposit of Securities in Lieu of Retention and Deposit of Retention may be requested from the District.

9.6 BENEFICIAL OCCUPANCY

9.6.1 District reserves the right, at its option and convenience, to occupy or otherwise make use of any part of the Construction Work at any time prior to Substantial Completion or Final Completion upon **ten (10)** days' notice to Design-Builder. Such occupancy or use is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following conditions:

.1 District's Representative shall make an inspection of the portion of the Project to be beneficially occupied and prepare a list of items to be completed or corrected prior to Final Completion. Prior to Beneficial Occupancy, District shall issue a Certificate of Beneficial Occupancy on District's form.

.2 Beneficial Occupancy by District shall not be construed by Design-Builder as an acceptance by District of that portion of the Construction Work which is to be occupied.

.3 Beneficial Occupancy by District shall not constitute a waiver of existing claims of District or Design-Builder against each other.

.4 Design-Builder shall provide, in the areas beneficially occupied and on a twenty-four (24) hour and seven (7) day per week basis as required, utility services, heating, and cooling for systems which are in operable condition at the time of Beneficial Occupancy. All responsibility for the operation and maintenance of equipment shall remain with Design-Builder while the equipment is so operated. Design-Builder shall submit to District an itemized list of each piece of equipment so operated with the date operation commences. The Guarantee to Repair Periods, as defined in Article 12.2, shall commence upon the occupancy date stated in the Certificate of Beneficial Occupancy, except that the Guarantee to Repair Periods for that part of equipment or systems that serve portions of the Work for which District has not taken Beneficial Occupancy or issued a Certificate of Substantial Completion shall not commence until the District has taken Beneficial Occupancy for that portion of the Work or has issued a Certificate of Substantial Completion with respect to the entire Project.

.5 District shall pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.

.6 District shall pay all utility costs that arise out of the Beneficial Occupancy.

.7 Design-Builder shall not be responsible for providing security in areas beneficially occupied.

.8 District shall use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of Design-Builder's remaining Work.

.9 Design-Builder shall not be required to repair damage caused by District in its Beneficial Occupancy.

.10 Except as provided in this Article 9.6, there shall be no added cost to District due to Beneficial Occupancy.

.11 Design-Builder shall continue to maintain all insurance required by the Contract in full force and effect.

9.7 SUBSTANTIAL COMPLETION

9.7.1 "Substantial Completion" means the stage in the progress of the Construction Work, as determined by District's Representative, when the Construction Work is complete and in accordance with the Contract Documents except only for completion of minor items that do not impair District's ability to occupy and fully utilize the Construction Work for its intended purpose and a Certificate of Occupancy has been issued by the District.

9.7.2 When Design-Builder gives notice to District's Representative that the Construction Work is substantially complete, unless District's Representative determines that the Construction Work is not sufficiently complete to warrant an inspection to determine Substantial Completion, District's Representative shall inspect the Construction Work. If the District's Representative determines that the Work is not substantially completed, the District's Representative shall prepare and give to Design-Builder a comprehensive list of items to be completed or corrected before establishing Substantial Completion. Design-Builder 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 Design-Builder to complete all Construction Work in accordance with the Contract Documents. Upon notification that the items on the list are completed or corrected, as applicable, the District's Representative shall make an inspection to determine whether the Construction Work is substantially complete. Costs for additional inspection by District's Representative shall be deducted from any monies due and payable to Design-Builder.

9.7.3 When District's Representative determines that the Construction Work is substantially complete, District's Representative shall arrange for inspection by District's Building Official and other officials, as appropriate, for the purpose of issuing a Certificate of Occupancy. After a Certificate of Occupancy has been issued by the District, the District's Representative shall prepare a Certificate of Substantial Completion on District's form, which, when signed by District, shall establish the date of Substantial Completion and the responsibilities of District and Design-Builder for security, maintenance, utilities, insurance, and damage to the Construction Work. The District's Representative shall prepare and furnish to the Design-Builder a comprehensive "punch list" of items to be completed or corrected prior to Final Completion.

9.7.4 Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee to Repair Period for the Work covered by the Certificate of Substantial Completion, shall commence on the date of Substantial Completion of the Construction Work except that Substantial Completion shall not commence the Guarantee to Repair Period for any equipment or systems that:

.1 Are not operational (equipment or systems shall not be considered operational if they cannot be used for the intended service); or

.2 Are not accepted by the District.

The Guarantee to Repair Period for equipment or systems which become fully operational and accepted subsequent to Substantial Completion shall begin on the date of their written acceptance by District.

9.7.5 The daily rate included in the Agreement and specifically identified as the rate to be paid to Design-Builder for Compensable Delays shall not

apply to any delays occurring after the Work is substantially completed.

9.8 FINAL COMPLETION, FINAL PAYMENT, AND RELEASE OF RETENTION

9.8.1 Upon receipt of notice from Design-Builder that the Work is ready for final inspection, District's Representative shall make such inspection. Final Completion shall be when District's Representative determines that the Work is fully completed and in accordance with the Contract Documents, including without limitation, satisfaction of all "punch list" items, and determines that a Certificate of Occupancy has been issued by the District. After receipt of the final Application for Payment, if District's Representative determines that Final Completion has occurred, District's Representative shall issue the final Certificate for Payment.

9.8.2 Final payment and retention shall be released to Design-Builder, as set forth in Article 9.8.3, after:

- .1 Design-Builder submits the final Application for Payment and all submittals required in accordance with Article 9.3.
- .2 Design-Builder submits all guarantees and warranties procured by Design-Builder from Subcontractors, all operating manuals for equipment installed in the Project, as-built documents, and all other submittals required by the Contract Documents;
- .3 Design-Builder submits the Final Distribution of Contract Dollars in the form contained in the Exhibits; and
- .4 District's Representative issues the final Certificate for Payment.

At its sole discretion, after Final Completion, District may waive the requirement that Design-Builder submit a final Application for Payment before making final payment and/or release of retention to Design-Builder.

9.8.3 Retention shall be released to Design-Builder sixty (60) days after the filing of the Notice of Completion.

9.8.4 Acceptance of final payment by Design-Builder shall constitute a waiver of all claims, except claims for retention and claims previously made in writing and identified by Design-Builder as unsettled at the time of the final Application for Payment.

9.8.5 In the event of a dispute, District may withhold up to 150% of the disputed amount from the final payment and retention funds.

ARTICLE 10. PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Design-Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

10.1.2 Work may be ongoing at the time school is in session. The use of alcohol, drugs, or tobacco shall not be permitted on District property. Access to areas outside of the construction area is prohibited, unless the Design-Builder is accompanied by the District Representative. Design-Builder shall comply with District's fingerprinting requirements. All representatives of the Design-Builder shall present themselves with appropriate language, actions and work wear while on the construction site.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 Design-Builder shall take adequate precautions for safety of, and shall provide adequate protection to prevent damage, injury, or loss to, the following:

- .1 Employees involved in the Construction Work and other persons who may be affected thereby,
- .2 The Construction Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody, or control of Design-Builder or Subcontractors; and
- .3 Other property at the Project site and adjoining property.

10.2.2 Design-Builder shall erect and maintain, as required by existing conditions and performance of the Work, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.2.3 When use or storage of explosives, other hazardous materials, equipment, or unusual methods are necessary for execution of the Construction Work, Design-Builder shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.4 Design-Builder shall designate a responsible member of Design-Builder's organization at the Project site whose duty shall be the prevention of accidents. That person shall be the Superintendent, unless otherwise designated by Design-Builder in writing to District and District's Representative.

10.2.5 Design-Builder shall not load, or permit any part of the Construction Work or the Project site to be loaded, so as to endanger the safety of persons or property.

10.2.6 Design-Builder shall comply with all applicable laws, ordinances, rules, or regulations pertaining to safety at the Site. Design-Builder shall implement safety measures such as fencing, barricades, signs, lights and other precautions to prevent injury or death to persons or damage to property. Design-Builder is responsible for securing the Site and Work in place or in progress (including materials/equipment/tools situated at the Site) to prevent theft, loss or damage. The District and employees, officers, agents or representatives of the District are not liable to the Design-Builder, subcontractors or their respective personnel for the loss, theft, damage or destruction of materials, equipment, tools and other personal property items, whether or not such personal property is used to complete the Work or is incorporated into the Work. The risk of such loss, theft, damage or destruction is solely that of the Design-Builder or subcontractors. **Design-Builder and all contractors, including all subcontractors, laborers and any individual performing work on any District project, are required to wear hard hats and safety vests at all times while on any District site or campus without exception.**

10.2.7 Design-Builder shall confine operations at the Site to areas permitted by all applicable laws and permits relating to the Work, subject to any restrictions or limitations set forth in the Contract Documents. The Design-Builder shall not unreasonably encumber the Site or adjoining areas with materials or equipment. The Design-Builder is solely responsible for providing security at the Site and coordinating access to the Site, with all such costs included in the Contract price. Design-Builder shall provide DSA, the District, the inspector, the Architect of Record, and the Design Professional(s) of Record with access to the Work, whether in place, preparation and progress and wherever located. The District shall at all times have access to the Site. Design-Builder shall provide the District with keys/codes/card keys to all Site perimeter locks.

10.3 EMERGENCIES

10.3.1 In an emergency affecting the safety of persons or property, Design-Builder shall act to prevent or minimize damage, injury, or loss. Design-Builder shall promptly notify District's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and Design-Builder's action.

ARTICLE 11. INSURANCE AND BONDS

11.1 DESIGN-BUILDER'S INSURANCE

11.1.1 Design-Builder shall, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and District from claims, such as for bodily injury, wrongful death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by Design-Builder, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The amounts of such insurance and any additional insurance requirements are specified in the Special Conditions. See Article 3.27 of the General Conditions regarding the scope and extent of Design-Builder's liability for repair of damaged Work.

11.1.2 The following policies and coverage shall be furnished by Design-Builder:

.1 COMMERCIAL GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE

a. Design-Builder shall procure and maintain during the life of this Contract and for such other period as may be required herein, at its sole expense, Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products/completed operations if applicable, personal and advertising injury – which may arise from or out of Design-Builder's operations, use, and management of the Project site, or the performance of its obligations hereunder. Policy limits shall be in the amount of at least **[One Million Dollars (\$1,000,000.00)]** per occurrence. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b. Such policy shall comply with all the requirements of this Article. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with

respect to the limits of liability. Further, the limits set forth herein shall not be construed to relieve the Design-Builder from liability in excess of such coverage, nor shall it limit Design-Builder's indemnification obligations to the District, and shall not preclude the District from taking such other actions available to the District under other provisions of the Contract Documents or law.

c. Design-Builder shall make certain that any and all subcontractors hired by Design-Builder are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Design-Builder shall indemnify and hold the District and the Indemnified Parties harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by the District and the Indemnified Parties as a result thereof.

d. All general liability policies provided pursuant to the provisions of this Article shall comply with the provisions of the Contract Documents.

e. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, under-ground excavation, removal of lateral support, and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Design-Builder of that part of the indemnification contained in these General Conditions, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of fifty percent (50%) of any such aggregate limit must remain available at all times; if over fifty percent (50%) of any aggregate limit has been paid or reserved, the District may require additional coverage to be purchased by Design-Builder to restore the required limits. Design-Builder may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement described in the Contract Documents.

.2 AUTOMOBILE LIABILITY INSURANCE

Design-Builder shall take out and maintain at all times during the term of this Contract Automobile Liability Insurance in the amount of at least **[One Million Dollars (\$1,000,000.00)]** per occurrence. Such insurance shall provide coverage for bodily injury and property damage including coverage for any auto, in a form and with insurance companies acceptable to the District.

.3 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

The Design-Builder shall provide, during the life of this Contract, Workers' Compensation Insurance for all of the employees engaged in Work under this Contract, on or at the Project site, and, in case of any sublet Work, the Design-Builder shall require the subcontractor similarly to provide Workers' Compensation Insurance for all the latter's employees as prescribed by State law. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Design-Builder's insurance. In case any class of employees engaged in work under this Contract, on or at the Project site, is not protected under the Workers' Compensation Statutes, the Design-Builder shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Design-Builder is required to secure payment of compensation to his employees in accordance with the provisions of Section 3700 of the Labor Code. The Design-Builder shall file with the District certificates of his insurance protecting workers. Company or companies providing insurance coverage shall be acceptable to the District, if in the form and coverage as set forth in the Contract Documents. The policy shall contain a Waiver of Subrogation in favor of the District.

Design-Builder shall provide, during the life of this Contract, Employer's Liability Insurance, including Occupational Disease, in the amount of at least **[One Million Dollars (\$1,000,000.00)]** per person per accident. Design-Builder shall provide District with a certificate of Employer's Liability Insurance. Such insurance shall comply with the provisions of the Contract Documents. The policy shall be endorsed, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement and contain a Waiver of Subrogation in favor of the District.

.4 FORM AND PROOF OF CARRIAGE OF INSURANCE

a. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the District Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VIII. Insurance deductibles or self-insured retentions must be declared by the Design-Builder, and such deductibles and retentions shall have the prior written consent from the District. At the election of the District, the Design-Builder shall either 1) reduce or eliminate such deductibles or self-insured retentions; or

2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

b. Design-Builder shall cause its insurance carrier(s) to furnish the District with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein; or 2) if requested to do so in writing by the District Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Design-Builder shall ensure that the District, members of District's Board of Trustees, and officers, officials, employees, agents, representatives, and volunteers of the District are named as Additional Insureds and shall provide a Waiver of Subrogation in favor of those parties. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that shall provide no less than thirty (30) days' written notice be given to the District prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the District may terminate or Stop Work pursuant to the Contract Documents, unless the District receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages set forth herein and the insurance required herein is in full force and effect. Design-Builder shall not take possession, or use the Project site, or commence

operations under this Agreement, until the District has been furnished original Certificate(s) of Insurance and certified original copies of Endorsements or policies of insurance including all Endorsements and any and all other attachments as required in this Article. The original Endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.

c. It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary, and the District's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.

d. The District reserves the right to adjust the monetary limits of insurance coverages during the term of this Contract, including any extension thereof, if, in the District's reasonable judgment, the amount or type of insurance carried by the Design-Builder becomes inadequate.

e. Design-Builder shall pass down the insurance obligations contained herein to all tiers of sub- contractors working under this Contract.

11.2 BUILDER'S RISK ("ALL RISK")

11.2.1 It is the Design-Builder's responsibility to maintain or cause to be maintained Builder's Risk ("All Risk") extended coverage insurance on all work, material, equipment, appliances, tools, and structures that are a part of the Contract and subject to loss or damage by fire, and vandalism and malicious mischief, in an amount to cover one hundred percent (100%) of the replacement cost. The District accepts no responsibility until the Work is formally accepted by the Board of Trustees. The Design-Builder is required to file with the District a certificate evidencing fire insurance coverage.

11.2.2 Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.

.1 Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.

.2 Coverage shall include all materials stored on site and in transit.

.3 Coverage shall include Design-Builder's tools and equipment.

.4 Insurance shall include boiler, machinery and material hoist coverage.

11.2.3 Such insurance shall comply with the provisions of the Contract Documents.

11.3 PERFORMANCE BOND AND PAYMENT BOND

11.3.1 Pursuant to Education Code section 81704, Design-Builder shall possess or obtain sufficient bonding to cover the contract amount for nondesign services, and errors and omission insurance coverage sufficient to cover all design and architectural services provided in the Contract. The statute does not permit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

11.3.2 Design-Builder shall furnish bonds covering the faithful performance of the Contract ("Performance Bond") and payment of obligations arising thereunder ("Payment Bond") on the forms contained in the Exhibits.

11.3.3 The Payment Bond and Performance Bond shall each be in the amount of the Guaranteed Maximum Price Proposal.

11.3.4 The Payment Bond and Performance Bond shall be in effect on the date the Contract is signed by District.

11.3.5 Design-Builder shall promptly furnish such additional security as may be required by District to protect its interests and those interests of persons or firms supplying labor or materials to the Work. Design-Builder shall furnish supplemental Payment and Performance Bonds each in the amount of the current Contract Sum at the request of the District.

11.3.6 Surety companies used by Design-Builder shall be, on the date the Contract is signed by District, listed in the latest published State of California, Department of Insurance, list of "Insurers Admitted to Transact Surety Insurance in This State."

11.3.7 The premiums for the Payment Bond and Performance Bond shall be paid by Design-Builder.

ARTICLE 12. UNCOVERING AND CORRECTION OF CONSTRUCTION WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Construction Work is covered contrary to District's Representative's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by District's Representative, be uncovered for District's Representative's observation and be replaced at Design-Builder's expense without adjustment of the Contract Time or the Contract Sum.

12.1.2 If a portion of the Construction Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which District's Representative has not specifically requested to observe prior to its being covered, District's Representative may request to see such Construction Work and it shall be uncovered and replaced by Design-Builder. If such Construction Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Construction Work shall be added to the Contract Sum by Change Order; and if the uncovering and replacing of the Construction Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Change Order. If such Construction Work is not in accordance with the Contract Documents, Design-Builder shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

12.2.1 The term "Guarantee to Repair Period" means a period of two (2) years, unless a longer period of time is specified, commencing as follows:

.1 For any Construction Work not described as incomplete in the Certificate of Substantial Completion, on the date of Substantial Completion.

.2 For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion pursuant to Article 9.6 of the General Conditions, from the first date of such Beneficial Occupancy or actual use, as established in a Certificate of Beneficial Occupancy.

.3 For all Construction Work other than 12.2.1.1 or 12.2.1.2 above, from the date of Final Completion.

12.2.2 Design-Builder shall (1) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee to Repair Period; and (2) replace, repair, or restore to District's satisfaction any other parts of the Work and any other real or personal property that is damaged or destroyed as a result of Defective Work or the correction of Defective Work. Design-Builder shall promptly commence such correction, replacement, repair, or restoration upon notice from District's Representative or District, but in no case later than ten (10) days after receipt of such notice, and Design-Builder shall diligently and continuously prosecute such correction to

completion. Design-Builder shall bear all costs of such correction, replacement, repair, or restoration, and all losses resulting from such Defective Work, including additional testing, inspection, and compensation for District's Representative's services and expenses. Design-Builder shall perform corrective Work at such times that are acceptable to District and in such a manner as to avoid, to the extent practicable, disruption to District's activities.

12.2.3 If immediate correction of Defective Work is required for life safety or the protection of property and is performed by District or Separate Contractors, Design-Builder shall pay to District all reasonable costs of correcting such Defective Work. Design-Builder shall replace, repair, or restore to District's satisfaction any other parts of the Construction Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

12.2.4 At Design-Builder's expense, Design-Builder shall remove from the Project site portions of the Construction Work and materials that are not in accordance with the Contract Documents and that are neither corrected by Design-Builder nor accepted by District.

12.2.5 If Design-Builder fails to commence correction of Defective Work within **ten (10)** days after notice from District or District's Representative, or fails to diligently prosecute such correction to completion, District may correct the Defective Work at Design-Builder's expense, in accordance with Article 2.4 of the General Conditions. In addition, District may remove the Defective Work and store salvageable materials and equipment at Design-Builder's expense.

12.2.6 If Design-Builder fails to pay the costs of such removal and storage as required by above Articles 12.2.4 and 12.2.5, within **ten (10)** days after written demand, District may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. Design-Builder shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Design-Builder is liable to District, including compensation for District's Representative's services and expenses. If such proceeds of sale do not cover costs and damages for which Design-Builder is liable to District, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due Design-Builder or the remaining payments are insufficient to cover such deficiency, Design-Builder shall promptly pay the difference to District.

12.2.7 Design-Builder's obligations under this Article 12 are in addition to, and not in limitation of, its warranty under Article 3.4 of the General Conditions or any other obligation of Design-Builder under the Contract Documents. Enforcement of Design-Builder's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies District may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations of Design-Builder under the Contract Documents. Establishment of the Guarantee to Repair Period relates only to the specific obligation of Design-Builder to correct the Work and in no way limits either Design-Builder's liability for Defective Work or the time within which proceedings may be commenced to enforce Design-Builder's obligations under the Contract Documents.

ARTICLE 13. TERMINATION OR SUSPENSION OF THE CONTRACT

13.1 TERMINATION BY DESIGN-BUILDER

13.1.1 Subject to below Article 13.1.2, Design-Builder shall have the right to terminate the Contract only upon the occurrence of one of the following:

.1 Provided that District has not commenced reasonable action to remove any order of a court within the ninety (90) day period, the Work is stopped for **ninety (90)** consecutive days, through no act or fault of Design-Builder, any Subcontractor, or any employee or agent of Design-Builder or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.

.2 District fails to perform any material obligation under the Contract Documents and fails to cure such default within **thirty (30)** days, or District has not commenced to cure such default within **thirty (30)** days where such cure will require a reasonable period beyond **thirty (30)** days and diligently prosecutes the same to completion, after receipt of notice from Design-Builder stating the nature of such default(s).

.3 Repeated suspensions by District, other than such suspensions as are agreed to by Design-Builder under Article 13.3 below, which constitute in the aggregate more than **twenty percent (20%)** of the Contract Time.

13.1.2 Upon the occurrence of one of the events listed in Article 13.1.1 above, Design-Builder may, upon giving **thirty (30)** days additional notice to District and District's Representative, and provided that the condition giving rise to Design-Builder's right to terminate is continuing, terminate the Contract.

13.1.3 Upon termination by Design-Builder, District shall pay to Design-Builder the sum determined by Article 13.4.4 of the General Conditions. Such payment shall be the sole and exclusive remedy to which Design-Builder is entitled in the event of termination of the Contract by Design-Builder pursuant to this Article 13.1, and Design-Builder shall be entitled to no other compensation or damages and expressly waives the same.

13.2 TERMINATION BY DISTRICT FOR CAUSE

13.2.1 District shall have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:

.1 Design-Builder becomes insolvent or files for relief under the bankruptcy laws of the United States.

.2 Design-Builder makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.

.3 A receiver is appointed to take charge of Design-Builder's property.

.4 The commencement or completion of any Work activity on the critical path is more than **thirty (30)** days behind the date set forth in the Contract Schedule for such Work activity as a result of an Unexcusable Delay. For a Contract with a Contract Time of less than **three hundred (300)** days, the **thirty (30)** day period shall be reduced to the number of days commensurate with **ten percent (10%)** of the Contract Time.

.5 Design-Builder abandons the Work.

13.2.2 Upon the occurrence of any of the following events, District shall have the right to terminate the Contract for cause if Design-Builder fails to promptly commence to cure such default and diligently prosecute such cure within **five (5)** days after notice from District, or within such longer period of time as is reasonably necessary to complete such cure:

.1 Design-Builder persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.

.2 Design-Builder fails to make prompt payment of amounts properly due Subcontractors after receiving payment from District.

.3 Design-Builder disregards Applicable Code Requirements.

.4 Design-Builder persistently or materially fails to execute the Work in accordance with the Contract Documents.

.5 Design-Builder is in default of any other material obligation under the Contract Documents.

.6 Design-Builder persistently or materially fails to comply with applicable safety requirements.

13.2.3 Upon any of the occurrences referred to in Articles 13.2.1 and 13.2.2 above, District may, at its election and by notice to Design-Builder, terminate the Contract and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by Design-Builder; accept the assignment of any or all of the subcontracts; and then complete the Work by any method District may deem expedient. If requested by District, Design-Builder shall remove any part or all of Design-Builder's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within [seven (7)] days of such request; and if Design-Builder fails to do so, District may remove or store, and after [ninety (90)] days sell, any of the same at Design-Builder's expense.

13.2.4 If the Contract is terminated by District as provided in this Article 13.2, Design-Builder shall not be entitled to receive any further payment until the expiration of [thirty-five (35)] days after Final Completion and acceptance of all Work by District.

13.2.5 If the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, including costs for District staff time, plus all losses sustained, including any liquidated damages provided under the Contract Documents, such excess shall be paid to Design-Builder. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, Design-Builder shall pay such excess to District.

13.2.6 No termination or action taken by District after termination shall prejudice any other rights or remedies of District provided by law or by the Contract Documents upon such termination, and District may proceed against Design-Builder to recover all losses suffered by District.

13.3 SUSPENSION BY DISTRICT FOR CONVENIENCE

13.3.1 District may, at any time and from time to time, without cause, order Design-Builder, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time as District may determine, up to [ninety (90)] days, with such period of suspension to be computed from the date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Article 13.3. The Work may be stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, Design-Builder shall, at District's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within [ninety (90)] days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by Design-Builder and District, District shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Change Order.

13.3.2 If a Suspension Order is canceled or expires, Design-Builder shall continue with the Work. A Change Order shall be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. Any Claim by Design-Builder for an adjustment of the Contract Sum or the Contract Time shall be made within [twenty-one (21)] days after the end of the Work suspension. Design-Builder agrees that submission of its claim within said [twenty-one (21)] days is an express condition precedent to its right to Arbitrate or Litigate such a claim.

13.3.3 The provisions of this Article 13.3 shall not apply if a Suspension Order is not issued by District. A Suspension Order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.

13.4 TERMINATION BY DISTRICT FOR CONVENIENCE

13.4.1 District may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to Design-Builder. Upon such termination, Design-Builder agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of Design-Builder, District shall pay Design-Builder in accordance with Article 13.4.4 below.

13.4.2 Upon receipt of notice of termination under this Article 13.4, Design-Builder shall, unless the notice directs otherwise, do the following:

- .1 Immediately discontinue the Work to the extent specified in the notice.
- .2 Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued;
- .3 Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work; and
- .4 Thereafter, do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.

13.4.3 Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and, subject to Design-Builder's obligations under Article 13.4.2 above, as to bona fide obligations assumed by Design-Builder prior to the date of termination.

13.4.4 Upon such termination, District shall pay to Design-Builder the sum of the following:

- .1 The amount of the Contract Sum allocable to the portion of the Work properly performed by Design-Builder as of the date of termination, less sums previously paid to Design-Builder.
- .2 Incorporation in the Work.
- .3 Plus any proven losses with respect to materials and equipment directly resulting from such termination.
- .4 Plus reasonable demobilization costs.
- .5 Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and losses in connection with such termination.

The above payment shall be the sole and exclusive remedy to which Design-Builder is entitled in the event of termination of the Contract by District pursuant to this Article 13.4, and Design-Builder shall be entitled to no other compensation or damages and expressly waives same.

ARTICLE 14. STATUTORY AND OTHER REQUIREMENTS

14.1 NONDISCRIMINATION

14.1.1 For purposes of this Article 14.1, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

14.1.2 Design-Builder shall comply and shall ensure that all Subcontractors comply with Sections 12900 through 12996 of the Government Code.

14.1.3 Design-Builder agrees as follows during the performance of the Work:

- .1 In accordance with Article 3.7.9 herein, Design-Builder shall provide equal treatment to, and shall not willfully discriminate against or allow

harassment of any employee or applicant for employment on the basis of: race; religious creed; color; national origin; ancestry; physical disability; mental disability; medical condition (as defined in Section 12926 of the Government Code and including cancer-related medical conditions and/or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; sex, gender; gender identity; gender expression; age; sexual orientation; pregnancy; citizenship (within the limits imposed by law or District's policy); or military and veteran status or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). Design-Builder shall also take affirmative action to ensure that any such employee or applicant for employment is not discriminated against on any of the bases identified above. Such equal treatment shall apply, but not be limited to the following: employment; upgrade; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design-Builder also agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Design-Builder shall, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, state that qualified applicants shall receive consideration for employment without regard to: race; religious creed; color; national origin; ancestry; physical disability; mental disability; medical condition (as defined in Section 12926 of the Government Code and including cancer-related medical conditions and/or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; sex, gender; gender identity; gender expression; age; sexual orientation; pregnancy; citizenship (within the limits imposed by law or District's policy); or military and veteran status or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). For purposes of this provision: (1) "pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth; and (2) "service in the uniformed services" includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

.2 Design-Builder and all Subcontractors shall permit access to their records of employment, employment advertisements, application forms, and other pertinent data and records by District or any appropriate agency of the State of California designated by District for the purposes of investigation to ascertain compliance with this Article 14.1. The outcome of the investigation may result in the following:

.1 A finding of willful violation of the provisions of this Contract or of the California Fair Employment and Housing Act may be regarded by District as (1) a basis for determining that Design-Builder is not a "responsible bidder" as to future contracts for which such Design-Builder may submit bids, or (2) a basis for refusing to accept or consider the bids of Design-Builder for future contracts.

.2 District may deem a finding of willful violation of the California Fair Employment and Housing Act to have occurred upon receipt of written notice from the California Department of Fair Employment and Housing that it has (1) investigated and determined that Design-Builder has violated the California Fair Employment Practices Act, and (2) issued an order or obtained pursuant to Applicable Code Requirements.

.3 Upon receipt of such written notice from the Fair Employment Practices Commission, District may notify Design-Builder that, unless it demonstrates to the satisfaction of District within a stated period that the violation has been corrected, Design-Builder's Proposals on future projects shall not be considered.

.4 Design-Builder agrees that, should District determine that Design-Builder has not complied with this Article 14.1, Design-Builder shall forfeit to District, as a penalty, for each day or portion thereof, for each person who was denied employment as a result of such non-compliance, the penalties provided in Article 14.2 below for violation of prevailing wage rates. Such penalty amounts may be recovered from Design-Builder; and District may deduct any such penalty amounts from the Contract Sum.

.5 Nothing contained in this Article 14.1 shall be construed in any manner so as to prevent District from pursuing any other remedies that may be available at law.

.6 Design-Builder shall meet the following standards for compliance and provide District with satisfactory evidence of such compliance upon District's request, which shall be evaluated in each case by District:

.1 Design-Builder shall notify its Superintendent and other supervisory personnel of the nondiscrimination requirements of the Contract Documents and their responsibilities thereto.

.2 Design-Builder shall notify all sources of employee referrals (including unions, employment agencies, and the State of California Employment Development Department) of the nondiscrimination requirements of the Contract Documents by sending to such sources and by posting the Notice of Equal Employment Opportunity ("EEO").

.3 Design-Builder and/or its representative shall, through all unions with whom it may have agreements, develop agreements that (1) define responsibilities for nondiscrimination in hiring, referrals, upgrading, and training; and (2) implement an affirmative nondiscrimination program, in terms of the unions' specific areas of skill and geography, such that qualified minority women, non-minority women, and minority men shall be available and given an equal opportunity for employment.

.4 Design-Builder shall notify District of opposition to the nondiscrimination requirements of the Contract Documents by individuals, firms, or organizations during the term of the Contract.

.7 Design-Builder shall include the provisions of the foregoing Articles 14.1.3.2.1 through 14.1.3.2.6 in all subcontracts with Subcontractors, so that such provisions shall be binding upon each such Subcontractor.

14.2 PREVAILING WAGE RATES

14.2.1 For purposes of this Article 14.2, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

14.2.2 This Project is a public works project and is subject to the payment of prevailing wages. Design-Builder shall comply and shall ensure that all Subcontractors comply with prevailing wage law pursuant to the Labor Code, including, but not limited to, Section 1720 et seq. of the Labor Code, and the Education Code, as applicable. Compliance with these sections is required by this Contract. The Work under this Contract is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations ("DIR").

14.2.3 The State of California DIR has ascertained the general prevailing *per diem* wage rates in the locality in which the Construction Work is to be performed for each craft, classification, or type of worker required to perform the Work. A copy of the general prevailing *per diem* wage rates shall be on file at District's principal facility office and shall be made available to any interested party upon request. Design-Builder shall post a copy of the general prevailing *per diem* wage rates as well as job site notices as prescribed by regulation at the job site. By this reference, such schedule is made part of the Contract Documents. Design-Builder shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Design-Builder in the execution of the Construction Work. Design-Builder shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the prevailing rates to all workers employed by such Subcontractors in the execution of the Construction Work. Design-Builder shall forfeit to District, as a penalty, not more than Two Hundred Dollars (\$200) for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Work done by Design-Builder or any Subcontractor. The amount of this penalty shall be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the Contract Sum or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the Contract Sum. Design-Builder shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Construction Work, for each day, or portion thereof, for which the worker was paid less than the specified prevailing *per diem* wage rate, an amount equal to the difference between the specified prevailing *per diem* wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment shall be made pursuant to Section 1742 of the Labor Code.

14.2.4 Each Design-Builder submitting a proposal must be a DIR registered contractor pursuant to Labor Code Section 1725.5 ("DIR Registered

Contractor”), unless an exception expressly provided in the Labor Code applies. This project is subject to compliance monitoring and enforcement by DIR. A proposer who is not a DIR Registered Contractor when submitting a proposal for the work shall be initially rejected as the District may not accept any proposal that does not satisfy the requirements of Labor Code Section 1725.5 and may not enter into any contract for the completion of a public works project with a proposer that is not a DIR Registered Contractor pursuant to Labor Code Section 1725.5(e). Pursuant to Labor Code Section 1725.5, all subcontractors identified in a Proposer’s Subcontractor List shall also be DIR Registered Contractors. If awarded the Contract, at all times during performance of the work, the Proposer and all Subcontractors of any tier shall be DIR Registered Contractors and continue to comply with all DIR requirements.

14.3 PAYROLL RECORDS

14.3.1 For purposes of this Article 14.3, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

14.3.2 Design-Builder and all Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual *per diem* wages paid to each journeyworker, apprentice, worker, or other employee employed in connection with the Construction Work. All payroll records shall be certified as being true and correct by Design-Builder or Subcontractors keeping such records, and the payroll records shall be filed electronically with the Labor Commissioner at least monthly and be available for inspection at all reasonable hours at the principal office of Design-Builder on the following basis:

.1 A certified copy of an employee’s payroll record shall be made available for inspection or furnished to such employee or the employee’s authorized representative on request.

.2 A certified copy of all payroll records shall be made available for inspection upon request to District, the State of California Division of Labor Standards Enforcement (“DLSE”), and the Division of Apprenticeship Standards (“DAS”) of the State of California DIR.

.3 A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either District, the DAS, or the DLSE. The public shall not be given access to such records at the principal offices of Design-Builder or Subcontractors. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by District 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 Design-Builder awarded the Contract or performing the Contract shall not be marked or obliterated.

14.3.3 Design-Builder shall file a certified copy of the payroll records with the entity that requested the records within ten (10) days after receipt of a written request. Design-Builder shall inform District of the location of such payroll records for the Project, including the street address, city, and county; and Design-Builder shall, within five (5) working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Article 14.3 or with Labor Code Section 1776, Design-Builder shall have ten (10) days in which to comply following receipt of notice specifying in what respects Design-Builder must comply. Should noncompliance still be evident after the ten (10) day period, Design-Builder shall forfeit to District, as a penalty, One Hundred Dollars (\$100) for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Contract Sum.

14.4 APPRENTICES

14.4.1 For purposes of this Article 14.4, the term Subcontractor shall not include suppliers, manufacturers, and distributors.

14.4.2 Only apprentices, as defined in Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Division 3, Chapter 4, of the Labor Code, are eligible to be employed by Design-Builder and Subcontractors as apprentices. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training and in accordance with prevailing wage law pursuant to the Labor Code, including, but not limited to, Section 1777.5. The Design-Builder bears responsibility for compliance with this section for all apprenticeable occupations.

14.4.3 Every apprentice shall be paid the standard wage to apprentices, under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only for the Construction Work in the craft or trade to which the apprentice is indentured.

14.4.4 When Design-Builder or Subcontractors employ workers in any apprenticeship craft or trade on the Work, Design-Builder or Subcontractors shall 1) send contract award information to the applicable joint apprenticeship committee that can supply apprentices to the site of the public work; and 2) apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the area of the Project site, for a certificate approving Design-Builder or Subcontractors under the apprenticeship standards for the employment and training of apprentices in the area of the Project site. The committee shall issue a certificate fixing the number of apprentices or the ratio of apprentices to journeypersons who shall be employed in the craft or trade on the Construction Work. The ratio shall not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of journeyperson work, except as permitted by law. Design-Builder or Subcontractors shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices, or the ratio of apprentices to journeypersons fixed in the certificate issued by the joint apprenticeship committee, or present an exemption certificate issued by the DAS.

14.4.5 “Apprenticeship craft or trade,” as used in this Article 14.4, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council.

14.4.6 If Design-Builder or Subcontractors employ journeyworkers or apprentices in any apprenticeship craft or trade in the area of the Project site, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other contractors in the area of the Project site are contributing, Design-Builder and Subcontractors shall contribute to the fund or funds in each craft or trade in which they employ journeyworkers or apprentices on the Construction Work in the same amount or upon the same basis and in the same manner done by the other contractors. Design-Builder may include the amount of such contributions in computing its Proposal for the Contract; but if Design-Builder fails to do so, it shall not be entitled to any additional compensation therefore from District.

14.4.7 In the event Design-Builder willfully fails to comply with this Article 14.4, it shall be considered in violation of the requirements of the Contract.

14.4.8 Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Design-Builder or Subcontractors of journeyworker trainees who may receive on-the-job training to enable them to achieve journeyworker status in any craft or trade under standards other than those set forth for apprentices.

14.5 CONSTRUCTION WORK-DAY

14.5.1 Design-Builder shall not permit any worker to labor more than eight (8) hours during any one (1) day, or more than forty (40) hours during any one (1) calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Design-Builder shall forfeit to District, as a penalty, Twenty-Five Dollars (\$25) for each worker employed in the execution of this Contract by Design-Builder, or any Subcontractor, for each day during which such worker is required or permitted to work more than eight (8) hours in any one (1) day and forty (40) hours in any one (1) calendar week in violation of the terms of this Article 14.5 or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the Contract Sum. Design-Builder and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each day and each calendar week by each worker employed on the Project, which record shall be kept open at all reasonable hours to the inspection of District, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

15.1 GOVERNING LAW

15.1.1 This Contract shall be governed by the laws of the State of California.

15.2 SUCCESSORS AND ASSIGNS

15.2.1 District and Design-Builder respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Design-Builder shall not assign, transfer, convey, sublet, or otherwise dispose of this Contract or any part thereof including any claims, without prior written consent of the District. Any assignment without the written consent of the District shall be void. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering such services or supplying such Materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure, or the Government Code.

15.3 RIGHTS AND REMEDIES

15.3.1 All District's rights and remedies under the Contract Documents shall be cumulative and in addition to, and not in limitation of, all other rights and remedies of District under the Contract Documents or otherwise available at law or in equity.

15.3.2 No action or failure to act by District or District's Representative shall constitute a waiver of a right afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by District or District's Representative of any condition, breach, or default shall constitute a waiver of any other condition, breach, or default, nor shall any such waiver constitute a continuing waiver.

15.3.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against District, District's Representative, or Design-Builder.

15.4 SURVIVAL

15.4.1 The provisions of the Contract, which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and District's right to audit Design-Builder's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

15.5 COMPLETE AGREEMENT

15.5.1 The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in Article 7 of the General Conditions.

15.6 SEVERABILITY OF PROVISIONS

15.6.1 If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

15.7 RESERVED**15.8 TIME OF THE ESSENCE**

15.8.1 Time is of the essence with respect to all terms and provisions of the Contract Documents.

15.9 DISTRICT'S RIGHT TO AUDIT

15.9.1 District and entities and agencies designated by District shall have access to and the right to audit and the right to copy at District's cost all of Design-Builder's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Design-Builder shall preserve all such records and other items during the performance of the Contract and for a period of at least three (3) years after Final Completion.

15.10 METHODS OF DELIVERY FOR SPECIFIED DOCUMENTS

15.10.1 The following documents must be delivered in a manner specified in Article 15.10.2:

- .1 Design-Builder notices of election to litigate or arbitrate;
- .2 Written demand for an informal conference to meet and confer pursuant to Article 4.5;
- .3 District's written statement identifying remaining disputes following informal conference pursuant to Article 4.6;
- .4 Written demand for non-binding mediation pursuant to Article 4.6;
- .5 Design-Builder claims pursuant to Article 4.3;
- .6 Design-Builder notices of conditions pursuant to Articles 3.10.4, 3.24, or 3.25;
- .7 District's notices of Design-Builder's failure to perform and/or correct defective work pursuant to Articles 4.1.6, 12.2 and 13.2.3;
- .8 District's notice to stop work pursuant to Article 2.3.1; and
- .9 Notices of termination or suspension pursuant to Article 13.

15.10.2 Delivery methods for documents specified in Article 15.10.1 include:

- .1 By personal delivery; or
- .2 Sent by facsimile copy where receipt is confirmed; or
- .3 Sent by Express Mail, or another method of delivery providing for overnight delivery where receipt is confirmed; or
- .4 Sent by registered or certified mail, postage prepaid, return receipt requested.

15.10.3 The documents identified in Article 15.10.1 shall only be effective if delivered in the manner specified in Article

15.10.2. Subject to the forgoing, such documents shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. Delivery of the specified documents shall be made at the respective street addresses set forth in the Agreement. Such street addresses may be changed by notice given in accordance with this Article 15.10.

15.11 MUTUAL DUTY TO MITIGATE

15.11.1 District and Design-Builder shall use all reasonable and economically practicable efforts to mitigate delays and damages to the Project and to one another with respect to the Project, regardless of the cause of such delay or damage.

15.12 FAIR WAGE

15.12.1 Design-Builder shall comply with all applicable federal, state and local working condition requirements.

15.13 COUNTERPARTS

15.13.1 The Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed via a District-approved digital signature process and shall have the same force and effect as the use of a manual signature. The District reserves the right to reject any digital signature that cannot be positively verified by the District system as an authentic digital signature.

15.14 NOTICE AND SERVICE THEREOF

15.14.1 All notices shall be in writing and shall either be served by personal delivery or mailed to the other party. Written notice to the Design-Builder shall be addressed to Design-Builder's principal place of business unless Design-Builder designates another address in writing for service of notice. Notice to District shall be addressed to the District as designated in the Project Directory unless District designates another address in writing for service of notice. Notice shall be effective upon receipt or **five (5)** days after being sent by first class mail, whichever is earlier.

15.15 AUTHORIZED REPRESENTATIVES

15.15.1 The District shall designate representatives, who shall have the right to be present at the Project site at all times. The District may designate an inspector, in accordance with requirements of Title 19, 21 and/or 24 of the California Code of Regulations, who shall have the right to observe all of the Design-Builder's Work. His/her duties are specifically defined in the California Code of Regulations. The inspector is not authorized to make changes in the Contract Documents. The inspector shall not be responsible for the Design-Builder's failure to carry out the Work in accordance with the Contract Documents. Inspector shall be provided with all necessary samples of materials and work for testing purposes. She/he shall have free access to any or all parts of Work at any time. Design-Builder shall provide safe and proper facilities for such access.

15.16 PROHIBITED INTERESTS

15.16.1 No District official or representative who is authorized in such capacity and on behalf of the District to negotiate, supervise, make, accept, or approve, or to take part in negotiating, supervising, making, accepting, or approving any engineering, inspection, construction, or material supply contract or any subcontract in connection with construction of the Project, shall be or become directly or indirectly interested financially in the Contract.

[END OF DOCUMENT]