

SECTION 00 00 10

PROJECT TITLE & SIGNATURES

PROJECT MANUAL
PERALTA COMMUNITY COLLEGE DISTRICT
LANEY COLLEGE TITLE IX LOCKER ROOM
RENOVATION PROJECT

DATE: October 09 , 2020
OWNER: Peralta Community College District
333 East 8th St,
Oakland, CA 94606

FILE NO: 19-20/11

IDENTIFICATION STAMP		
DIV. OF THE STATE ARCHITECT		
OFFICE OF REGULATION SERVICES		
APPL		
AC _____	FLS _____	SS _____
DATE _____		

ARCHITECT AND CONSULTING ENGINEERS:

Architect:

By: _____
Consultant Name (license no.)

By: _____
Consultant Name (license no.)

By: _____
Consultant Name (license no.)

By: _____
Consultant Name (license no.)

END OF SECTION

SECTION 00 01 10

TABLE OF CONTENTS

For convenience of packaging and reference only, documents are provided to the Proposers in four (4) parts, Numbered 1 through 4. Parts are arranged as follows:

Part 1 - Project Requirements (Divisions 0 and 1)

Request for Proposal - Section 00 10 00

Part 2 - Criteria Documents (Divisions 2 - 33)

Narrative (Criteria Report 08-10-2020)

Part 3 - Criteria Documents (Drawings)

Part 4 - Reference Documents

1. PCCD Facilities & Technology Master Plan Update 2017
2. Geotechnical Report dated April 25, 2012
3. Theater Modernization 100% SD Drawings and Specifications
4. Peralta Community College District Building Design & Construction Standards
5. Hazmat Report (*In Progress- will add into future addendum*)

Reference Documents, reports and surveys are provided for Bidder's convenience unless identified as such in the Project Requirements, they are not Contract Documents.

PART 1 - PROJECT REQUIREMENTS

DIVISION 0: CONTRACT REQUIREMENTS

00 00 01	Project Title & Signatures
00 01 10	Table of Contents
00 01 15	Drawing List
00 10 00	Request for Proposals
00 10 15	Substitution Form
00 11 13	Notice to Design Build Entities
00 26 40	Rules and Procedures for Discussions and Negotiations
00 33 50	Existing Site Conditions
00 35 00	Labor Compliance Program
00 43 00	Bond Accompanying Proposal
00 45 00	Proposer Certifications
00 50 00	Agreement
00 50 01	Notice to Proceed with Design
00 50 02	Notice to Proceed with Construction
00 50 03	Notice of Award (NOA)
00 50 04	Notice of Intent to Award Design Build Contract (NOIA)
00 51 50	Escrow Bid Documentation
00 51 60	Escrow Agreement for Security Deposits in Lieu of Retention
00 52 00	Pre-Proposal Mtg Agrmt waiver of claims FINAL

DIVISION 1: GENERAL REQUIREMENTS

01 01 50	Additional Requirements for DSA
01 11 00	Summary of Work
01 11 13	Work Covered By Contract Documents
01 11 20	Design Services and Deliverables
01 14 00	Work Restrictions
01 14 10	Construction Management Plan
01 23 00	Alternates
01 31 00	Project Management and Coordination
01 31 19	Project Meetings
01 31 20	Project Management Software
01 33 00	Submittal Procedures
01 35 50	CALGreen Environmental Requirements
01 41 00	Regulatory Requirements
01 42 00	References
01 42 13	Abbreviations
01 45 00	Quality Control
01 52 00	Construction Facilities
01 60 00	Product Requirements
01 70 00	Execution and Close Out Procedures
01 71 23	Field Engineering
01 73 00	Execution
01 73 29	Cutting and Patching
01 77 00	Cleaning and Closeout Procedures
01 81 00	Building Information Modeling (BIM) Performance Requirements

- 01 88 20 Miscellaneous Hazardous Materials Performance Requirements
- 01 89 00 Site Construction Performance Requirements
- 01 95 06 Recycled Content Certification Form

PART 2 – CRITERIA DOCUMENTS (TECHNICAL SPECIFICATIONS)

DIVISION 02 – EXISTING CONDITIONS

- 02 41 00 Demolition

DIVISION 03 – CONCRETE

- 03 20 00 Concrete Reinforcing
- 03 30 00 Cast-in-Place Concrete

DIVISION 05 – METALS

- 05 40 00 Cold-Formed Metal Framing
- 05 52 13 Pipe and Tube Railings

DIVISION 06 – WOOD, PLASTICS, AND COMPOSITES

- 06 10 00 Rough Carpentry
- 06 41 00 Architectural Wood Casework

DIVISION 07 – THERMAL AND MOISTURE PROTECTION

- 07 21 00 Thermal Insulation
- 07 84 00 Firestopping
- 07 92 00 Joint Sealants

DIVISION 08 – OPENINGS

- 08 11 13 Hollow Metal Doors and Frames
- 08 31 00 Access Doors and Panels
- 08 33 13 Coiling Counter Doors
- 08 43 13 Aluminum-Framed Storefronts
- 08 80 00 Glazing
- 08 83 00 Mirrors

DIVISION 09 – FINISHES

- 09 05 61 Common Work Results for Flooring Preparation
- 09 21 16 Gypsum Board Assemblies
- 09 30 00 Tiling
- 09 51 00 Acoustical Ceilings
- 09 65 00 Resilient Flooring
- 09 68 13 Tile Carpeting
- 09 91 23 Interior Painting

DIVISION 10 – SPECIALTIES

Peralta Community College District
Laney College Title IX Locker Room Remodel

TABLE OF CONTENTS
00 01 10-3

- 10 11 00 Visual Display Units
- 10 14 00 Signage
- 10 21 13.17 Phenolic Toilet Compartments
- 10 26 00 Wall and Door Protection10 28 00 - Toilet, Bath, and Laundry Accessories
- 10 44 00 Fire Protection Specialties
- 10 51 00 Lockers

DIVISION 12 – FURNISHINGS

- 12 24 00 Window Shades - MechoShade Systems
- 12 36 00 Countertops

DIVISION 21 – FIRE SUPPRESSION

- 21 00 00 Fire Suppression Basic Requirements
- 21 05 00 Common Work Results for Fire Suppression
- 21 13 00 Fire-Suppression Sprinkler Systems

DIVISION 22 – PLUMBING

- 22 00 00 Plumbing Basic Requirements
- 22 05 19 Plumbing Devices
- 22 05 23 General-Duty Valves for Plumbing Piping
- 22 05 29 Hangers and Supports for Plumbing Piping and Equipment
- 22 05 48 Vibration and Seismic Controls for Plumbing Piping and Equipment
- 22 05 53 Identification for Plumbing Piping and Equipment
- 22 05 93 Testing, Adjusting, and Balancing for Plumbing
- 22 07 00 Plumbing Insulation
- 22 10 00 Plumbing Piping
- 22 30 00 Plumbing Equipment
- 22 40 00 Plumbing Fixtures

DIVISION 23 – HEATING VENTILATING, AND AIR CONDITIONING (HVAC)

- 23 00 00 Heating, Ventilating, and Air Conditioning (HVAC) Basic Requirements
- 23 05 13 Common Motor Requirements for HVAC Equipment
- 23 05 19 Meters and Gauges for HVAC Piping
- 23 05 23 General-Duty Valves for HVAC Piping
- 23 05 29 Hangers and Supports for HVAC Piping and Equipment
- 23 05 48 Vibration and Seismic Controls for HVAC
- 23 05 53 Identification for HVAC Piping and Equipment
- 23 05 93 Testing, Adjusting, and Balancing for HVAC
- 23 07 00 HVAC Insulation
- 23 09 00 Instrumentation and Control Performance Specifications
- 23 21 13 HVAC Piping
- 23 21 16 Hydronic Piping Specialties
- 23 31 00 HVAC Ducts and Casings
- 23 33 00 Air Duct Accessories
- 23 34 00 HVAC Fans
- 23 36 00 Air Terminal Units

23 37 00 Air Outlets and Inlets
23 40 00 HVAC Air Cleaning Devices
23 82 16 Air Coils

DIVISION 26 – ELECTRICAL

26 05 05 Selective Demolition for Electrical
26 05 19 Low-Voltage Electrical Power Conductors and Cables
26 05 26 Grounding and Bonding for Electrical Systems
26 05 29 Hangers and Supports for Electrical Systems
26 05 33 Raceways and Boxes for Electrical Systems
26 05 53 Identification for Electrical Systems
26 05 83 Wiring Connections
26 09 23 Automatic Lighting Control Devices
26 24 16 Panelboards
26 27 26 Wiring Devices
26 51 00 Interior Lighting

PART 3 – CRITERIA DOCUMENTS (DRAWINGS)

Refer to SECTION 00 01 10 Drawing list (Criteria Drawings set)

PART 4 – REFERENCE DOCUMENTS

REFERENCE DOCUMENTS

1. PCCD Facilities & Technology Master Plan Update 2017
2. Geotechnical Report dated April 25, 2012
3. Theater Modernization 100% SD Drawings and Specifications
4. Peralta Community College District Building Design & Construction Standards
5. Hazmat Report (*In Progress- will add into future addendum*)

END OF SECTION

SECTION 00 01 15

DRAWING LIST

PART 3 - CRITERIA DOCUMENTS - DRAWINGS

GENERAL

G-000	COVERSHEET
G-010	GENERAL NOTES
G-011	GENERAL NOTES
G-012	PROJECT SYNOPSIS
G-131	FIRE LIFE SAFETY PLAN
G-140	ACCESSIBILITY SITE PLAN
G-140B	(E) ACCESSIBLE PARKING LOT
G-140C	(E) ACCESSIBLE PARKING LOT DETAILS
G-140D	(E) ACCESSIBLE CROSSWALK
G-141	ACCESSIBILITY PLAN - AREA OF ALTERATION
G-530	ACCESSIBILITY DETAILS
G-531	ACCESSIBILITY DETAILS
G-532	ACCESSIBILITY DETAILS

ARCHITECTURAL

A-000	ARCHITECTURAL GENERAL NOTES
A-002	CONCEPT DESIGN
A-021	LEVEL 1 OVERALL DEMOLITION PLAN
A-031	LEVEL 1 OVERALL REFLECTED CEILING DEMOLITION PLAN
A-121	LEVEL 1 OVERALL FLOOR PLAN
A-131	LEVEL 1 OVERALL REFLECTED CEILING PLAN
A-520	FRAMING DETAILS
A-530	TYPICAL CEILING DETAILS
A-531	TYPICAL CEILING DETAILS
A-540	CASEWORK DETAILS
A-550	INTERIOR DETAILS
A-600	DOOR AND WINDOW SCHEDULE

INTERIORS

ID121	LEVEL 1 FINISH PLAN
ID401	LEVEL 1 - ENTRANCE
ID402	LEVEL 1 - RAMP
ID403	LEVEL 1 - COMMON AREA
ID404A	LEVEL 1 - HALLWAY
ID404B	LEVEL SL 2 SEGMENT A FINISH PLAN
ID405	LEVEL 1 - TEAM ROOM
ID406	LEVEL 1 - TRAINING ROOM
ID407	LEVEL 1- WOMENS GENERAL LOCKER ROOM
ID408	LEVEL 1 - MULTIPURPOSE ROOM
ID600	FINISH LEGEND AND SCHEDULE

STRUCTURAL

S-001 GENERAL NOTES & TYPICAL DETAILS
S-101 LEVEL 1 STRUCTURAL DEMO PLAN
S-201 LEVEL 1 STRUCTURAL FLOOR PLAN

MECHANICAL

M-001 SYMBOLS LIST AND GENERAL NOTES - MECHANICAL
M-002 SCHEDULES - MECHANICAL
M-121 LEVEL 1 PLAN - MECHANICAL
MD-121 LEVEL 1 DEMOLITION PLAN - MECHANICAL
M-101 LEVEL 1 ZONING PLAN – MECHANICAL

PLUMBING

P-001 SYMBOLS LIST AND GENERAL NOTES - PLUMBING
P-002 SCHEDULES - PLUMBING
PD-121 LEVEL 1 DEMOLITION PLAN - PLUMBING
P-121 LEVEL 1 PLAN – PLUMBING

ELECTRICAL

E-001 ABBREVIATIONS, SYMBOLS, LUMINAIRE SCHEDULE, SHEET INDEX
E-101 BASEMENT FLOOR PLAN - DEMOLITION POWER AND SIGNAL
E-121 BASEMENT FLOOR PLAN - DEMOLITION LIGHTING
E-201 LEVEL 1 FLOOR PLAN - NEW POWER AND SIGNAL
E-221 BASEMENT FLOOR PLAN - NEW LIGHTING
E-301 ONE LINE DIAGRAM, PANEL SCHEDULES
E-401 DETAILS

END OF SECTION

PERALTA COMMUNITY COLLEGE DISTRICT



**REQUEST FOR PROPOSAL FROM
PROSPECTIVE DESIGN/BUILD ENTITIES**

Laney College Campus Title IX Locker Room Renovation Project

**RFP #19-20/11
Peralta Community College District**

OCTOBER 09, 2020

SECTION 00 10 00

REQUEST FOR PROPOSALS

This RFP is composed of four (4) Parts:

Part 1: Contract Requirements: Division 0 and 1 Specifications

Part 2: Criteria Document - Technical Specifications

Part 3: Criteria Document - Drawings

Part 4: Reference Documents

1. PCCD Facilities & Technology Master Plan Update 2017
2. Geotechnical Report dated April 25, 2012
3. Theater Modernization 100% SD Drawings and Specifications
4. Peralta Community College District Building Design & Construction Standards
5. Hazmat Report (*In Progress- will add into future addendum*)

Reference Documents, reports and surveys are provided for Respondent's convenience unless identified as such in the Project Requirements, they are not Contract Documents.

**PERALTA COMMUNITY COLLEGE DISTRICT
REQUEST FOR PROPOSALS
TITLE IX LOCKER ROOM RENOVATION PROJECT AT LANEY COLLEGE
DESIGN-BUILD SERVICES
RFP # 19-20/11**

Peralta Community College District ("District") is seeking prequalified Design-Build Entities (DBEs) to submit competitive Proposals to design and construct the District's TITLE IX LOCKER ROOM RENOVATION PROJECT ("Project"), in accordance with Education Code section 81700 et seq. Only Respondents that have been prequalified by the District in response to the prior Request for Qualifications ("RFQ") for the Project will be eligible to submit Proposals in response to this Request for Proposals ("RFP").

Respondents must submit one (1) electronic copy of the Proposal (uploading instructions will be issued via Addendum), conforming to the requirements of this RFP to:

PERALTA COMMUNITY COLLEGE DISTRICT
Department of General Services
333 East 8th Street
Oakland, CA 94606
ATTN: Nicanor Custodio, Purchasing Department Buyer
RFP # 19-20/11

ALL PROPOSALS ARE DUE BY 2:00 P.M. ON Friday ,December 4, 2020. Oral, telegraphic, facsimile, or telephone Proposals will not be accepted. Proposals received after this date and time will not be accepted and will be returned unopened. The District reserves the right to waive irregularities and omissions in any Proposal, and to make all final determinations. The District also reserves the right to reject any and all Proposals and to negotiate contract terms with one or more Respondents.

Mandatory information meeting is scheduled for Thursday, October 15, 2020 at 2:00 PM. The meeting will be conducted online, with invitations sent out via e-mail to pre-qualified Design-Build Entities.

Questions regarding this RFP may be directed in writing to the District's Construction Manager, Stan Wong of Swinerton Management & Consulting, at swong@swinerton.com and must be submitted on or by **Friday, November 20, 2020.**

I. RFP SCHEDULE SUMMARY

The District may change the dates on this schedule without prior notice.

DEADLINE	ACTION ITEM
October 9, 2020	Release and distribution of RFP to prequalified Respondents.
October 15 , 2020 at 2:00 PM	Mandatory information meeting.
Week of November 2, 2020	Confidential Meetings
November 20, 2020	Last day to receive written questions from Respondents.
November 30, 2020	Last day for District to issue addenda or answer questions.
December 4, 2020	Deadline for Proposals in response to RFP.
December 9, 2020	Interview notifications provided to Respondents.
Week of December 14, 2020	Interviews of Respondents.
December 18, 2020	Notification to selected DBE(s) to start negotiation.

II. INTRODUCTION

The District is seeking Proposals from prequalified design-build entities or design-build teams (each referred to herein as "DBE") to design and construct the District's TITLE IX LOCKER ROOM RENOVATION PROJECT ("Project"), in accordance with Education Code section 81700 et seq. This RFP defines the services sought from the DBE and generally outlines the Project requirements.

III. DESIGN-BUILD PROCUREMENT PROCESS

Pursuant to Education Code section 81703, procurement of a DBE for the Project will follow two (2) phases:

1. Prequalification – First, by prior RFQ, the District prequalified Respondents using a standard template request for statements of qualifications.
2. Design-Build Competition – Second, by this RFP, the District invites only prequalified Respondents to submit competitive Proposals for the Project. The District will use a best value selection method for evaluating Proposals. The selection criteria and procedure are defined in this RFP.

Any person or entity that has performed or is performing services for District relating to the solicitation of this design-build project, including, without limitation, services relating to the

development of performance criteria, will **not** be eligible to submit a proposal as a design-build entity or to join a design-build team.

IV. PROJECT DESCRIPTION AND SCOPE OF SERVICES

A. Overview

Pursuant to Education Code section 81700 et seq., the selected DBE will design and construct the Project. The Project is further defined in the attached **Appendix A**.

The members of the DBE must be appropriately licensed and registered in the State of California for architectural, engineering, and construction services, as applicable and as needed to complete the Project. In addition, the DBE shall have experience with both design and construction of public school facilities and in working with the California Community Colleges Chancellor's Office ("CCCCO"), the Division of the State Architect ("DSA"), and Title 24 of the California Code of Regulations.

All tiers of contractors performing work on the project must be registered with the Department of Industrial Relations ("DIR") as required by law. The DBE will be required to comply with the Labor Code prevailing wage requirements and the District's bonding and insurance requirements. The DBE shall be required to work cooperatively with District staff, Governing Board, all other technical consultants, the Criteria Architect, the project inspector, and program and/or construction manager, if any, retained by the District for the Project, citizens' oversight committee, other District committees, and the community to facilitate timely and professional completion of the Project.

B. Criteria Documents

Pursuant to Education Code section 81703, subdivision (a), the District's Criteria Architect, Taylor Design, has prepared Project Criteria Documents, which are listed in **Appendix B** and incorporated herein by this reference. The Criteria Documents may establish, without limitation, the size, type, and desired design character of the Project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the District's needs.

Respondents must completely familiarize themselves with the Criteria Documents prior to submitting a Proposal. The selected DBE will be required to strictly adhere to the Criteria Documents in completing the design and constructing the Project.

C. Scope of Work

Although the final scope of work will be negotiated in the executed Agreement, the selected DBE shall be responsible for performing the following scope of work, at a minimum:

1. Design Services

- a. Complete the design for the Project based on the Criteria Documents, including related meetings with the District for input and approval at multiple stages of design development and preparation of detailed construction cost budgets.

- i. Design Development: Prepare Design Development Documents from the Criteria Documents, including related architectural, structural, mechanical, electrical, civil, and landscape services, for District review and approval.
 - ii. 50% Construction Documents: Upon the District's acceptance of the Design Development Documents (or earlier as approved by District), prepare 50% construction documents for District review and approval.
 - iii. 100% Construction Documents: Upon the District's acceptance of 50% Construction Documents (or earlier as approved by District), prepare 100% Construction Documents for District review and approval.
- b. Submit completed plans and specifications for DSA approval and perform all services related to obtaining DSA approval.
 - c. Any other services that are reasonable and necessary for design of the Project, including close-out with DSA.

2. Preconstruction Services

- a. Consult with District staff in relation to the existing site. DBE should make site visits, as needed to review the current site conditions. During this evaluation, DBE may make recommendations relating to soils investigations and utility locations and capacities, in order to minimize unforeseen conditions.
- b. Provide a detailed budget for the construction of the project with identified subcontractor bids and self-performed work.
- c. Undertake value-engineering analysis and prepare reports with recommendations to the District to maintain established Project budget and specifications. Provide a detailed analysis of all major building systems with an emphasis on possible value engineering possibilities.
- d. Detailed Construction CPM Schedule: Produce detailed construction CPM schedules to be incorporated into the Project documents including identification of the Project critical path and agency approvals.
- e. Construction Planning: Plan the phases and staging of construction, staging areas, temporary fencing, office trailer placement, access, etc. as required.
- f. Any other services that are reasonable and necessary to control the budget and schedule.

3. Construction Services

- a. Administer and coordinate on a daily basis the work of all trade contractors the DBE hires to work on the Project.
- b. Enforce strict performance, scheduling, and notice requirements.
- c. Document the progress and costs of the Project.

- d. Report proactively on potential schedule impacts and recommend potential solutions to schedule problems.
- e. Coordination of record drawings and specifications.
- f. Compilation of operations and maintenance manuals, warranties/guarantees, and certificates.
- g. Obtaining occupancy permits and coordinating testing, documentation, and governmental inspections and approvals.
- h. Preparation of accounting and closeout reports and occupancy plan reports.
- i. Other responsibilities as necessary for the completion of the Project.

D. Design-Build Structure

The Agreement (as defined below at subparagraph G) conforms to design-build project delivery method pursuant to Education Code section 81700 et seq.

If an award is made, the maximum compensation to the DBE for design and construction of the Project shall be based on and not exceed the Stipulated Sum for the Project. The DBE will proceed to complete the design based on the Criteria Documents, with District input and authorization at multiple stages. DBE shall submit complete plans and specifications to DSA for approval.

The DBE is responsible for completing the Project within the Stipulated Sum. Any re-design or re-bidding to stay within the Stipulated Sum shall be at no additional cost to the District.

E. District Project Management Description

The District's Governing Board will be responsible for making final decisions, but the Superintendent will be responsible for day-to-day decisions and may designate a project manager, who will be the primary point of contact between the DBE and the District.

F. Registration of DBE/Contractor and All Tiers of Subcontractors

The selected DBE shall not allow any employee or subcontractor to commence work on any contract or any subcontract until the proof of registration with the DIR required of the contractor or subcontractor has been provided to and accepted by the District.

G. Form of Agreement

The selected DBE must be able to execute the District's standard form of Design-Build Agreement ("Agreement") contained at Section 00 50 00 and incorporated herein by this reference.

H. Indemnity

Respondents must acknowledge that they have reviewed the District's indemnity provision set forth in the Agreement (Section 00 50 00) and must agree to the indemnity provision and

confirm in writing that, if given the opportunity to contract with the District, Respondent has no substantive objections to the use of the District’s standard indemnity provision.

I. Insurance

The District requires at least the following insurance coverage from the selected DBE:

Professional Liability		\$2,000,000
Commercial General Liability	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	\$2,000,000 per occurrence; \$4,000,000 aggregate
Automobile Liability – Any Auto	Combined Single Limit	\$1,000,000
Workers’ Compensation		Statutory limits under State law
Employer’s Liability		\$1,000,000
Builder’s Risk		Replacement Cost
Pollution Liability		\$1,000,000 per claim; \$2,000,000 aggregate

DBE shall provide to the District certificate(s) of insurance and endorsements satisfactory to the District. Insurance policy(ies) shall not be amended or modified and coverage amounts shall not be reduced without thirty (30) days’ written notice to the District prior to modification and/or cancellation. The District shall be named as an additional insured under the Commercial General Liability and Automobile Liability policies. Builder’s Risk policy(ies) shall be primary. Any insurance carried by the District shall only be secondary and supplemental. DBE shall not allow any employee or subcontractor to commence work on any contract or any subcontract until the proof of insurance required of the DBE or subcontractor has been provided to and accepted by the District.

V. FULL OPPORTUNITY

The District hereby affirmatively ensures that Disadvantaged Business Enterprises (“DBE”), Small Local Business Enterprise (“SLBE”), Small Emerging Local Business Enterprise (“SELBE”) and Disabled Veterans Business Enterprise (“DVBE”) firms shall be afforded full opportunity to submit qualifications in response to this RFP and will not be discriminated against on the basis of race, color, national origin, ancestry, disability, gender, transgender status, political affiliation, or religion in any consideration leading to the award of contract.

VI. LIMITATIONS

This RFP is neither a formal request for bids, nor an offer by the District to contract with any party responding to this RFP. The District reserves the right to add additional prequalified Respondents for consideration after distribution of this RFP, if it is found to be in the best interest of the District. All decisions concerning selection of the DBE will be made in the best interests of the District. The awarding of the contract pursuant to this RFP, if at all, is at the sole discretion of the District.

The District makes no representation that participation in this RFP process will lead to an award of contract or any consideration whatsoever. The District shall in no event be responsible for the cost of preparing any Proposal in response to this RFP.

Proposals and any other supporting materials submitted to the District in response to this RFP will not be returned and will become the property of the District unless portions of the materials are designated as proprietary at the time of submittal, and are specifically requested to be returned. Vague designations and/or blanket statements regarding entire pages or documents are insufficient and will not bind the District to protect the designated matter from disclosure. Pursuant to *Michaelis, Montanari, & Johnson v. Superior Court* (2006) 38 Cal.4th 1065, Proposals shall be held confidential by the District and shall not be subject to disclosure under the California Public Records Act until after either: (1) the District and the successful Respondent have completed negotiations and entered into an Agreement, or (2) the District has rejected all Proposals. Furthermore, the District will have no liability to the Respondent or other party as a result of any public disclosure of any Proposal.

VII. RESTRICTIONS ON LOBBYING AND CONTACTS

From the period beginning on the date of the issuance of this RFP and ending on the date of the award of the contract, no person, or entity submitting in response to this RFP, nor any officer, employee, representative, agent, or consultant representing such a person or entity shall contact through any means or engage in any discussion regarding this RFP, the evaluation or selection process/or the award of the contract with any member of the District, Governing Board, selection members, or any member of the Citizens' Oversight Committee. Any such contact shall be grounds for the disqualification of the Respondent submitting a Proposal.

VIII. MANDATORY INFORMATIONAL MEETING

Each Respondent must attend the mandatory informational meeting , to be conducted on **Thursday, October 15 2020 at 2:00 PM**. The meeting will be conducted online, with invitations sent out via e-mail to pre-qualified Design-Build Entities. At this meeting, District representatives may distribute information and materials to further describe the Project and the scope of work. Respondents shall consider and address materials and information from the meeting in their Proposals. Respondents that fail to attend the mandatory informational meeting, in its entirety, shall be ineligible for responding to this RFP.

IX. STIPEND

Respondents that submit a responsive Proposal in response to the RFP, but that are not selected to negotiate the Agreement for the Project, will be eligible to receive a stipend of Twenty Five Thousand Dollars (\$25,000) pursuant to the District's Stipend Agreement (**Appendix C**). Respondents must execute and return a copy of the Stipend Agreement with their Proposal, and comply with all terms of the Stipend Agreement, in order to be eligible for the stipend.

X. PROPOSAL REQUIREMENTS

A. Format

Proposal must be in 8½ x 11 inch format with font no less than 11 point font size. The Proposals shall include section divider sheets labeled with boldface headers (e.g. the first

section divider sheet would be entitled "Table of Contents," the second section divider sheet would be entitled "Cover Letter," etc.) **One (1) electronic copy of the Proposal shall be submitted (uploading instructions will be issued via Addendum).**

B. General Overview

Each Proposal shall address the technical experience, background, qualifications and expertise of Respondent. The Proposal shall demonstrate that the Respondent possesses the skills and professional experience to perform the functions of the Project and fulfill the goals and vision of the District for the Project. Proposals shall describe the Respondent's methods and plan for carrying out the Project. Respondent's approach to professional design services, construction scheduling, staging, and logistics (based on timelines and information provided by the District in this RFP and at the mandatory informational meeting and site walk) should be included. Describe creative methodologies and/or technologies that the Respondent proposes to use, and/or unique resources that the Respondent can offer to the District and Project.

C. Contents

Respondents shall comply with the following requirements for its Proposal:

1. Table of Contents

A complete and clear listing of the headings and pages to allow easy reference to key information.

2. Cover Letter (maximum 1 page)

A letter of introduction signed by an authorized officer of the Respondent. If the Respondent is a joint venture, duplicate the signature block and have a principal or officer sign on behalf of each party to the joint venture. The letter shall also include:

- a. Respondent's name.
- b. Address, include any branch office address and point of contact.
- c. Telephone number.
- d. Fax number.
- e. Email address.
- f. Identification of team members.
- g. License number for Respondent's design professional in general responsible charge.
- h. Contractors State License Board ("CSLB") license classification and number and Public Works Contractor Registration number on file with the DIR for Respondent's general contractor.
- i. Identification of the individual(s) authorized to speak for Respondent during the evaluation process.

j. The following statement:

“[RESPONDENT’S NAME] received a copy of the District’s Design-Build Agreement (“Agreement”) attached at Section 00 50 00 to the RFP. [RESPONDENT’S NAME] has reviewed the indemnity provisions and insurance requirements contained in the Agreement. If given the opportunity to contract with the District, [RESPONDENT’S NAME] has no objections to these provisions, or to the use of the Agreement.”

- k. Certification that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting contract(s), nor that any such person will be employed in the performance of any/all contract(s) without immediate divulgence of this fact to the District.
- l. Statement that Respondent is proposing with the same membership of the design-build entity or design-build team identified in Respondent’s Statement of Qualifications (“SOQ”) submitted in response to the RFQ for this Project
- m. Verification that all information in Respondent’s SOQ submitted in response to the RFQ for this Project remains accurate or, if any information has subsequently become inaccurate, identify the inaccuracy and its cause in the cover letter and provide updated, accurate information. (Appendix may be used to provide complete documentation/information for this purpose, if needed, and will not count toward the page limit.)
- n. Statement that Respondent acknowledges and confirms that it will be willing and able to perform all of the services described in Section IV.C. – Scope of Work of this RFP.

3. Executive Summary (maximum 1 page)

An overview of the entire Proposal with a description of the general approach and/or methodology Respondent will use to meet the goals and fulfill the general functions as set forth in this RFP.

4. Technical Expertise

- a. Include an organizational chart of Respondent’s team. If Respondent is proposing as a design-build team the chart must identify, at a minimum, all members and their roles.
- b. Describe the proposed Project team, including design professional in general responsible charge, general contractor, and key subconsultants. Provide resumes for up to six (6) key personnel and explain what each will bring to the Project.
- c. Include Designated Subcontractors for the following trades. **Submit the information requested in Appendix D**, including licensure, company name and address, and project experience for three (3) relevant projects:
 - Mechanical (HVAC)
 - Electrical

- Plumbing
- d. Summarize the proposed Project team members' design and construction experience as relevant to this Project. Emphasize work on similar community college projects, accounting for the facility type, features, size, contract value, complexity, and schedule of this Project.
 - e. Demonstrate how the proposed Project team will communicate, collaborate, and work together and with the District. Explain how the proposed Project team's collective expertise will translate into a better value for the District.
 - f. Discuss in detail DBE's claims experience submitted in your prequalification submittal, including how these claims were resolved, and how DBE will work with the District team to mitigate and avoid claims throughout the project.

5. Safety

- a. Experience modification rate and average total recordable injury/illness rate meet the requirements of Education Code section 81703, subdivision (c)(2)(G).
- b. Approach and means and methods Respondent intends to utilize to ensure safety on the Project.

6. Schedule

Develop and provide a preliminary schedule for all phases of design and construction of the Project through completion, including specific milestones. Identify any schedule challenges and describe Respondent's plan for addressing the same.

Provide three (3) examples of Community College, K-12, or higher education projects that had significant schedule challenges. Include the original contract duration, final contract duration, and approaches your team took to mitigate schedule impacts, particularly those impacting campus operations.

7. Design Proposal

A. **Building Systems Description:**

- i. Narrative describing how the DBE intends to conform with the Criteria Documents contained in the RFP documents, describing in narrative format the systems, subsystems, materials, equipment, and design solutions incorporated therein, including the intended approach to coordinating / integrating various systems.
- ii. Submission of an outline technical specification replacing the performance specifications contained in these RFP documents is neither desired nor acceptable.

B. **Life-cycle costs**

Provide a detailed life-cycle cost analysis of building systems over 15 years or more.

- C. **Opportunities for Innovation:** DBE's approach to key project challenges identified by the District. Provide a written narrative (with drawings as required) illustrating the DBE's response to the following items:
1. Describe your approach to addressing Covid-19, including design approach (MEP, planning, layout, improved air quality, etc.), and managing impacts, protocols, and safety during construction.
 2. One of the Criteria Document design features is All-Gender Restrooms. Describe your approach to All-Gender Restrooms, including proposed revisions to the current layout, incorporating information gleaned from previous completed All-Gender Restrooms, and thinking about how current events like Covid-19 and inclusive design could enhance the experience. Elements to consider: creative options for access, privacy, hygiene, inclusive design, practical considerations, and to evolve Laney in a direction that will provide better experiences for all.
 3. The men's and women's area currently has floor-to-ceiling partitions for privacy. Describe your innovative approach to providing privacy, while also allowing and a sense of community in the space.
 4. The existing facility has several different level changes (ramping, steps, etc.). Provide your approach to eliminating these barriers, and an enhanced approach to Universal Design.
 5. The Central Utility Plant (CUP) will provide new infrastructure and more efficient energy use (with all-electric boilers), but will provide lower temperature hot water than the current system. Describe your approach to mitigating lower water temperature provided by the CUP renovation. The Locker Room Renovation Criteria Documents are based on the current gas-fired boilers.
 6. The theater building above will be undergoing a structural renovation at the same time as the Locker Room Renovation Project. The theater project includes new columns inside the Locker Room space. Describe your approach to mitigate design and construction impacts, and to collaborate with the theater design and construction team.
 7. Describe your general approach to collaboration/innovation with adjacent campus projects (shared access routes, parking, staging, economies of scale, efficiency, etc.)
 8. Describe your approach to create a facility with improved sightlines (while not compromising privacy and security).
- D. **Quality Enhancements:** A listing of proposed Quality Enhancements consisting of specific elements wherein the DBE believes that its proposal will enhance the Project in excess of the minimum requirements of the RFP. Quality enhancements must address items including, but not limited to, quality and performance of materials, equipment and systems, warranties/guarantees, and schedule. Such enhancements shall be offered by the DBE in the Work DBE intends to provide within the Contract Sum

identified in this Request for Proposals.

A list of potential enhancements is provided below, including the District's priority (on a scale of 1 to 3, 3 being the highest priority level). The DBE may or may not respond to all enhancements listed, and the DBE is encouraged to propose its own enhancements:

Item	Description	Priority
1	Build out of Shell Space: This enhancement gives the end user groups immediate access to conference and student study spaces. Study area expansion, areas enhancing student space/use, MP room space (both MP rooms), prioritize build-out of storage rooms.	3
2	Early substantial completion. This enhancement opens the facility sooner and reduces the dependency on temporary facilities.	3
3	Enhance the storage rooms by including storage racks in the base scope of work. This enhancement gives the user groups immediate use of the storage rooms.	2
4	LEED certification. This enhancement gives Laney College and the District a more sustainable space that directly affects the user group's environment and lower energy consumption.	1
5	Enhanced security. Add recording of video and storing video on site. Better quality cameras, more cameras, etc.	2
6	Enhanced lighting controls. This enhancement provides additional control to the user groups and will contribute to reduced energy consumption. Examples: student study areas, other areas that could benefit.	2
7	Touchless flush valves are preferable (currently specified in Criteria Docs).	1
8	Additional wayfinding and sports motivational signage, to include more wayfinding and motivational signage throughout the space. Can include graphics/signage that enhances Laney values and mission (i.e. Dream, Flourish, Succeed), Title IX compliance, gender equity, etc.	1
9	Provide flat panel tv monitors, where indicated. Shown as District-provided (currently).	1
10	Provide furniture in the locker room attendant offices, conference rooms, and student study rooms. Shown on plans (as District-provided).	1
11	Replace the two existing concrete ramps with fully ADA compliant ramps at the main entrance to the women's and men's locker rooms (DSA does not require these ramps to be updated due to the unreasonable hardship of replacing the ramps).	1

12	Replace the existing concrete exit stairs with fully compliant stairs (DSA does not require this stair to be updated due to the unreasonable hardship of replacing the stair).	1
13	Extended project warranty, or individual product or building system warranties.	2
14	Added MEP in custodial closets, or other equipment that enhances maintenance or sanitation capability.	2

8. Small Local Business Enterprise (SLBE) and Small Emerging Local Business Enterprise (SELBE) Program

Review District’s SLBE and SELBE Program (**Appendix E**). If DBE meets the District criteria, submit the completed SLBE/SELBE Self-Certification Affidavit contained therein.

9. Price

A Price Declaration (**Appendix F**) that the DBE will complete the design and construct the Project for the Stipulated Sum must be completed and signed by the legal entity that will execute the Agreement, and included in this section of the submittal. Alteration of any kind to this form may cause the submittal of the DBE to be rejected by the District.

10. Insurance

Respondent must demonstrate that it can maintain adequate insurance as required herein. The Proposal must include a letter from Respondent’s insurance company indicating its ability to provide insurance coverage on behalf of Respondent in accordance with the insurance requirements in Section 00 50 00. (This letter may be included in the Appendix to the Proposal where it will not count toward the page limit.)

11. Comments to Form of Agreement

Respondents must thoroughly review the Agreement provided with this RFP at Section 00 50 00 and confirm in writing that, if given the opportunity to contract with the District, Respondent has no substantive objections to the use of the District’s standard agreement. Respondent must also identify any term or condition of the Agreement that Respondent requests modifying, deleting, or adding. Respondents must set forth a clear explanation of the change with specific alternate language. If selected, Respondent will be precluded from negotiating changes that have not been identified in its RFP Packet. The District will review, but is not obligated to accept, any proposed changes.

12. Certifications

Provide executed Non-Collusion Declaration (**Appendix G**) and executed Iran Contracting Act Certification. (**Appendix H**)

13. Stipend Agreement

Provided executed Stipend Agreement (**Appendix C**).

14. Appendix (if used)

May include:

- Updating/correction of information from SOQ, if needed.
- Letter from insurance company.
- Resumes of subconsultants, if any.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

XI. SELECTION CRITERIA AND PROCEDURES

A. Best Value Methodology: Responsive Proposals will be evaluated under the following factors and weights:

FACTOR	DESCRIPTION	WEIGHT
Price	Price Declaration (Appendix F) that the DBE will complete the design and construct the Project for the Stipulated Sum.	15 points
Technical Expertise	Demonstrated project team experience and capability; how the proposed Project team will communicate, collaborate, and work together and with the District; and how team’s collective expertise will translate into a better value for the District.	25 points
Life-cycle costs	Life-cycle cost analysis of building systems over 15 years or more.	15 points
Safety	Acceptable safety record and approach to safety.	15 points
SLBE/SELBE	Certification of compliance with PCCD SLBE/SELBE Program (Extra Credit points).	10 points (Extra Credit Points)
Schedule	Preliminary schedule for all phases of design and construction of the Project through completion, including specific milestones.	15 points
Building Systems Description	Narrative describing how the DBE intends to conform with the Criteria Documents contained in the RFP documents, describing in narrative format the systems, subsystems, materials, equipment, and design solutions	15 points
Opportunities for Innovation	DBE’s approach to key project challenges identified by the District.	15 points
Quality Enhancements	A listing of proposed Quality Enhancements consisting of specific elements wherein the DBE believes that its proposal will enhance the Project in excess of the minimum requirements of the RFP.	10 points
Interview (If used, score; if not used, all respondents will receive 0 points.)	Interview performance, including but not limited to proposed team attendance and approach to work.	25 points
MAXIMUM SCORE: 150 points		

District staff will assign points for each factor to each Respondent. Respondents will then be ranked based on total points. A higher point total reflects a determination that Respondent's Proposal presents a better value to the District.

B. District Investigations

The District may consider and perform investigations of Respondents that extend beyond contacting any references identified in the Proposal and/or SOQ.

C. Interviews

The District may invite Respondents to meet with District staff and consultants. Key personnel of Respondent's proposed project team will be expected to attend the interview. The interview will be an opportunity for the District to review the Proposal, qualifications, and any other matters the District deems relevant to its evaluation. Any comments or objections to the form of Agreement (Section 00 50 00) may be the subject of inquiry at the interview. Respondent may be requested to provide a more detailed fee Proposal in advance of the interview.

D. Selection of Finalists

Proposals shall be evaluated and the Project awarded in the following manner:

1. The District will evaluate all timely submitted Proposals for responsiveness.
2. Responsive Proposals will be evaluated and scored according to the best value methodology described above.
3. Once the evaluation is complete, responsive Proposals will be ranked based on total points, but the District shall not be required to rank more than the three (3) highest-scoring Proposals.
4. The District's Governing Board will award the contract, if at all, to the responsible Respondent whose Proposal is determined by the District to be the best value.
5. If the selected DBE refuses or fails to execute the tendered proposed contract, the Governing Board may, if it deems it to be in the best interest of the District, award the contract to the Respondent with the second highest best value score. If the second selected DBE refuses or fails to execute the tendered proposed contract, the Governing Board may, if it deems it to be in the best interest of the District, award the instrument to the Respondent with the third highest best value score.
6. Notwithstanding any other law, upon issuance of a contract award, the District shall publicly announce its award, identifying the DBE to which the award is made, along with a statement regarding the basis of the award. The statement regarding the District's contract award and the contract file shall provide sufficient information to satisfy an external audit.

XII. FINAL DETERMINATION

The District reserves the right to contract with any entity responding to this RFP for all or any portion of the work described herein, to reject any proposal as nonresponsive, and/or not to contract with any DBE for the services described herein. The District makes no representation

that participation in the RFP process will lead to an award of contract or any consideration whatsoever. The District reserves the right to seek proposals from or to contract with any firm not participating in this process. The District shall in no event be responsible for the cost of preparing any Proposal in response to this RFP.

The awarding of contract(s) is at the sole discretion of the District. The District may, at its option, determine to award contracts only for portions of the scope of work. In such case, the successful proposing DBE will be given the option not to agree to enter into the contract and the District will retain the right to negotiate with any other proposing DBE selected as a finalist. If no finalist is willing to enter into a contract for the reduced scope of work, the District will retain the right to enter into negotiations with any other Respondent responding to this RFP.

WE THANK YOU FOR YOUR INTEREST IN THE DISTRICT'S PROJECT!

APPENDIX A

PROJECT DESCRIPTION

The Peralta Community College District (hereinafter "the District") seeks responses from experienced Design/Build Entities (DBE) to construct the Title IX Locker Room renovation at Laney College for the Peralta Community College District, to be located at 900 Fallon Street, Oakland, CA 94607. The building was constructed circa 1968. The proposed modernization includes the same 23,400 SF below grade locker room space but upgrading its entirety, including a new architectural layout of the rooms.

The renovated building will promote interaction among the students, and the modernization of existing space will celebrate women and female athletes of Laney College, simplify access, reduce travel distance, improve security, support a diverse community, achieve Title IX compliance, and improve financial efficiency. The scope of work includes a new MEP system, HVAC system, fire protection system installation, and installation of limited new furniture, fixtures and equipment. The construction value of the Design/Build Contract will be Eight Million Five Hundred Thousand Dollars (\$8,500,000).

APPENDIX B
CRITERIA DOCUMENTS

1. Criteria Documents

- a.** Criteria Specification set Division 02-33
- b.** Criteria Drawing set
- c.** Narrative (Criteria Report 08-10-2020)

Criteria Documents posted to the District Vendor Registry website at:

<https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=4d041f6c-7568-4c8a-8878-c82684292a3c>

APPENDIX C

STIPEND AGREEMENT FOR DESIGN-BUILD PROPOSAL

This Stipend Agreement for Design-Build Proposal ("Agreement") is made and entered into this ____ day of _____, 2020, between the Peralta Community College District ("District") and _____ ("Respondent") (each a "Party," and, together, "Parties").

RECITALS

WHEREAS, pursuant to Education Code section 81700 et seq., District previously issued a Request for Qualifications ("RFQ") No. 19-20/11, to prequalify/shortlist design-build entities/teams for the District's Laney College Title IX Locker Room Renovation ("Project");

WHEREAS, pursuant to Education Code section 81700 et seq., District has now issued a Request for Proposals ("RFP") No. 19-20/11, inviting each prequalified/shortlisted design-build entity/team to submit a competitive proposal for the Project ("Proposal");

WHEREAS, in order to encourage detailed and comprehensive Proposals, District wishes to pay a stipend in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000) to each prequalified/shortlisted design-build entity/team that submits a timely and complete Proposal in response to the RFP but that is not selected by District to negotiate the design-build contract for the Project ("Stipend"); and

WHEREAS, the Parties wish to set forth the terms and conditions associated with the Stipend.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the Parties agree as follows:

TERMS

- 1. Scope of Services.** Respondent shall provide a Proposal in response to the RFP that complies with and satisfies all of the Proposal requirements listed therein, including any addenda thereto.
- 2. Contract Time.** The services performed under this Agreement shall commence upon the release of the RFP and shall be completed on or before the deadline for submitting a Proposal to the RFP, unless this Agreement is terminated and/or otherwise cancelled prior to that time.
- 3. Stipend.** A Stipend in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000) shall be paid for a complete Proposal in response to the RFP that is not selected by District to negotiate the design-build contract for the Project. Respondent may only submit one (1) Proposal and only one (1) Stipend will be paid per complete Proposal, regardless of the number of members on Respondent's team. To be deemed "complete," the Proposal must be submitted by an eligible prequalified/shortlisted design-build entity/team and must comply with and satisfy all of the requirements of the RFP as determined by District. Incomplete Proposals will not be eligible for any portion of the Stipend.

Other than payment of the Stipend, in no event shall District be responsible for any costs incurred by Respondent in relation to the RFP. Respondent shall be solely

responsible for any and all costs and expenses incurred by Respondent, including but not limited to the costs of hiring subconsultants, contractors and other professionals, review of the Project's Bridging or Criteria Documents, review and preparation of necessary documentation relating to the Project, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Respondent's staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Respondent in performance of the services contemplated by this Agreement.

- 4. Payment.** Respondent may invoice District for the Stipend up to thirty (30) days after the deadline for Proposals in response to the RFP. Provided that all conditions are met, District shall pay the Stipend within sixty (60) days of District's selection of a design-build entity to negotiate the design build contract for the Project or, if no selection is made, within sixty (60) days of the announcement that no selection shall be made.
- 5. Ownership of Materials.** Upon payment of the Stipend, Respondent agrees that its Proposal becomes the property of District without restriction or limitation on its use. All Documents & Data (which includes but is not limited to record drawings, specifications and estimates prepared pursuant thereto, prepared or caused to be prepared by Respondent under this Agreement) shall be and remain the property of District for the purposes of repair, maintenance, renovation, modernization, or other purposes, only as they relate to the Project for which Respondent entered this Agreement. Nothing in this Section shall preclude District from using the plans, record drawings, specification, or estimates related to the Project for the purposes of additions, alignments, or other development on the Project site(s). In exchange for the Stipend, Respondent agrees that it shall not copyright any of the Documents & Data developed under this Agreement, unless otherwise agreed to in writing.
- 6. Design-Build Contract.** In no event shall District be obligated to award or enter into a design-build contract. District reserves the right to enter into a design-build contract with parties other than Respondent. District shall not be responsible to Respondent for any claims or damages resulting from District's failure to enter into the design-build contract with Respondent.
- 7. Termination.** By written notice to Respondent, District may, with or without reason, terminate this Agreement without compensation or liability to Respondent at any time prior to the deadline for submitting Proposals in response to the RFP.
- 8. Indemnity.** Respondent shall indemnify, defend and hold harmless District, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers ("Indemnified Parties") from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Respondent. Respondent shall, to the furthest extent permitted by California law, defend the Indemnified Parties at Respondent's own expense, including attorneys' fees and costs, from any and all claims arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of Respondent. District shall have the right to accept or reject any legal representation that Respondent proposes to defend the Indemnified Parties.
- 9. Limitation of District Liability.** District's financial obligations under this Agreement shall be limited to the payment of the Stipend provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special,

consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

- 10. Compliance with Laws.** Respondent shall observe and comply with all rules and regulations of the governing board of District and all applicable federal, state, and local laws, ordinances, and regulations. Respondent shall give all notices required by any applicable law bearing on the services under this Agreement.
- 11. Disputes.** All claims, disputes or controversies arising out of, or in relation to the interpretation, application or enforcement of this Agreement may be decided through mediation as the first method of resolution. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, Respondent shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to Respondent's right to bring a civil action against District.
- 12. Attorney's Fees/Costs.** Should litigation be necessary to enforce any terms or provisions of this Agreement, then each Party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.
- 13. Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission or electronic mail, addressed as follows:

District:

Peralta Community College District
Department of General Services
333 East 8th Street
Oakland, CA 94606
Fax: _____
Email: _____
ATTN: _____

Respondent:

[NAME]

Fax: _____
Email: _____
ATTN: _____

Any notice personally given or sent by facsimile transmission or electronic mail shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) calendar days after deposit in the United States mail.

- 14. Independent Contractor.** Respondent, in the performance of this Agreement, shall be and act as an independent contractor. Respondent represents and warrants that: (A) Respondent is free from the control and direction of District in connection with the performance of the Services, both under the Agreement and in fact; (B) Respondent's Services are outside the usual course of District's business; and (C) Respondent is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services.

Respondent understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of District, and are

not entitled to benefits of any kind or nature normally provided employees of District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Respondent shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Respondent's employees. By checking the applicable box below, Respondent hereby represents and warrants to District the following:

- Respondent is and shall be a resident of the State of California or is otherwise exempt from withholding. To the extent an exemption is sought, Respondent will provide District with appropriate evidence including, without limitation, FTB Form 590. Respondent shall still be responsible for payment of all state and federal taxes.
- Respondent is not a resident of the State of California or otherwise not exempt from withholding, and Respondent authorizes District to withhold from all payments made to Respondent under this Agreement all taxes required to be withheld by law. (See, e.g., California Revenue & Taxation Code section 18661 et seq.)

- 15. No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
- 16. Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 17. California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which District's administrative offices are located.
- 18. Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 19. Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 20. Assignment.** The obligations of Respondent pursuant to this Agreement shall not be assigned by Respondent.
- 21. Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
- 22. Authority to Bind Parties.** Neither Party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

- 23. Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.
- 24. Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
- 25. Signature Authority.** Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authority and empowered to enter into this Agreement.
- 26. Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
- 27. Incorporation of Recitals.** The Recitals are hereby incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

Dated: _____, 2020

Dated: _____, 2020

Peralta Community College District

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Information regarding Respondent:

License No.: _____

Registration No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

- Individual
- Sole Proprietorship
- Partnership
- Limited Partnership
- Corporation, State: _____
- Limited Liability Company
- Other: _____

Employer Identification and/or
Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, District requires Respondent to furnish the information requested in this section.

APPENDIX D

Designated Subcontractors List

Use the forms below for all designated subcontractor(s) for the Project.

Respondent acknowledges and agrees that it must clearly set forth below the name, location and California contractor license number of each subcontractor who will perform work or labor or render service to the Respondent in or about the construction of the modular scope for the Project.

Respondent acknowledges and agrees that designating subcontractor(s) below does not excuse Respondent from complying with the bidding requirements of Education Code section 81704, subdivision (c), in procuring subcontractors who will perform work or labor or render service to Respondent in connection with the construction of the Project in an amount in excess of One-Half of One Percent (0.5%) of the price allocable to construction work.

Respondent acknowledges and agrees that by designating subcontractor(s) below, those subcontractor(s) shall be afforded the protections of the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code.

Respondent acknowledges and agrees that if, during preconstruction services, Respondent and the District concur that the work requires additional subcontractors, then all additional subcontractors shall be procured in accordance with Education Code section 81704, subdivision (c) and the terms of the Contract Documents.

Trade: Mechanical (HVAC)

License Number: _____ Expiration Date: _____

Address: _____

Additional Information:

Project Experience:

List **three** of the most relevant projects completed within the last 5 years. For each project, submit the following information:

1. Project Name: _____

Location: _____

Initial Contracted Amount: \$ _____

Final Contracted Amount: \$ _____

Contracted with Owner? Yes _____ No _____

Contracted with General Contractor? Yes _____ No _____

Name of General Contractor: _____

Project Contact: Telephone: _____

Number of Projects completed with this General Contractor: _____

Delivery Method: Design/Build ____ Design/Bid/Build ____ Other: _____

Number of Licensed Professional Engineers on staff: _____

Trade: Mechanical (HVAC)

2. Project Name: _____

Location: _____

Initial Contracted Amount: \$ _____

Final Contracted Amount: \$ _____

Contracted with Owner? Yes _____ No _____

Contracted with General Contractor? Yes _____ No _____

Name of General Contractor: _____

Project Contact: Telephone: _____

Number of Projects completed with this General Contractor: _____

Delivery Method: Design/Build ____ Design/Bid/Build ____ Other: _____

Number of Licensed Professional Engineers on staff: _____

3. Project Name: _____

Location: _____

Initial Contracted Amount: \$ _____

Final Contracted Amount: \$ _____

Contracted with Owner? Yes _____ No _____

Contracted with General Contractor? Yes _____ No _____

Name of General Contractor: _____

Project Contact: Telephone: _____

Number of Projects completed with this General Contractor: _____

Delivery Method: Design/Build ____ Design/Bid/Build ____ Other: _____

Number of Licensed Professional Engineers on staff: _____

Trade: Electrical

Name: _____

License Number: _____ Expiration Date: _____

Address: _____

Additional Information:

Project Experience:

List **three** of the most relevant projects completed within the last 5 years. For each project, submit the following information:

1. Project Name: _____

Location: _____

Initial Contracted Amount: \$ _____

Final Contracted Amount: \$ _____

Contracted with Owner? Yes _____ No _____

Contracted with General Contractor? Yes _____ No _____

Name of General Contractor: _____

Project Contact: Telephone: _____

Number of Projects completed with this General Contractor: _____

Delivery Method: Design/Build ____ Design/Bid/Build ____ Other: _____

Number of Licensed Professional Engineers on staff: _____

Trade: Electrical

2. Project Name: _____

Location: _____

Initial Contracted Amount: \$ _____

Final Contracted Amount: \$ _____

Contracted with Owner? Yes _____ No _____

Contracted with General Contractor? Yes _____ No _____

Name of General Contractor: _____

Project Contact: Telephone: _____

Number of Projects completed with this General Contractor: _____

Delivery Method: Design/Build ____ Design/Bid/Build ____ Other: _____

Number of Licensed Professional Engineers on staff: _____

3. Project Name: _____

Location: _____

Initial Contracted Amount: \$ _____

Final Contracted Amount: \$ _____

Contracted with Owner? Yes _____ No _____

Contracted with General Contractor? Yes _____ No _____

Name of General Contractor: _____

Project Contact: Telephone: _____

Number of Projects completed with this General Contractor: _____

Delivery Method: Design/Build ____ Design/Bid/Build ____ Other: _____

Number of Licensed Professional Engineers on staff: _____

Trade: Plumbing

Name: _____

License Number: _____ Expiration Date: _____

Address: _____

Additional Information:

Project Experience:

List **three** of the most relevant projects completed within the last 5 years. For each project, submit the following information:

1. Project Name: _____

Location: _____

Initial Contracted Amount: \$ _____

Final Contracted Amount: \$ _____

Contracted with Owner? Yes _____ No _____

Contracted with General Contractor? Yes _____ No _____

Name of General Contractor: _____

Project Contact: Telephone: _____

Number of Projects completed with this General Contractor: _____

Delivery Method: Design/Build ____ Design/Bid/Build ____ Other: _____

Number of Licensed Professional Engineers on staff: _____

Trade: Plumbing

2. Project Name: _____

Location: _____

Initial Contracted Amount: \$ _____

Final Contracted Amount: \$ _____

Contracted with Owner? Yes _____ No _____

Contracted with General Contractor? Yes _____ No _____

Name of General Contractor: _____

Project Contact: Telephone: _____

Number of Projects completed with this General Contractor: _____

Delivery Method: Design/Build ____ Design/Bid/Build ____ Other: _____

Number of Licensed Professional Engineers on staff: _____

3. Project Name: _____

Location: _____

Initial Contracted Amount: \$ _____

Final Contracted Amount: \$ _____

Contracted with Owner? Yes _____ No _____

Contracted with General Contractor? Yes _____ No _____

Name of General Contractor: _____

Project Contact: Telephone: _____

Number of Projects completed with this General Contractor: _____

Delivery Method: Design/Build ____ Design/Bid/Build ____ Other: _____

Number of Licensed Professional Engineers on staff: _____

[END OF APPENDIX]

APPENDIX E



Peralta Community College District

SMALL LOCAL BUSINESS ENTERPRISE and SMALL EMERGING LOCAL BUSINESS ENTERPRISE PROGRAM

The District is committed to ensure equal opportunity and equitable treatment in awarding and managing its public contracts and has established an annual overall program goal of twenty-five percent participation for small local businesses. To facilitate opportunities for small local business, the District will use a maximum 5% bidding preference for SLBE and SELBE firms. The preference is only used for computation purposes to determine the winning bidder, the contract is awarded at the actual bid amount. Please review the following guidelines to see if your firm qualifies for the preference.

The 5% bidding preference for an SLBE and SELBE firms are for construction, personal and professional services, goods and services, maintenance, repairs, and operations where responsibility and quality are equal. The preference will be 5% of the bid amount of the lowest responsive responsible bidder, and may not exceed \$50,000.00 for any bid.

A Non-SLBE/SELBE Prime Contractor who utilizes 25% of total bid amount, with SLBE or SELBE subcontractors (who meet the District's Definition of an SLBE and SELBE), can also receive a maximum of 4% bidding preference, not to exceed \$50,000.00 for any bid. (See below Subcontractor section.)

Definitions:

SLBE: A Small Local Business Enterprise is a business that has not exceeded gross annual revenue of 8.5 million dollars for a construction firm, or 6 million dollars for goods and non-professional services firm, or 3 million dollars for architecture, engineering and professional services firm, for the past three consecutive years and meets the below geographic location requirements.

SELBE: A Small Local Emerging Business Enterprise is a business that has not exceeded gross annual revenue of 1.5 million dollars for the past three consecutive years and meets the below geographic location requirements.

Commercially Useful Function: Shall mean a business is directly responsible for providing the materials, equipment, supplies or services to the District as required by the contract solicitation. The business performs work that is normal for its business services and carries out its obligation by actually performing, managing, or supervising the work involved. The business is **not** Commercially Useful if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SLBE or SELBE participation.

Geographic Location Requirements:

- The business must be located at a fixed, established commercial address located in the District's market area of Albany, Alameda, Berkeley, Emeryville, Oakland, or Piedmont, and not a temporary or movable office, a post office box, or a telephone answering service.
- If the business has an office outside of the District's market area as well as an office within the market area, the office within the District's market area must be staffed on a full time permanent basis with someone employed by the business.
- If requested, the business that has an office outside of the District's market area must provide proof of one or more past contracts citing the business address (such as contracts to perform work, to rent space or equipment, or for other business services) was within the District's market area at least one (1) year prior to the date of contract award. The one-year requirement does not apply to businesses whose sole establishment is located within the District's market area.

Subcontractors:

Non-SLBE/SELBE Prime Contractors who use subcontractors, who meet the district definitions of SLBE and SELBE, may receive a maximum of 4% bidding preference if the following conditions are met:

1. 25% of total bid amount is with Subcontractors who meet the District's definition of an SLBE and SELBE. The Prime Contractor must list each Subcontractor on the Subcontractor List form, clearly identifying the SLBE and SELBE status and the Dollar Amount of work each subcontractor will perform.
2. The Subcontractors must provide a Commercially Useful Function.
3. The Prime Contractor must maintain the Subcontractor percentages (based on the quoted dollar amounts) indicated in the Subcontractor List form at the time the Contract is awarded and throughout the term of the Contract.
4. The Prime Contractor must fill out sign the SLBE/SELBE Self Certification Affidavit and return it with the bid documents, and 48 hours after the bid opening the Prime Contractor must submit signed SLBE/SELBE Self Certification Affidavit from each of the SLBE and SELBE subcontractors listed in the Subcontractor form. The Subcontractor must agree to provide the requested documentation to verify the SLBE/SELBE status.
5. No Substitutions can be made to the SLBE and SELBE subcontractor without the prior written approval of the District. The District will approve a subcontractor substitution on the following conditions:
 - a. A written statement from the subcontractor agreeing to the substitution.
 - b. When the subcontractor has been given a reasonable opportunity to execute the subcontract, yet fails to, or refuses to execute the subcontract, or refuses to satisfy contractual obligations.
 - c. When the subcontractor becomes insolvent.
 - d. When the District determines the work performed by the subcontractor is not in accordance with the contract agreement, or the subcontractor is substantially and unduly delaying or disrupting the progress of work.

Firms that meet the District criteria for an SLBE and SELBE can complete the below self-certification affidavit signed under penalty of perjury. Firms claiming SLBE and SELBE status in the self-certification affidavit will be required to submit proof of residency and revenue 48 hours after bid opening. Such proof shall consist of a copy of a contract to perform work, to rent space or equipment, or for other business services, executed from their local address, and the firm's tax returns for the past three consecutive years.



Peralta Community College District

SLBE/SELBE SELF CERTIFICATION AFFIDAVIT

I certify under penalty of perjury that my firm meets the District's definition of a Small Local Business Enterprise or a Small Emerging Local Business Enterprise and resides in the geographic location of the District's market area and qualifies for the below preference. The maximum preference will be five percent of the bid amount of the lowest responsible bidder, and may not exceed \$50,000.00 for any bid. The preference is only used for computation purposes to determine the winning bidder; the contract is awarded at the actual bid amount. The District's Contract Compliance Office will determine whether this requirement has been fulfilled. Bidders may only claim one of the below preferences.

Certification Status	Preference	Preference Claimed (check only one)
SLBE	5% of lowest bid	
SELBE	5% of lowest bid	
25% of Subcontractors are SLBE/SELBE	4% of lowest bid	
Not a SLBE/SELBE	None	

1. I acknowledge and am hereby advised that upon a finding of perjury with the claims made in this self certification affidavit the District is authorized to impose penalties which may include any of the following:
 - a) Refusal to certify the award of a contract
 - b) Suspension of a contract
 - c) Withholding of funds
 - d) Revision of a contract for material breach of contract
 - e) Disqualification of my firm from eligibility for providing goods and services to the Peralta Community College District for a period not to exceed five (5) years

2. I acknowledge and have been advised and hereby agree that my firm will be required to provide proof (and if applicable, my SLBE and SELBE Subcontractors will provide proof) of the status claimed on this self-certification affidavit 48 hours after bid opening. Proof of status claimed includes tax returns from the previous three years and past contracts to determine the size and geographical location of my firm.

3. I declare that the above provisions are attested to under penalty of perjury under the laws of the State of California.

Bid Number: _____ Bid Name _____

Signed Date

Printed or typed name Title

Name of Company Telephone Fax

APPENDIX F

PRICE DECLARATION

In submitting this Proposal, Design/Builder represents that Proposer has examined:

- Part 1- DIV 00- 01 Contract Documents
- Part 2- Criteria Docs (Specification)
- Part 3- Criteria Doc (Drawing Set)
- Part 4- Reference Docs

In submitting this proposal, Design/Builder represents that Design/Builder has examined copies of all the Contract Documents and acknowledges receipt of the following addenda:

Addendum No.: _____.	Date: _____.
Addendum No.: _____.	Date: _____.
Addendum No.: _____.	Date: _____.
Addendum No.: _____.	Date: _____.
Addendum No.: _____.	Date: _____.

Failure to acknowledge receipt of an addendum on the Proposal Form shall not in itself be cause for withdrawal or rejection of proposal, if it can be shown that Design/Builder did, in fact, receive such addendum prior to proposal opening.

Design/Builder acknowledges the Stipulated Sum set forth in the space provided below shall include the entire compensation to Design/Builder to design and construct the Project including, without limitation, cost of bonds, insurance, sales tax, and every other item of expense – direct or indirect – incidental to proposal price.

APPENDIX F (Continued)

COMPLETE WORK:

1. Dollar amount of work to be performed by the Design Build Entity, Subconsultants and Designated Subcontractors:

\$ _____
(Amount to be entered by Design Build Entity)

2. Dollar amount of work to be performed by Non-Designated Subcontractors (to be bid in accordance with the requirements of the Design Build Agreement):

\$ _____
(Amount to be entered by Design Build Entity)

3. Total dollar amount of work to be performed by Design-Build Entity, Subconsultants, Designated Subcontractors, and Non-Designated Subcontractors (total of section 1 and 2, above):

\$ _____
(Amount to be entered by Design Build Entity. Must not exceed Stipulated Sum, below.)

4. **Stipulated Sum:**

\$ _____
(Amount established by District.)

SIGN HERE: _____
Signature of Proposer

DATE: _____
Day/Month/Year Title of Proposer

APPENDIX G

**NON-COLLUSION DECLARATION
(Public Contract Code section 7106)**

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.
[Title] [Name of Firm]

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

Any person executing this declaration on behalf of a bidder 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 bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____,
[Date]

at _____, _____.
[City] [State]

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

**APPENDIX H
IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code section 2202-2208)**

Prior to bidding on or submitting a proposal for a contract for goods or services of \$1,000,000 or more, the bidder/proposer must submit this certification pursuant to Public Contract Code section 2204.

The bidder/proposer must complete **ONLY ONE** of the following two options. To complete OPTION 1, check the corresponding box **and** complete the certification below. To complete OPTION 2, check the corresponding box, complete the certification below, and attach documentation demonstrating the exemption approval.

OPTION 1. Bidder/Proposer 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), and we are 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.

OPTION 2. Bidder/Proposer has received a written exemption from the certification requirement pursuant to Public Contract Code sections 2203(c) and (d). *A copy of the written documentation demonstrating the exemption approval is included with our bid/proposal.*

CERTIFICATION:

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the bidder/proposer to the OPTION selected above. This certification is made under the laws of the State of California.

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

END OF DOCUMENT

[END OF APPENDICES]

SECTION 00 10 15

SUBSTITUTION REQUEST FORM

Note: Failure to complete this form with complete and accurate information in a timely manner will nullify any request for substitution.

TO: _____

PROJECT: _____

We hereby submit for your consideration the following product(s), material(s), and/or detail(s) instead of the specified item per the contract documents for the above indicated project and the following specified reference:

<u>ITEM DESCRIPTION</u>	<u>SPEC SECTION</u>	<u>SPEC PARAGRAPH</u>	<u>DRAWINGS</u>

Proposed Substitution: _____

- a. Attach complete technical data, including laboratory tests, if applicable.
- b. Include complete information on changes to Drawings and/or Specifications, which proposed substitution would require for its proper installation.
- c. Submit with this request all necessary samples and substantiating data to prove equal quality and performance to that which is specified. Clearly mark manufacturer's literature and test reports to indicated equality in performance.
- d. Upon submitting any substitution, the Contractor and/or Subcontractors certify that the substituted product does not contain detectable amounts of asbestiform minerals and/or lead compounds in concentrations greater than 1/10th of 1% (0.1%).

Fill in blanks below:

A. Does the proposed substitution affect dimensions indicated on Drawings?

Yes___No___

Explanation: _____

B. Will the undersigned pay for changes to the building design, including design, engineering and processing costs caused by the proposed substitution?

Yes___No___

Explanation: _____

C. Does the proposed substitution have an effect on other trades?

Yes ___ No ___

Explanation: _____

D. Does the proposed substitution have an effect on applicable code requirements?

Yes ___ No ___

Explanation: _____

E. Outline differences between proposed substitution and specified item:

F. Are the manufacturer's guarantees of the proposed substitution the same as the specified item?

Yes ___ No ___

Explanation: _____

G. Is the proposed substitution listed with and conform to the same requirements of the same testing agencies as the specified item, such as ICBO, ASTM, etc.?

Yes ___ No ___

Explanation: _____

Has the proposed substitution been accepted by DSA?

Yes ___ No ___

Explanation: _____

**CERTIFICATION OF EQUAL PERFORMANCE AND ASSUMPTION OF LIABILITY
FOR EQUAL PERFORMANCE BY CONTRACTOR**

The undersigned states that the function, appearance and quality are equivalent or superior to the specified item.

Submitted By:

Signature Title

Name (print)

Firm Date

Telephone

Address

Remarks: _____

.....

For Use By Design Consultant

_____ Accepted _____ Accepted As Noted _____ Not Accepted

_____ Received Too Late _____ Approved as Alternate – See Bid Form

DOCUMENT 00 11 13

NOTICE TO DESIGN-BUILD ENTITIES

NOTICE IS HEREBY GIVEN that the Peralta Community College District ("District") of Oakland, California, acting through its Governing Board, hereinafter referred to as the District, will accept proposals for the award of a Design Build Project.

**PCCD PROJECT NO. 19-20/11
LANEY COLLEGE- LOCKER ROOM RENOVATION PROJECT**

Each proposal must conform to and be responsive to the contract documents and be submitted on a form furnished by the District. Proposals can only be submitted by those Design-Build Entities who have been invited to submit proposals for this Project. The following firms are hereby invited to submit proposals:

- Alten Construction, Inc
- Overaa Construction
- Rodan Builders, Inc

DESCRIPTION OF THE WORK: The Work generally consists of the to construct the Title IX Locker Room renovation at Laney College for the Peralta Community College District, to be located at 900 Fallon Street, Oakland, CA 94607. The building was constructed circa 1968. The proposed modernization includes the same 23,400 SF below grade locker room space but upgrading its entirety, including a new architectural layout of the rooms.

The renovated building will promote interaction among the students, and the modernization of existing space will celebrate women and female athletes of Laney college, simplify access, reduce travel distance, improve security, support a diverse community, achieve Title IX compliance, and improve financial efficiency. The scope of work includes a new MEP system, HVAC system, fire protection system installation, and installation of new fixtures . The construction value of the Design/Build Contract will be approximately \$8,500,000.

PROPOSALS DUE: Proposals will be received by the Peralta Community College District **no later than 2:00 p.m. Friday, December 04, 2020**. Respondents must submit one (1) electronic copy of the Proposal (uploading instructions will be issued via Addendum), conforming to the requirements of this RFP to:

Please submit Proposals to:

Peralta Community College District
Attn: Nicanor Custodio / Purchasing Buyer
333 East 8th Street, Oakland, CA 94606

All documents including addenda will be posted to the District Vendor Registry website at:

<https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=4d041f6c-7568-4c8a-8878-c82684292a3c>

The main contact for this project is Stan Wong, Swinerton Management and Consulting, Construction Manager, email: swong@swinerton.com

Mandatory information meeting is scheduled for Thursday, October 15th, 2020 at 2:00 PM. The meeting will be conducted online, with invitations sent out via e-mail to pre-qualified Design-Build Entities. Questions asked by Design-Build Entities at the Pre-Submittal Conference not specifically addressed within the Contract Documents shall be answered in writing, and shall be sent to all Design-Build Entities present at the Pre-Submittal Conference. [*Proposals will not be accepted from any bidder who did not attend the mandatory Pre-Submittal Conference. **]

DETERMINATION OF BEST VALUE: The District will review proposals and based on upon that review select up to three (3) firms to participate in an interview process. If the Contract is to be awarded, District will award the Contract to the responsive Design-Build Entity whose proposal is determined to provide the Best Value to the District. District shall provide Document 00 51 00 Notice of Award within sixty (60) calendar days of Proposal submission. District's written decision shall support the award of the Contract by stating the basis of the award.

THIS IS A LABOR AGREEMENT PROJECT: This project is subject to the terms of the Program Labor Agreement (PLA) executed between the Peralta Community College District and the Building and Construction Trades Council of Alameda County, AFL-CIO . Copies of the PLA are available as part of the DBE-RFP package Section 00 50 00, Exhibit "B."

PREVAILING WAGE: The successful proposer shall be required to pay its workers on this project a sum not less than the general prevailing wage rate of per diem wages and not less than the general prevailing rate for holiday and overtime work for work of a similar character in the locality in which the project is performed as provided under California Labor Code section 1770 et sec. The District has determined the prevailing rate of per diem wages and the general prevailing rate for holidays and overtime work in the locality in which this project is to be performed for each craft, classification or type of work needed to execute the work.

Design-Build Entity shall be required to post, at each job site, a copy of such prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations.

This project is a Public Works Project. All Contractors and Subcontractors must be registered with the California Department of Industrial Relations (DIR) pursuant to Labor Code Section 1773.3 for monitoring of labor compliance with DIR. For complete information, refer to the following link: www.dir.ca.gov/public-works/SB854.html

SUBSTITUTION OF SECURITIES: District will permit successful Proposer to substitute securities for retention monies withheld to ensure performance of Contract, as set forth in Document 00 51 60 (Escrow Agreement in Lieu of Retention), in accordance with California Public Contract Code, Section 22300. By this reference, Document 00 51 60 (Escrow Agreement in Lieu of Retention) is incorporated in full in this Document 00 11 13.

RESTRICTIONS ON SUBSTITUTIONS AND SOLE SOURCE ITEMS: As a limitation on Proposer's privilege to substitute "or equal" items, District has found that certain items are designated as District standards and certain items are designated to match existing items in use on a particular public improvement either completed or in the course of completion or are available from one source. As to such items, District will not permit substitution. Such items are described in the Bidding Documents.

The Peralta Community College District is an equal opportunity employer.

Board of Trustees

Peralta Community College District

Peralta Community College District
Laney College Title IX Locker Room Remodel

NOTICE TO DESIGN-BUILD ENTITIES
00 11 13-2

Leigh Sata, Executive Bonds Manager

Published: October 09, 2020

END OF DOCUMENT

SECTION 00 26 40

RULES AND PROCEDURES FOR DISCUSSIONS AND NEGOTIATIONS

PART 1 - GENERAL

1.1 SUMMARY

- 1.1.1 This section provides the rules and procedures by which the District will discuss and negotiate a design build contract with the Proposers whose proposals were determined to be the most advantageous pursuant to the best value method.
- 1.1.2 Pursuant to Section 00 10 00 (Request for Proposals), the Proposers acknowledged and agreed that by signing their proposal, the District chooses to reserve for itself the right to discuss and negotiate a design build contract with the Proposers to determine which proposal is most advantageous to the District would be awarded the contract.
- 1.1.3 Upon reserving this right, District is required under California Education Code section 17250.25(a)(2)(C)(v) to provide the rules and procedures it shall observe to ensure that any discussions or negotiations to determine the most advantageous proposal are conducted in a fair and impartial manner.

1.2 RULES AND PROCEDURES

- 1.2.1 Preliminary Completeness Review. As part of the preliminary completeness review process the District may, in its sole discretion, discuss any apparently patently defective or non-responsive Proposal with the submitting Proposer to clarify or correct any errors by the District in reviewing the proposal, to request additional clarifying, instructive, advisory, or corrective information, and to otherwise determine whether a defect may be waived as inconsequential.
- 1.2.2. Technical Review. During the detailed technical review of Proposers' proposals the District may, in its sole discretion, submit written and/or oral questions to the Proposers regarding their proposals. Proposers must answer the District's questions in writing. The technical review question and answer process is not to be treated as an opportunity for Proposers to change or supplement their proposals; it is intended to make clear, refine or otherwise explain elements of the Proposers' technical proposals.
- 1.2.3. Technical Review Presentations. Should the District elect to require Proposers to make detailed technical presentations regarding the essential elements of their Proposals, on one or more Evaluation Factor Categories, the District may, in its sole discretion, ask questions of the presenters regarding the presentation topic and/or its relationship to other elements of the Proposal.
- 1.2.4. Requests for Supplemental Information and Proposals. The District has reserved the right to request supplemental information and proposals from the Proposers. If the District elects, in its sole discretion, to make a request for supplemental material from any Proposer, the District will make a similar request of all Proposers, with equal time for response given to all Proposers.

- 1.2.5. Best and Final Offer. The District may, at its sole option, either accept a Proposer's proposal by award of a contract or enter into further discussions with one or more Proposers whose proposals are deemed to be reasonably susceptible of being considered for award. After discussions are concluded or as part of on-going contract negotiations, the District may, in its sole discretion, request a "Best and Final Offer" from one or more Proposers for consideration by the District.
- 1.2.6. Proposal Evaluations. The District will evaluate responsive Proposers' written proposals and assign each proposal a score pursuant to the scoring criteria described in the Request for Proposals (Section 00 10 00). If there is any conflict between these Rules and the Request for Proposals, the Request for Proposals shall prevail. The proposals will be ranked from lowest to highest score based on the District's evaluation of all criteria.
- 1.2.7 Evaluation Panel(s). The District will assemble one or more Evaluation Panels to evaluate the technical components of the Proposals. Evaluation Panels may be composed of members of the Project's construction management team, District's designated contract negotiator(s), specialists from the District's Risk Management Department, the District's Legal Office or authorized Special Counsel to the District, and other qualified individuals whose participation the District determines is necessary or appropriate.
- 1.2.8. Interview/Presentation Panel. The District will assemble an Interview/Presentation Panel, whose members will be similar to that of the Evaluation Panel(s) and who will score the Proposers presentations of their Proposals. Interview/Presentation Panel members will not know the initial score or rankings of the proposals assigned by the Evaluation Panel(s); if such knowledge comes to them, they will be replaced on the panel by a person of equivalent or higher level. The Interview/Presentation Panel will meet separately with each Proposer for the presentation of their proposal. Each Proposer will be asked to give a short proposal overview. To the maximum extent practical, each Proposer will address the major concerns of the Interview/Presentation Panel, and should be prepared to answer any questions that may arise as a result of the presentation. The Proposers will be chosen by lot to determine the order of presentations. Proposers will bring no more than six (6) representatives to the panel. Proposers representatives will be comprised of the team as noted in the DBE proposal only. No management nor business developing personnel allowed on the presentation team. Proposer's representatives may make a visual presentation, including models; they may bring copies of their proposal.
- 1.2.9. Interview/Presentation Panel Scoring. Upon completion of each interview/presentation, each member of the Evaluation Panel will separately and confidentially score each Proposer on all criteria. The District will receive the panel member's scores, and combine them with the Proposers' scores for all Evaluation Factor Categories to come to a total score. The proposals will be re-ordered, if necessary, from lowest to highest. Upon re-ordering, the Proposers with the two highest scores will be contacted, and negotiations may commence to determine which proposal is the most advantageous to the District. If there is a tie between the 2nd and 3rd proposals, then negotiations will commence by and among the top three proposals and the District.
- 1.2.10. Contract Negotiations. The District will assemble a Contract Negotiation Team to engage the Proposer with the highest ranked proposal. The District may, in its

sole discretion, conduct concurrent negotiations with the Proposer having the second highest ranked proposal. Upon successful conclusion of negotiations, the District will notify the Proposer having the proposal that is the most advantageous to the District.

1.3. CONE OF SILENCE.

1.3.1 "Cone of Silence" means a prohibition on any communication, oral or written, regarding particular Requests for Proposals (RFP), bids, proposals, contract negotiations, or other competitive solicitations between:

1.3.1.1 Any person who seeks an award of the Project from the District, including a Proposer or Proposer's representative, and

1.3.1.2 Any person appointed to evaluate or recommend selection in such procurement process.

1.3.2 Notwithstanding the foregoing, the Cone of Silence shall not apply to communications with, among or between the Project Manager, Criteria Architect, Construction Manager, and District Special Counsel and their respective staff, or with designated staff who are not serving on an Evaluation Panel or the Interview/Presentation Panel, to obtain clarification or information concerning the subject solicitation. Further, nothing herein shall prohibit District employees or representatives from communicating with each other. For purposes of this section, "Proposer's representative" means an employee, partner, officer, or director of a Proposer, or consultant, lobbyist, or actual or potential subcontractor or sub-consultant of a Proposer.

1.3.3 A Cone of Silence applies to this procurement as of the date this section is issued conformed for release. The Cone of Silence shall terminate at the time the SFUSD Board of Education votes to award or approve a contract, to reject all bids or responses, or otherwise take action that ends the solicitation.

1.3.4 Nothing contained herein shall prohibit any prequalified Proposer or any Proposer's representative:

1.3.4.1 from making public presentations at duly noticed pre-bid conferences or before duly noticed Evaluation Panel and/or Interview/Presentation Panel meetings;

1.3.4.2 from engaging in contract negotiations with the District;

1.3.4.3 from making a public presentation to the Board of Trustees during any duly noticed public meeting; or

1.3.4.4 from communicating in writing with any District employee or official for purposes of seeking clarification or additional information, subject to the provisions of the applicable RFP, or bid documents.

- 1.3.5 Nothing contained herein shall prohibit the Project Manager or other respective staff from initiating contact with a prequalified Proposer or Proposer's representative and subsequent communications related thereto for the purpose of obtaining further information regarding the RFP, bid, or competitive solicitation or as otherwise permitted by this Section. For purposes of this Section and when not otherwise precluded by the operation of this Section from doing so, the Project Manager or designee shall accept communications from prequalified Proposers or Proposer's representatives while a Cone of Silence is applicable to this competitive solicitation. Such contact shall be in writing and shall be provided to the members of the applicable evaluation, including any response thereto.
- 1.3.6 The District's Legal Office shall be informed of any person who is alleged to have violated the requirements of this Section. In each such instance, an investigation may be performed and the results of each investigation including a determination of violation, if any, shall be compiled in a report.
- 1.3.6.1 If there is a determination of violation, the District reserves the right to reprimand, penalize in the form of lower ranking or points, or entirely disqualify the Proposer who committed the violation from further consideration for the pending competitive solicitation.
- 1.3.6.2 A copy of the report, including a determination of violation, if any, and notice of the penalty imposed as provided for in this Section, if any, shall be immediately furnished or mailed to the Proposer or person who has been investigated.

END OF SECTION

SECTION 00 33 50

EXISTING SITE CONDITIONS

1. This document sets forth the terms and conditions under which a Proposer may review, study, use or rely upon geotechnical data for, or areas near, the Project site (the "Site"), and existing conditions information concerning existing conditions at the Site. This document, the available geotechnical data, and the supplied existing conditions information are not Contract Documents.
2. **REPORTS AND INFORMATION.**
 - 2.1 District, its consultants and prior contractors have collected documents that provide a general description of the Site and conditions of the Work. These documents may consist of geotechnical reports near and around the Site, contracts, contract specifications, tenant improvement contracts, as-built drawings, utility drawings, and information regarding Underground Facilities. These reports, documents and other information are not part of the Contract Documents.
 - 2.2 Proposers must inspect all available geotechnical reports and all information regarding existing conditions provided by the District.
 - 2.3 The following reports and information regarding existing conditions and Underground Facilities at or contiguous to the Site are included with this RFP as reference documents:
 - 2.3.1 PCCD Facilities & Technology Master Plan Update 2017
 - 2.3.2 Geotechnical Report dated April 25, 2012
 - 2.3.3 Theater Modernization 100% SD Drawings and Specifications
 - 2.3.4 Peralta Community College District Building Design & Construction Standards
 - 2.3.5 Hazmat Report
 - 2.4 The reports, documents, and information described herein are not part of the Contract Documents. However, for Proposer's convenience, copies of the documents have been provided with the Project Manual and Criteria Documents.
3. **USE OF INFORMATION ON EXISTING CONDITIONS.**
 - 3.1 Above-Ground Existing Conditions. Under no circumstances shall District be deemed to make a warranty or representation of visible existing above-ground conditions, as-built conditions, or other above-ground actual conditions verifiable by reasonable independent investigation. These conditions are verifiable by the Proposer by the performance of its own independent investigation, which the Proposer must perform prior to submitting a Proposal. The Proposer must not rely on the information supplied by District regarding existing above-ground conditions. By submitting a Proposal, Proposer represents and agrees it is not relying on any information regarding existing above-ground conditions supplied by District to the extent such conditions are verifiable by reasonable independent investigation.

3.2 Underground Facilities. Information supplied regarding existing Underground Facilities at or contiguous to the Site is based on information furnished to District by others (e.g., the owners or builders of such Underground Facilities or others). For those Underground Facilities that are owned by District, District will be responsible for the accuracy of information regarding Underground Facilities and for any conditions that materially differ from those indicated in the information provided by the District, provided that Proposer has conducted an independent review of the information provided by the District and discrepancies were not apparent. Proposer is responsible for understanding and interpreting all information on Underground Facilities other than those owned by District and District agrees that Proposer is not responsible for the accuracy of such information or reports. In reviewing any information regarding Underground Facilities, Proposer is responsible for making all reasonable interpretations and drawing all reasonable conclusions from that information but shall be solely responsible for any unreasonable interpretations or conclusions drawn therefrom. Compensation to the Design Builder for unknown differing site conditions shall be allowed as is provided for in the Contract Documents.

4. **LIMITED RELIANCE PERMITTED ON CERTAIN INFORMATION.**

4.1 Geotechnical Data. By submitting a Proposal, Proposer represents and agrees that in submitting its Proposal, it is not relying on any geotechnical data supplied by District, except as specifically set forth herein.

4.2 The Proposer may rely upon the accuracy of the “technical data” contained in the geotechnical reports and drawings identified above, but only insofar as it relates to subsurface conditions and only if Proposer has conducted a thorough review of such technical data and discrepancies were not apparent. The term “technical data” in the referenced reports and drawings shall be limited as follows:

4.2.1 The term “technical data” shall include actual reported depths, reported quantities, reported soil types, reported soil conditions, and reported material, equipment or structures that were encountered during subsurface exploration.

4.2.2 The term “technical data” does not include, and the Proposer may not rely upon, any other data, interpretations, opinions, or information shown or indicated in such drawings or reports that otherwise relate to subsurface conditions or described structures.

4.2.3 The term “technical data” shall not include the location of Underground Facilities.

4.2.4 The Proposer may not rely on the completeness of reports and drawings for design or construction. The Proposer may rely upon the general accuracy of the “technical data” contained in such reports or drawings.

4.2.5 The Proposer is responsible for making reasonable interpretations of technical data and reports. The Proposer is solely responsible for any unreasonable interpretation or conclusion drawn from any “technical data” or any other data, interpretations, opinions or information contained in supplied geotechnical data. However, compensation for unknown differing site conditions shall be allowed as is provided for in the Contract Documents.

5. INVESTIGATIONS.

5.1 Before submitting a Proposal, each Proposer shall conduct its own visual inspection of the Site and will be responsible for performing its own Geotechnical Investigation and report all other investigations that Proposer deems are necessary to make its Proposal and for performing and furnishing Work in accordance with the time, price and other terms and conditions of the Contract Documents. Proposer may rely upon the geotechnical and existing conditions data provided by the District only to the extent the Proposer's geotechnical engineer deems appropriate in the exercise of its professional judgment. The design shall not be developed based solely upon the information provided by the District.

Each Proposer will be responsible for obtaining and reviewing such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site or otherwise, as deemed necessary by its geotechnical engineer, that may affect structural design, cost, progress, performance or furnishing of Work or that relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by the Proposer and safety precautions and programs incident thereto, and for performing reasonable on-site inspections for visible conditions, which the Proposer deems necessary to make its Bid and for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

Each Proposer shall conduct its own Hazardous Material Survey the Proposer deems necessary for the performance of its work.

6. ACCESS TO SITE.

6.1 Subject to District approval and reasonable scheduling, District will provide each Proposer access to the Site to conduct such examinations and investigations as each Proposer deems necessary for submission of its Proposal.

7. Section 01 88 20 (Miscellaneous Hazardous Materials Performance Requirements) describes hazardous material information included with the Request for Proposal Documents and use of data therein.

8. REPORTS AND INFORMATION.

8.1 The District, its consultants, Contractors, and agents have prepared and are preparing documents providing a general description of the Project Site and identifying locations of known or suspected hazardous materials. The existing documents consist of surveys included in the Project Manual. Additional documents may be provided to Proposers in an Addendum.

8.2 The Project Site consists of the following:

The Work generally consists of the to construct the Title IX Locker Room renovation at Laney College for the Peralta Community College District, to be located at 900 Fallon Street, Oakland, CA 94607. The building was constructed circa 1968. The proposed modernization includes the same 21,800 SF below grade locker room space but upgrading its entirety, including a new architectural layout of the rooms.

The renovated building will promote interaction among the students, and the modernization of existing space will celebrate women and female athletes of Laney college, simplify access, reduce travel distance, improve security, support a diverse community, achieve Title IX compliance, and improve financial efficiency. The scope of work includes a new MEP system, HVAC system, fire protection system installation, and installation of new furniture, fixtures and equipment.

9. USE OF DATA

9.1 Data regarding the locations and types of hazardous materials was obtained for use of District and its consultants, Contractors, agents, and tenants for planning and design and are not part of the Contract Documents. Proposer may rely on this information for its accuracy regarding the locations of potentially hazardous materials related to the Work. The provisions of Section 4 (Limited Reliance Permitted on Certain Information) apply to any hazardous materials information. Compensation to the Design Builder for unknown differing site conditions, including conditions that differ materially from those indicated in the reports or surveys referred to herein, shall be allowed as provided in the Contract Documents.

9.2 District does not warrant and makes no representation regarding the accuracy, completeness or thoroughness of any information verifiable by visual inspection. By submitting a Proposal, Proposer represents and agrees that in submitting a Proposal it has reviewed the data regarding existing conditions supplied by District concerning the general location of potentially hazardous materials.

10. INVESTIGATIONS.

10.1 Before submitting a Proposal, each Proposer shall conduct its own visual inspection of the Site, and with the District's consent, shall perform other investigations that Proposer deems are necessary to make its Proposal and for performing and furnishing Work in accordance with the time, price and other terms and conditions of the Contract Documents.

END OF DOCUMENT

SECTION 00 35 00

LABOR COMPLIANCE PROGRAM

SECTION I PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720 *et seq.*, and include, but are not limited to, such types of work as construction, alteration, demolition, repair, or maintenance work. The Division of Labor Statistics and Research (DLSR) predetermines the appropriate prevailing wage rates for particular construction trades and crafts by county.

1 A. Types of Contracts to Which Prevailing Wage Requirements Apply

As provided in California Labor Code sections 17250.30(d)(2) and (d)(3), the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code apply such that the District shall reimburse the department for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771,5 of the Labor Code. In lieu of reimbursing the Department of Industrial Relations for its reasonable and directly related costs of performing, monitoring, and enforcement on public works projects, the District will continue operating its existing previously approved labor compliance program to monitor and enforce prevailing wage requirements on this project because the District entered into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

SECTION II

JOB START MEETING

After the District awards the contract, and prior to the commencement of the work, a Job Start meeting (Pre-Job conference) may be conducted by the Labor Compliance Officer (LCO) with the contractor and those subcontractors listed in its bid documents.

At that meeting, the LCO will discuss the federal and state labor law requirements applicable to the contract, including prevailing wage requirements, the respective record keeping responsibilities, the requirement for the submittal of certified payroll records to the District, and the prohibition against discrimination in employment.

The LCO will provide the contractor and each subcontractor with a Checklist of Labor Law Requirements and will discuss in detail the following checklist items:

1. The contractor's duty to pay prevailing wages (Labor Code Section 1770 et seq.);
2. The contractor's duty to employ registered apprentices (Labor Code Section 1777.5);
3. The penalties for failure to pay prevailing wages and to employ apprentices, including forfeitures and debarment (Labor Code Sections 1775, 1777.7, and 1813);
4. The requirement to maintain and submit copies of certified payroll records to the District, on a weekly basis, as required (Labor Code Section 1776), and penalties for failure to do so (Labor Code Section 1776(g)); the requirement includes and applies to all subcontractors performing work on the project even if their portion of the work is less than one-half of one percent (1/2 of 1%) of the total amount of the contract.
5. The prohibition against employment discrimination (Labor Code Sections 1735 and 1777.6; the Government Code; and Title VII of the Civil Rights Act of 1964, as amended);
6. The prohibition against taking or receiving a portion of an employee's wages (Labor Code Section 1778) (kickback);
7. The prohibition against accepting fees for registering any person for public works (Labor Code Section 1779) or for filing work orders on public works (Labor Code Section 1780);
8. The requirement to list all subcontractors that are performing one-half of one percent of the total amount of the contract (Public Contract Code Section 4100 et seq.);
9. The requirement to be properly licensed and to require all subcontractors to be properly licensed, and the penalty for employing workers while unlicensed (Labor Code Section 1021 and under California Contractors License Law, also, see Business and Professions Code Section 7000, et seq.);
10. The prohibition against unfair competition (Business and Professions Code Sections 17200-17208);
11. The requirement that the contractor and subcontractor be properly insured for Workers'

Compensation (Labor Code Section 1861); and

12. The requirement that the contractor abide by the Occupational Safety and Health laws along with all regulations that apply to the project.

It will be the DBE's responsibility to provide copies of the LCP package to all listed subcontractors and to any substituted subcontractors.

SECTION III REVIEW OF CERTIFIED PAYROLL RECORDS

A. Certified Payroll Records Required

The DBE and each subcontractor shall maintain payrolls and basic records (timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working on the project. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, and actual wages paid.

1. Submittal of Certified Payroll Records

The DBE and each subcontractor shall maintain weekly certified payroll records for submittal to the Peralta Community College District LCO as required. The DBE shall be responsible for the submittal of payroll records of all its subcontractors. All certified payroll records shall be accompanied by a statement of compliance signed by the DBE or each subcontractor indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations, and that the classifications set forth for each employee conform with the work performed.

Time cards, front and back copies of cancelled checks, daily logs, employee sign-in sheets and/or any other record maintained for the purposes of reporting payroll may be requested by the Labor Compliance Officer at any time and shall be provided within 10 days following the receipt of the request.

2. Full Accountability

Each individual, laborer or craftsperson working on the project must appear on the payroll. The basic concept is that the employer who pays the trades worker must report that individual on its payroll. This includes individuals working as apprentices in an apprenticeable trade. Owner-operators are to be reported by the contractor employing them, rental equipment operators are to be reported by the rental company paying the workers' wages.

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification descriptive of the work actually done.

The DBE shall provide the records required under this section to the District within five (5) days of each payday, and make them available for inspection by the Department of Industrial Relations, and shall permit representatives of each to interview trades workers during working hours on the project site.

3. Responsibility for Subcontractors

DBE shall be responsible for ensuring adherence to labor standards provisions by its subcontractors. Moreover, DBE is responsible for Labor Code violations of its subcontractors in accordance with Labor Code section 1775.

4. Payment to Employees

Employees must be paid unconditionally, and not less often than once each week, the full amounts, that are due and payable for the period covered by the particular payday. Thus, an employer must establish a fixed workweek (Sunday through Saturday, for example) and an established payday (such as every Friday or the preceding day should such payday fall on a holiday). On each and every payday, each worker must be paid all sums due as of the end of the preceding workweek and must be provided with an itemized wage statement.

If an individual is called a subcontractor, whereas, in fact, he/she is merely a journey level mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the DBE as a trades worker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the general contractor for purposes of prevailing wage requirements, certified payroll reporting and workers' compensation laws.

The worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the "Prevailing Wage Determinations" for the class of work actually performed. Any work performed on Saturday, Sunday, and/or on a holiday, or portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day and 40 hours in a workweek shall be premium pay. All work performed on Saturday, Sunday and holidays shall be paid pursuant to the Prevailing Wage determination.

B. Apprentices

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered and approved by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any craft/classification shall not be greater than the ratio permitted to the DBE as to its entire workforce under the registered program.

Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed. Pre-apprentice trainees, trainees in non-apprenticeable crafts, and others who are not duly registered will not be permitted on the project unless they are paid full prevailing wage rates as journeypersons.

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Submit contract award information to the apprenticeship committee for each apprenticeable

craft or trade in the area of the Project;

2. Request dispatch of apprentices from the applicable Apprenticeship Program(s) and employ apprentices on public works projects in a ratio to journeypersons which in no case shall be less than one (1) hour of apprentice work to each five (5) hours of journeyperson work; and
3. Contribute to the applicable Apprenticeship Program(s) or the California Apprenticeship Council in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. If payments are not made to an Apprenticeship Program, they shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142.

If the DBE is registered to train apprentices, it shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work. It should be noted that a prior approval for a separate project does not confirm approval to train on any project. The DBE/subcontractor must check with the applicable Joint Apprenticeship Committee to verify status.

1 C. Audit of Certified Payroll Records

Audits shall be conducted by the LCO, and shall also be conducted at the request of the Labor Commissioner to determine whether all trades workers on project sites have been paid according to the prevailing wage rates.

END OF SECTION

SECTION 00 43 00

BOND ACCOMPANYING PROPOSAL

Known All Men by These Presents That We [_____]

[_____] as

Principal, and

[_____]

(Name of Insurance Company, name of local representative, address, and telephone number)

Legally doing business in California as an admitted surety insurer, as Surety, are held firmly bound unto the Peralta Community College District, hereinafter called the District, in the penal sum of [_____] Dollars (\$ [_____]) (which represents 10% of the proposal amount) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION of this obligation is such that,

WHEREAS, the Principal has submitted a Proposal for [_____]

At [_____]

for which proposals are to be opened on

[_____]

NOW, THEREFORE, if the Principal is awarded the Contract, and, within the time and in the manner required in the Contact Documents, enters into a written Contract with the District in accordance with the Proposal, and gives bonds with good and sufficient surety for the faithful performance of such Contract and for the prompt payment for labor and materials in the prosecution thereof; or in the event of the Principal's failure to enter into such contract and give such bonds, if the principal shall pay to the District, the difference between the amount specified in said Proposal and such larger amount for which the District may procure the work covered by said Proposal, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract on the call for proposals, or to the work to be performed there under, or the specifications accompanying the same, shall in any way affect its time, alteration or addition to the terms of said contract to the call for proposals, or to the work, or to the specifications.

In the event suit is brought upon this bond by the district and judgment is recovered, the Surety shall pay all costs incurred by the District in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, we have signed and sealed this instrument on this [_____]
day of [_____], 20____.]

[_____]	[_____]
(Witness)	(Principal) (Seal)
[_____]	[_____]
(Witness)	(Title)
[_____]	[_____]
(Witness)	(Surety) (Seal)
[_____]	[_____]
(Witness)	(Title)

SIGNATURE EXECUTED IN BEHALF OF SURETY MUST HAVE PROPER ACKNOWLEDGEMENT.

END OF SECTION

SECTION 00 45 00

PROPOSER CERTIFICATIONS

For the following design-build project:

Title IX Locker Room Renovation Project at Laney College
900 Fallon Street, Oakland, CA 96607

By and between

Peralta Community College District
Department of General Services
333 East 8th Street
Oakland, CA 94606

And

[Design/Builder]
[Address]

Dated as of _____, 2020

PAYMENT BOND
Design/Builder's Labor & Material Bond
(100% of Contract Price)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Peralta Community College District ("District") and [Design/Builder] ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

Title Ix Locker Room Renovation Project- Laney College

("Project" or "Contract") which Contract dated _____, 2020, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to one hundred percent (100%) of the Contract price, to secure the claims to which reference is made in sections 9000 through 9510 and 9550 through 9566 of the Civil Code, and division 2, part 7, of the Labor Code.

NOW, THEREFORE, the Principal and _____ ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of _____ Dollars (\$_____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of its subcontractors, or their heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal or any of his or its subcontractors of any tier under Section 13020 of the Unemployment Insurance Code with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20__.

Principal

Surety

By

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone No. of California Agent of Surety

Design/Builder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

END OF DOCUMENT

PERFORMANCE BOND
(100% of Contract Price)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Peralta Community College District ("District") and [Design/Builder] ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

Title Ix Locker Room Renovation Project- Laney College

("Project" or "Contract") which Contract dated _____, 2020, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract.

NOW, THEREFORE, the Principal and _____
_____ ("Surety") are held
and firmly bound unto the Board of the District in the penal sum of

_____ Dollars (\$ _____), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Promptly perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

Or, at the District's sole discretion and election, the Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the District of the lowest responsible bidder, arrange for a contract between such bidder and the District and make available as Work progresses sufficient funds to pay the cost of completion less the "balance of the Contract Price," and to pay and perform all obligations of Principals under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract Price," as used in this paragraph, shall mean the total amount payable to Principal by the District under the Contract and any modifications thereto, less the amount previously paid by the District to the Principal, less any withholdings by the District allowed under the Contract. District shall not be required or obligated to accept a tender of a completion contractor from the Surety for any or no reason.

The condition of the obligation is such that, if the above bound Principal, its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship,

and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

Surety expressly agrees that the District may reject any contractor or subcontractor proposed by Surety to fulfill its obligations in the event of default by the Principal. Surety shall not utilize Principal in completing the Work nor shall Surety accept a Bid from Principal for completion of the Work if the District declares the Principal to be in default and notifies Surety of the District's objection to Principal's further participation in the completion of the Work.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Design/Builder shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Design/Builder remains. Nothing herein shall limit the District's rights or the Design/Builder's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond. The Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond by any overpayment or underpayment by the District that is based upon estimates approved by the Architect. The Surety does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____, 20__.

Principal

Surety

By

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone No. of California Agent of Surety

Design/Builder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

END OF DOCUMENT

REGISTERED SUBCONTRACTORS LIST
(Labor Code Section 1771.1)

PROJECT: **Title Ix Locker Room Renovation Project- Laney College**

Date Submitted (for Updates): _____

Design/Builder acknowledges and agrees that it must clearly set forth below the name and Department of Industrial Relations (DIR) registration number of each subcontractor **for all tiers** who will perform work or labor or render service to Design/Builder or its subcontractors in or about the construction of the Work **at least two (2) weeks before the subcontractor is scheduled to perform work**. This document is to be updated as all tiers of subcontractors are identified.

Design/Builder acknowledges and agrees that, if Design/Builder fails to list as to any subcontractor of any tier who performs any portion of Work, the Contract is subject to cancellation and the Design/Builder will be subjected to penalty under applicable law.

If further space is required for the list of proposed subcontractors, attach additional copies of page 2 showing the required information, as indicated below.

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Subcontractor Name: _____

DIR Registration #: _____

Portion of Work: _____

Date: _____

Name of Design/Builder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

**HAZARDOUS MATERIALS
PROCEDURES & REQUIREMENTS**

1. Summary

This document includes information applicable to hazardous materials and hazardous waste abatement.

2. Notice of Hazardous Waste or Materials

- a. Design/Builder shall give notice in writing to the District, the Construction Manager, and the Architect promptly, before any of the following materials are disturbed, and in no event later than twenty-four (24) hours after first observance, of any:
 - (1) Material that Design/Builder believes may be a material that is hazardous waste or hazardous material, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
 - (2) Other material that may present a substantial danger to persons or property exposed thereto in connection with Work at the site.
- b. Design/Builder's written notice shall indicate whether the hazardous waste or material was shown or indicated in the Contract Documents to be within the scope of Work, and whether the materials were brought to the site by Design/Builder, its Subcontractors, suppliers, or anyone else for whom Design/Builder is responsible. As used in this section the term "hazardous materials" shall include, without limitation, asbestos, lead, Polychlorinated biphenyl (PCB), petroleum and related hydrocarbons, and radioactive material.
- c. In response to Design/Builder's written notice, the District shall investigate the identified conditions.
- d. If the District determines that conditions do not involve hazardous materials or that no change in terms of Contract is justified, the District shall so notify Design/Builder in writing, stating reasons. If the District and Design/Builder cannot agree on whether conditions justify an adjustment in Contract Price or Contract Time, or on the extent of any adjustment, Design/Builder shall proceed with the Work as directed by the District.
- e. If after receipt of notice from the District, Design/Builder does not agree to resume Work based on a reasonable belief it is unsafe, or does not agree to resume Work under special conditions, then District may order such portion of Work that is in connection with such hazardous condition or such affected area to be deleted from the Work, or performed by others, or District may invoke its rights to terminate the Contract in whole or in part. District will determine entitlement to or the amount or extent of an adjustment, if any, in

Contract Price or Contract Time as a result of deleting such portion of Work, or performing the Work by others.

- f. If Design/Builder stops Work in connection with any hazardous condition and in any area affected thereby, Design/Builder shall immediately redeploy its workers, equipment, and materials, as necessary, to other portions of the Work to minimize delay and disruption.

3. **Additional Warranties and Representations**

- a. Design/Builder represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have the required levels of familiarity with the Site and the Work, training, and ability to comply fully with all applicable laws and contractual requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be performed (including, but not limited to, all training required to address adequately the actual or potential dangers of Contract performance).
- b. Design/Builder represents and warrants that it, its employees, and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state, and other governmental and quasi-governmental requirements applicable to the Work.
- c. Design/Builder represents and warrants that it has studied carefully all requirements of the Specifications regarding procedures for demolition, hazardous waste abatement, or safety practices, specified in the Contract, and prior to submitting its bid, has either (a) verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by the Contract Documents, or (b) by way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by the Contract Documents. Design/Builder accepts the risk that any specified procedure will result in a completed Project in full compliance with the Contract Documents.

4. **Monitoring and Testing**

- a. District reserves the right, in its sole discretion, to conduct air monitoring, earth monitoring, Work monitoring, and any other tests (in addition to testing required under the agreement or applicable law), to monitor Contract requirements of safe and statutorily compliant work methods and (where applicable) safe re-entry level air standards under state and federal law upon completion of the job, and compliance of the work with periodic and final inspection by public and quasi-public entities having jurisdiction.
- b. Design/Builder acknowledges that District has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-abatement, during abatement, and post-abatement air monitoring, that District shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of

the Work by Design/Builder. In the event District elects to perform these activities and tests, Design/Builder shall afford District ample access to the Site and all areas of the Work as may be necessary for the performance of these activities and tests. Design/Builder will include the potential impact of these activities or tests by District in the Contract Price and the Scheduled Completion Date.

- c. Notwithstanding District's rights granted by this paragraph, Design/Builder may retain its own industrial hygiene consultant at Design/Builder's own expense and may collect samples and may perform tests including, but not limited to, pre-abatement, during abatement, and post-abatement personal air monitoring, and District reserves the right to request documentation of all such activities and tests performed by Design/Builder relating to the Work and Design/Builder shall immediately provide that documentation upon request.

5. **Compliance with Laws**

- a. Design/Builder shall perform safe, expeditious, and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal, and disposal industry, the applicable law, and the Contract Documents, including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of the law, delivering of all requisite notices, and obtaining all necessary governmental and quasi-governmental approvals.
- b. Design/Builder represents that it is familiar with and shall comply with all laws applicable to the Work or completed Work including, but not limited to, all federal, state, and local laws, statutes, standards, rules, regulations, and ordinances applicable to the Work relating to:
 - (1) The protection of the public health, welfare and environment;
 - (2) Storage, handling, or use of asbestos, PCB, lead, petroleum based products, radioactive material, or other hazardous materials;
 - (3) The generation, processing, treatment, storage, transport, disposal, destruction, or other management of asbestos, PCB, lead, petroleum, radioactive material, or hazardous waste materials or other waste materials of any kind; and
 - (4) The protection of environmentally sensitive areas such as wetlands and coastal areas.

6. **Disposal**

- a. Design/Builder has the sole responsibility for determining current waste storage, handling, transportation, and disposal regulations for the job Site and for each waste disposal facility. Design/Builder must comply fully at its sole cost and expense with these regulations and any applicable law. District may, but is not obligated to, require submittals with this information for it to review consistent with the Contract Documents.

- b. Design/Builder shall develop and implement a system acceptable to District to track hazardous waste from the Site to disposal, including appropriate "Hazardous Waste Manifests" on the EPA form, so that District may track the volume of waste it put in each landfill and receive from each landfill a certificate of receipt.
- c. Design/Builder shall provide District with the name and address of each waste disposal facility prior to any disposal, and District shall have the express right to reject any proposed disposal facility. Design/Builder shall not use any disposal facility to which District has objected. Design/Builder shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to the District.

7. Permits

- a. Before performing any of the Work, and at such other times as may be required by applicable law, Design/Builder shall deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. Design/Builder shall submit evidence satisfactory to District that it and any disposal facility:
 - (1) have obtained all required permits, approvals, and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by applicable law; and
 - (2) are in compliance with all such permits, approvals and the regulations.

For example, before commencing any work in connection with the Work involving asbestos-containing materials, or PCBs, or other hazardous materials subject to regulation, Design/Builder agrees to provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt requested, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to District. Design/Builder shall not conduct any Work involving asbestos-containing materials or PCBs unless Design/Builder has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, and bonds that are required by governmental or quasi-governmental authorities, and all fees, deposits, tap fees, offsite easements, and asbestos and PCB disposal facilities expenses necessary for the prosecution of the Work, shall be procured and paid for by Design/Builder. Design/Builder shall give all notices and comply with the all applicable laws bearing on the conduct of the Work as drawn and specified. If Design/Builder observes or reasonably should have observed that Plans and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying District in writing of such fact. If Design/Builder performs any Work contrary to applicable laws, it shall bear all costs arising therefrom.

- b. In the case of any permits or notices held in District's name or of necessity to be made in District's name, District shall cooperate with Design/Builder in securing the permit or giving the notice, but the Design/Builder shall prepare for District review and execution upon approval, all necessary applications, notices, and other materials.

8. Indemnification

To the fullest extent permitted by law, the indemnities and limitations of liability expressed throughout the Contract Documents apply with equal force and effect to any claims or liabilities imposed or existing by virtue of the removal, abatement, and disposal of hazardous waste. This includes, but is not limited to, liabilities connected to the selection and use of a waste disposal facility, a waste transporter, personal injury, property damage, loss of use of property, damage to the environment or natural resources, or "disposal" and "release" of materials associated with the Work (as defined in 42 U.S.C. § 9601 *et seq.*).

9. Termination

District shall have an absolute right to terminate for default immediately without notice and without an opportunity to cure should Design/Builder knowingly or recklessly commit a material breach of the terms of the Contract Documents, or any applicable law, on any matter involving the exposure of persons or property to hazardous waste. However, if the breach of contract exposing persons or property to hazardous waste is due solely to an ordinary, unintentional, and non-reckless failure to exercise reasonable care, then the procedures for termination for cause shall apply without modification.

END OF DOCUMENT

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700, in relevant part, provides:

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

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state; and/or
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

Date: _____

Name of Design/Builder: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Labor Code sections 1860 and 1861, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

END OF DOCUMENT

**PREVAILING WAGE AND
RELATED LABOR REQUIREMENTS CERTIFICATION**

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project including, without limitation, labor compliance monitoring and enforcement by the Department of Industrial Relations.

Date: _____

Name of Design/Builder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

**DISABLED VETERAN BUSINESS
ENTERPRISE PARTICIPATION CERTIFICATION**

GENERAL INSTRUCTIONS

Pursuant to Education Code section 71028 and Public Contract Code section 10115, the District has a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%) per year of the overall dollar amount expended each year on District projects. Therefore, the Design/Builder awarded the Contract must submit this document to the District with its executed Agreement, identifying the steps Design/Builder took to solicit DVBE participation in conjunction with this Contract.

PART I – Method of Compliance with DVBE Participation Goals. Check the appropriate box to indicate your method of committing the contract dollar amount.

YOUR BUSINESS ENTERPRISE IS:	AND YOU WILL	AND YOU WILL
<input type="checkbox"/> Disabled veteran owned and your forces will perform at least 3% of this Contract	Include a copy of your DVBE letter from Office of Small Business and Disabled Veterans Business Enterprise Services ("OSB")*	Complete Part 1 of this form and the Certification
<input type="checkbox"/> Disabled veteran owned but is unable to perform 3% of this Contract with your forces	Use DVBE subcontractors /suppliers to bring the Contract participation to at least 3%	Include a copy of each DVBE's letter from OSB (including yours, if applicable), and complete Part 1 of this form and the certification
<input type="checkbox"/> NOT disabled veteran owned	Use DVBE subcontractors /suppliers for at least 3% of this Contract	
<input type="checkbox"/> Unable to meet the required participation goals after good faith efforts	Make good faith efforts, including contacts, advertisement and DVBE solicitation	Complete all of this Certification form

* A DVBE letter from OSB is obtained from the participating DVBE.

You must complete the following table to show the dollar amount of DVBE participation:

	TOTAL CONTRACT PRICE
A. Prime Bidder, if DVBE (own participation)	\$
DVBE Subcontractor or Supplier	
Subtotal (A & B)	
Non-DVBE	
Total Bid	

PART II – Contacts. To identify DVBE subcontractors/suppliers for participation in your contract, you must contact each of the following categories. You should contact several DVBE organizations.

CATEGORY	TELEPHONE NUMBER	DATE CONTACTED	PERSON CONTACTED
The District, if any			*
OSB, which publishes a list of DVBE's; Internet Address: http://www.dgs.ca.gov/osbcr	(916) 323-5478 (916) 322-5060		*
DVBE Organization (List)			*

*Write "recorded message" in this column, if applicable.

PART III – Advertisement. You must advertise for DVBE participation in both a trade and focus paper. List the advertisement you place to solicit DVBE participation. Advertisements should be published at least fourteen (14) days prior to bid/proposal opening; if you cannot advertise fourteen (14) days prior, advertisements should be published as soon as possible. Advertisements must include that your firm is seeking DVBE participation, the project name and location, and you firm’s name, your contact person, and telephone number. Attach copies of advertisements to this form.

FOCUS/TRADE PAPER NAME	CHECK ONE		DATE OF ADVERTISEMENT
	TRADE	FOCUS	

PART IV – DVBE Solicitations. List DVBE subcontractors/suppliers that were invited to bid. Use the following instructions to complete the remainder of this section (read the three columns as a sentence from left to right). If you need additional space to list DVBE solicitations, please use a separate page and attach to this form.

IF THE DVBE.....	THEN.....	AND.....		
was selected to participate	Check "yes" in the "SELECTED" column	include a copy of their DVBE letter(s) from OSB		
was NOT selected to participate	Check "NO" in the "SELECTED" column	state why in the "REASON NOT SELECTED" column		
did not respond to your solicitation	Check the "NO RESPONSE" column.			
DISABLED VETERANS BUSINESS ENTERPRISES CONTACTED	SELECTED		REASON NOT SELECTED	NO RESPONSE
	YES	NO		

A copy of this form must be retained by you and may be subject to a future audit.

CERTIFICATION

I, _____ certify that I am the Design/Builder's _____ and that I have made a diligent effort to ascertain the facts with regard to the representations made herein. In making this certification, I am aware of section 12650 et seq. of the Government Code providing for the imposition of treble damages for making false claims.

Date: _____

Name of Design/Builder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification form is required from the successful Bidder pursuant to Government Code section 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 doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency and public school district under California law and requires all contractors on District projects to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990.

Design/Builder shall certify that it will provide a drug-free workplace by doing all of the following:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition.
- b. Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The person's or organization's policy of maintaining a drug-free workplace.
 - (3) The availability of drug counseling, rehabilitation, and employee-assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.
- c. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, 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 publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by section 8355(a), and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the 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 the aforementioned Act.

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

Date: _____

Name of Design/Builder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

TOBACCO-FREE ENVIRONMENT CERTIFICATION

Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq., Business and Professions Code section 22950 et seq., and District Board policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school-owned vehicles and vehicles owned by others while on District property. The prohibition on smoking includes the use of any electronic smoking device that creates an aerosol or vapor, in any manner or in any form, and the use of any oral smoking device for the purpose of circumventing the prohibition of tobacco smoking. Further, Health & Safety Code section 11362.3 prohibits the smoking or use of cannabis or cannabis products in any place where smoking tobacco is prohibited.

I acknowledge that I am aware of the District’s policy regarding tobacco-free environments at District sites, including the Project site and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm’s employees, agents, subcontractors, or my firm’s subcontractors’ employees or agents, to use tobacco and/or smoke on the Project site.

Date: _____

Name of Design/Builder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

HAZARDOUS MATERIALS CERTIFICATION

Design/Builder hereby certifies that no asbestos, or asbestos-containing materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Design/Builder's work on the Project for District.

Design/Builder further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (0.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Design/Builder if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing New Hazardous Material will be immediately rejected and this Work will be removed at Design/Builder's expense at no additional cost to the District.

Design/Builder has read and understood the document titled Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Name of Design/Builder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

LEAD-BASED MATERIALS CERTIFICATION

This certification provides notice to the Design/Builder that:

- (1) Design/Builder's work may disturb lead-containing building materials.
- (2) Design/Builder shall notify the District if any work may result in the disturbance of lead-containing building materials.
- (3) Design/Builder shall comply with the Renovation, Repair and Painting Rule, if lead-based paint is disturbed in a six-square-foot or greater area indoors or a 20-square-foot or greater area outdoors.

1. Lead as a Health Hazard

Lead poisoning is recognized as a serious environmental health hazard facing children today. Even at low levels of exposure, much lower than previously believed, lead can impair the development of a child's central nervous system, causing learning disabilities, and leading to serious behavioral problems. Lead enters the environment as tiny lead particles and lead dust disburse when paint chips, chalks, peels, wears away over time, or is otherwise disturbed. Ingestion of lead dust is the most common pathway of childhood poisoning; lead dust gets on a child's hands and toys and then into a child's mouth through common hand-to-mouth activity. Exposures may result from construction or remodeling activities that disturb lead paint, from ordinary wear and tear of windows and doors, or from friction on other surfaces.

Ordinary construction and renovation or repainting activities carried out without lead-safe work practices can disturb lead-based paint and create significant hazards. Improper removal practices, such as dry scraping, sanding, or water blasting painted surfaces, are likely to generate high volumes of lead dust.

Because the Design/Builder and its employees will be providing services for the District, and because the Design/Builder's work may disturb lead-containing building materials, DESIGN/BUILDER IS HEREBY NOTIFIED of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1978 are presumed to contain some lead-based paint until sampling proves otherwise.

2. Overview of California Law

Education Code section 32240 et seq. is known as the Lead-Safe Schools Protection Act. Under this act, the Department of Health Services is to conduct a sample survey of schools in the State of California for the purpose of developing risk factors to predict lead contamination in public schools. (Ed. Code, § 32241.)

Any school that undertakes any action to abate existing risk factors for lead is required to utilize trained and state-certified contractors, inspectors, and workers. (Ed. Code, § 32243, subd. (b).) Moreover, lead-based paint, lead plumbing, and solders, or other potential sources of lead contamination, shall not be utilized in the construction of any new school facility or the modernization or renovation of any existing school facility. (Ed. Code, § 32244.)

Both the Federal Occupational Safety and Health Administration ("Fed/OSHA") and the California Division of Occupational Safety and Health ("Cal/OSHA") have implemented safety orders applicable to all construction work where a contractor's employee may be occupationally exposed to lead.

The OSHA Regulations apply to all construction work where a contractor's employee may be occupationally exposed to lead. The OSHA Regulations contain specific and detailed requirements imposed on contractors subject to those regulations. The OSHA Regulations define construction work as work for construction, alteration, and/or repair, including painting and decorating. Regulated work includes, but is not limited to, the following:

- a. Demolition or salvage of structures where lead or materials containing lead are present;
- b. Removal or encapsulation of materials containing lead;
- c. New construction, alteration, repair, or renovation of structures, substrates, or portions thereof, that contain lead, or materials containing lead;
- d. Installation of products containing lead;
- e. Lead contamination/emergency cleanup;
- f. Transportation, disposal, storage, or containment of lead or materials containing lead on the site or location at which construction activities are performed; and
- g. Maintenance operations associated with the construction activities described in the subsection.

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Design/Builder, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532.1).

Design/Builder shall notify the District if any Work may result in the disturbance of lead-containing building materials. Any and all Work that may result in the disturbance of lead-containing building materials shall be coordinated through the District. A signed copy of this Certification shall be on file prior to beginning Work on the Project, along with all current insurance certificates.

3. Renovation, Repair and Painting Rule, Section 402(c)(3) of the Toxic Substances Control Act

The EPA requires lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint. Pursuant to the Renovation, Repair and Painting Rule (RRP), renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with training by a EPA-accredited training provider, and fully and adequately complying with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

The RRP requirements apply to all contractors who disturb lead-based paint in a six-square-foot or greater area indoors or a 20-square-foot or greater area outdoors. If a DPH-certified inspector or risk assessor determines that a home constructed before 1978 is lead-free, the federal certification is not required for anyone working on that particular building.

4. Design/Builder's Liability

If the Design/Builder fails to comply with any applicable laws, rules, or regulations, and that failure results in a site or worker contamination, the Design/Builder will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify, and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom.

If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses, and training shall conduct this Work.

It shall be the responsibility of the Design/Builder to properly dispose of any and all waste products, including, but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Design/Builder to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

The Design/Builder shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Design/Builder.

THE DESIGN/BUILDER HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT IT:

1. HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE OWNER'S PROPERTY;
2. IS KNOWLEDGEABLE REGARDING AND WILL COMPLY WITH ALL APPLICABLE LAWS, RULES, AND REGULATIONS GOVERNING WORK WITH, AND DISPOSAL, OF LEAD.

THE UNDERSIGNED WARRANTS THAT HE/SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE DESIGN/BUILDER. THE DISTRICT MAY REQUIRE PROOF OF SUCH AUTHORITY.

Date: _____

Name of Design/Builder: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

IMPORTED MATERIALS CERTIFICATION

This form shall be executed by all entities that, in any way, provide or deliver and/or supply any soils, aggregate, or related materials ("Fill") to the Project Site and shall be provided to the District at least ten (10) days before delivery. All Fill shall satisfy all requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, section 21000 et seq. of the Public Resources Code ("CEQA"), and all requirements of section 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control.

Certification of: Delivery Firm/Transporter Supplier Manufacturer
 Wholesaler Broker Retailer
 Distributor Other _____

Type of Entity Corporation General Partnership
 Limited Partnership Limited Liability Company
 Sole Proprietorship Other _____

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

By my signature below, I hereby certify that I am aware of section 25260 of the Health and Safety Code and the sections referenced therein regarding the definition of hazardous material. I further certify on behalf of the Firm that all soils, aggregates, or related materials provided, delivered, and/or supplied or that will be provided, delivered, and/or supplied by this Firm to the Project Site are free of any and all hazardous material as defined in section 25260 of the Health and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

Date: _____

Name of Firm: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

SKILLED AND TRAINED WORKFORCE CERTIFICATION

The undersigned does hereby certify to the governing board of the District as follows:

That I am a representative of the Design/Builder currently performing work on the Project; that I am familiar with the facts herein certified; and that I am authorized and qualified to execute this certificate on behalf of Design/Builder.

That Design/Builder and its subcontractors at every tier will use a Skilled and Trained Workforce to perform all work on the Contract or Project that falls within an apprenticeable occupation in the building and construction trades in accordance with Public Contract Code section 2600 et seq.

“Apprenticeable occupation” means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations (“Chief”) had approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.

“Skilled and Trained Workforce” means a workforce that meets all of the following conditions:

1. All of the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief.
2. The percentage of either (A) skilled journeypersons employed by the Design/Builder or subcontractor to perform work on the Contract or Project who are graduates of an apprenticeship program for the applicable occupation, or (B) hours of work performed by skilled journeypersons employed by Design/Builder or subcontractor to perform work on the Contract or Project who are graduates of an apprenticeship program for the applicable occupation, is at least equal to the percentages set forth in the following chart for the applicable month:

APPLICABLE DATES	% REQUIREMENT	EXCLUDED OCCUPATIONS
1/1/2016 – 12/31/2017	At least 30%	Teamster – 0%.
1/1/2018 – 12/31/2018	At least 40%	Teamster – 0%.
1/1/2019 – 12/31/2019	At least 50%	Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, and tile layer, setter, or finisher. - At least 30% for each trade.
1/1/2020 – 12/31/2020	At least 60%	

3. For an apprenticeable occupation in which no apprenticeship program has been approved by the Chief before January 1, 1995, up to one-half of the above graduation percentage requirements set forth in the above chart may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the Chief's approval of an apprenticeship program for that occupation in the county in which the Project is located.
4. The contractor or subcontractor need not meet the apprenticeship graduation requirements if:
 - a. During a calendar month, the Design/Builder or subcontractor employs skilled journeypersons to perform fewer than 10 hours of work on the Contract or Project; or
 - b. The subcontractor was not a listed subcontractor under Public Contract Code section 4104 or a substitute for a listed subcontractor and the subcontract does not exceed one-half of 1 percent of the price of the prime contract.

That Design/Builder and its subcontractors will demonstrate its compliance with the Skilled and Trained Workforce requirements by either of the following methods (check what applies):

- Using the form attached hereto, provide monthly reports to the District from the Design/Builder and its subcontractors demonstrating that they are complying with the requirements of Public Contract Code section 2600 et seq., which shall be a public record under California Public Records Act, Government Code section 6250 et seq.; or
- Provide evidence that Design/Builder and its subcontractors have agreed to be bound by: (1) a project labor agreement entered into by the District that binds all contractors and all its subcontractors at every tier performing work on the Project to use a skilled and trained workforce; (2) the extension or renewal of a project labor agreement entered into by the District prior to January 1, 2017; or (3) a project labor agreement that binds all contractors and all its subcontractors at every tier performing work on the Project to use a skilled and trained workforce.

I hereby certify that I am aware of the provisions of section 17407.5 of the Education Code and sections 2600 through 2602 of the Public Contract Code and will comply with such provisions during the performance of the Work of this Contract and will bind all of my subcontractors at every tier, with the exception of the subcontractors identified in Public Contract Code section 2602, to comply with such provisions.

Date: _____

Name of Design/Builder: _____

Signature: _____

Print Name: _____

Title: _____

**SKILLED AND TRAINED WORKFORCE
MONTHLY REPORT
(COVER PAGE)**

NAME OF PROJECT: _____

NAME OF CONTRACTOR: _____

FOR THE MONTH OF: _____ 20__

The undersigned hereby certifies that all the workers employed by the above-referenced contractor performing work in an apprenticeable occupation in the building and construction trades on the Project are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations.

The undersigned further certifies that the percentage of either (A) skilled journeypersons employed by the above-referenced contractor to perform work on the Project who are graduates of an apprenticeship program for the applicable occupation, or (B) hours of work performed by skilled journeypersons employed by the above-referenced contractor to perform work on the Project who are graduates of an apprenticeship program for the applicable occupation, is at least equal to the apprenticeship graduation percentage required by Public Contract Code section 2601 for the particular calendar month.

The undersigned has demonstrated compliance with the apprenticeship graduation percentage by completing the accompanying Worksheet(s). A true and correct Worksheet for each apprenticeable occupation in the building and construction trades utilized by the above-referenced contractor for the particular calendar month is attached hereto, **totaling _____ attached page(s).**

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

Date: _____

Signature: _____

Print Name: _____

Title: _____

**SKILLED AND TRAINED WORKFORCE
MONTHLY REPORT
(WORKSHEET)**

NAME OF PROJECT: _____

NAME OF CONTRACTOR: _____

FOR THE MONTH OF: _____ 20__

Page ___ of ___ (Duplicate as needed. Submit a separate Worksheet for each apprenticeable occupation in the building and construction trades utilized by contractor.)

***Apprenticeable occupation:** _____.

- A. If above-identified occupation is *acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, and tile layer, setter, or finisher*, the apprenticeship graduation percentage requirement is at least 30 percent.
- B. If the above-identified occupation is any other apprenticeable occupation, *excluding teamsters and occupations listed in subparagraph A, above*, the apprenticeship graduation percentage requirement is at least at least 30 percent in 2017, 40 percent in 2018, 50 percent in 2019, 60 percent in 2020.

Demonstrate compliance for the above-identified occupation by either Number of Skilled Journeypersons or Number of Hours of Work Performed by Skilled Journeypersons. Check and complete the method of compliance that applies:

Number of Skilled Journeypersons:

- 1. Number of skilled journeypersons performing work in the apprenticeable occupation: _____
- 2. Number of skilled journeypersons who are graduates of an apprenticeship program for the applicable occupation: _____

Percentage of skilled journeypersons who are graduates of an apprenticeship program for the applicable occupation (divide line 2 by line 1): _____ %

Number of Hours of Work Performed by Skilled Journeypersons:

- 1. Number of hours of work performed by skilled journeypersons in the apprenticeable occupation: _____
- 2. Number of hours of work performed by skilled journeypersons who are graduates of an apprenticeship program for the applicable occupation: _____

Percentage of hours of work performed by skilled journeypersons who are graduates of an apprenticeship program for the applicable occupation (divide line 2 by line 1): _____ %

*This Worksheet incorporates by reference all definitions in Public Contract Code section 2601, including, without limitation, the definitions of "apprenticeable occupation," "graduate of an apprenticeship program," and "skilled journeypersons."

END OF DOCUMENT

ESCROW AGREEMENT IN LIEU OF RETENTION
Public Contract Code Section 22300

This Escrow Agreement ("Escrow Agreement") is made and entered into this _____ day of _____, 2020, by and between the Peralta Community College District ("District"), whose address is Department of General Services, 333 East 8th Street, Oakland, CA 94606, and _____ ("Design/Builder"), whose address is _____, and _____ ("Escrow Agent"), a state or federally chartered bank in the state of California, whose address is _____.

For the consideration hereinafter set forth, District, Design/Builder, and Escrow Agent agree as follows:

1. Pursuant to section 22300 of Public Contract Code of the State of California, which is hereby incorporated by reference, Design/Builder has the following two (2) options:
 - Deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract No. _____ entered into between District and Design/Builder for the _____ Project, in the amount of _____ Dollars (\$ _____) dated, _____, 2020, (the "Contract"); **or**
 - On written request of Design/Builder, District shall make payments of the retention earnings for the above referenced Contract directly to Escrow Agent.

When Design/Builder deposits the securities as a substitute for Contract earnings (first option), Escrow Agent shall notify District within ten (10) calendar days of the deposit. The market value of the securities at the time of substitution and at all times from substitution until the termination of the Escrow Agreement shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between District and Design/Builder.

Securities shall be held in name of Peralta Community College District, and shall designate Design/Builder as beneficial owner.

2. District shall make progress payments to Design/Builder for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified above.
3. When District makes payment of retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Design/Builder until the time that the escrow created under this Escrow Agreement is terminated. Design/Builder may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the Parties shall be equally applicable and binding when District pays Escrow Agent directly.

4. Design/Builder shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of District. The District will charge Design/Builder \$_____ for each of District's deposits to the escrow account. These expenses and payment terms shall be determined by District, Design/Builder, and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Design/Builder and shall be subject to withdrawal by Design/Builder at any time and from time to time without notice to District.
6. Design/Builder shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to Escrow Agent that District consents to withdrawal of amount sought to be withdrawn by Design/Builder.
7. District shall have the right to draw upon the securities and/or withdraw amounts from the Escrow Account in the event of default by Design/Builder. Upon seven (7) days' written notice to Escrow Agent from District of the default, if applicable, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District. Escrow Agent shall not be authorized to determine the validity of any notice of default given by District pursuant to this paragraph, and shall promptly comply with District's instructions to pay over said escrowed assets. Escrow Agent further agrees to not interplead the escrowed assets in response to a conflicting demand.
8. Upon receipt of written notification from District certifying that the Contract is final and complete, and that Design/Builder has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Design/Builder all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on written notifications from District and Design/Builder pursuant to Paragraphs 5 through 8, inclusive, of this Escrow Agreement and District and Design/Builder shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

10. Names of persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of Design/Builder in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of District:

Title

Name

Signature

Address

On behalf of Escrow Agent:

Title

Name

Signature

Address

On behalf of Design/Builder:

Title

Name

Signature

Address

At the time that the Escrow Account is opened, District and Design/Builder shall deliver to Escrow Agent a fully executed copy of this Agreement.

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

On behalf of District:

Title

Name

Signature

Address

On behalf of Design/Builder:

Title

Name

Signature

Address

END OF DOCUMENT

WARRANTY FORM

_____ ("Contractor") hereby agrees that the _____
_____ ("Work" of Contractor) which Contractor has installed for the Peralta
Community College District ("District") for the following project:

Title IX Locker Room Renovation Project- Laney College

("Project" or "Contract") has been performed in accordance with the requirements of the
Contract Documents and that the Work as installed will fulfill the requirements of the
Contract Documents.

The undersigned agrees to repair or replace any or all of such Work that may prove to be
defective in workmanship or material together with any other adjacent Work that may be
displaced in connection with such replacement within a period of _____
year(s) from the date of completion as defined in Public Contract Code section 7107,
subdivision (c), ordinary wear and tear and unusual abuse or neglect excepted. The date of
completion is _____, 20____.

In the event of the undersigned's failure to comply with the above-mentioned conditions
within a reasonable period of time, as determined by the District, but not later than seven
(7) days after being notified in writing by the District, the undersigned authorizes the
District to proceed to have said defects repaired and made good at the expense of the
undersigned. The undersigned shall pay the costs and charges therefor upon demand.

Date: _____

Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

Representatives to be contacted for service subject to terms of Contract:

Name: _____

Address: _____

Phone NO.: _____

END OF DOCUMENT

AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS

THIS AGREEMENT AND RELEASE OF CLAIMS ("Agreement and Release") IS MADE AND ENTERED INTO THIS _____ DAY OF _____, 20__ by and between the Peralta Community College District ("District") and _____ ("Design/Builder"), whose place of business is _____.

RECITALS

WHEREAS, District and Design/Builder entered into a Design-Build Contract for the following project: [Name Of] Project ("Contract" or "Project") in the County of Alameda, California.

WHEREAS, The Work under the Contract was completed on _____, 20__ and a Notice of Completion was recorded with the County Recorder on _____, 20__.

NOW, THEREFORE, it is mutually agreed between District and Design/Builder as follows:

AGREEMENT AND RELEASE

1. Design/Builder will only be assessed liquidated damages as detailed below:

Original Guaranteed Maximum Price	\$ _____
Modified Guaranteed Maximum Price	\$ _____
Payment to Date	\$ _____
Liquidated Damages	\$ _____
Payment Due Design/Builder	\$ _____

2. Subject to the provisions hereof, District shall forthwith pay to Design/Builder the undisputed sum of _____ Dollars (\$_____) under the Contract, less any amounts represented by any notice to withhold funds on file with District as of the date of such payment.

3. Design/Builder acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against District arising from the performance of work under the Contract, except for the claims described in Paragraph 4 and continuing obligations described in Paragraph 6. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Design/Builder against District and all of its respective agents, employees, trustees, inspectors, assignees, consultants and transferees, except for any Disputed Claim that may be set forth in Paragraph 4 and the continuing obligations described in Paragraph 6 hereof.

4. The following claims are disputed (hereinafter, the "Disputed Claims") and are specifically excluded from the operation of this Agreement and Release:

<u>Claim No.</u>	<u>Description of Claim</u>	<u>Amount of Claim</u>	<u>Date Claim Submitted</u>
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____

[If further space is required, attach additional sheets showing the required information.]

5. Consistent with California Public Contract Code section 7100, Design/Builder hereby agrees that, in consideration of the payment set forth in Paragraph 2 hereof, Design/Builder hereby releases and forever discharges District, all its agents, employees, inspectors, assignees, and transferees from any and all liability, claims, demands, actions, or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
6. Guarantees and warranties for the Work, and any other continuing obligation of Design/Builder, including without limitation the duty to defend, indemnify and hold harmless the District, shall remain in full force and effect as specified in the Contract Documents.
7. Design/Builder hereby waives the provisions of California Civil Code section 1542 which provides as follows:
- A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.
8. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable. If any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal, or other law, ruling, or regulations, then such provision, or part thereof, shall remain in force and effect to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.

9. All rights of District shall survive completion of the Work or termination of Contract, and execution of this Release.

* * * CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING * * *

PERALTA COMMUNITY COLLEGE DISTRICT:

Signature: _____

Print Name: _____

Title: _____

DESIGN/BUILDER: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

FIRE AND LIFE SAFETY - CERTIFICATE OF GUARANTEE

We, (_____), agree to maintain _____

on the below mentioned building for the period indicated. This agreement is to maintain the systems, subject to the conditions outlined below.

Owner of Building: **Peralta Community College District**

School Name: Laney College

Project Name: Title IX Locker Room Renovation Project

Street Address: 900 Fallon Street, Oakland, CA 94607

City: **Oakland**

State: **California**

This GUARANTEE is effective this _____ day of _____, _____ for a term of

two (2) year(s) from this date, provided any defects result from defective material or workmanship and are not caused by other mechanics, fire, accidents or by acts of Providence over which we have no control.

For fire and life safety related work that includes but is not limited to fire alarm, fire sprinkler, emergency lighting, exit lighting, and exiting pathway systems such as: (elevator, wheelchair lifts, etc.) the subcontractor and General Contractor adhere to the following statement, **"in the event of our failure to respond and act within 3 hours after being notified in writing by the District, we authorize the District to proceed to have the defects repaired or replaced and made whole, together with any other adjacent work which may be displaced or damaged by so doing, at our expense, and we will honor and pay the costs and charges therefore upon demand. This work shall not invalidate any and all warranties and guarantees."**

(Signature)

(Title)

(Company Name)

(Date)

END OF DOCUMENT

FIRE AND LIFE SAFETY - CERTIFICATE OF WARRANTY

We, (_____), warrant all _____

Work performed under this contract the school(s), as listed below, for the period indicated.

Owner of Building: **Peralta Community College District**

School Name: Laney College

Project Name: Title IX Locker Room Renovation Project

Street Address: 900 Fallon Street, Oakland, CA 94607

City: **Oakland**

State: **California**

This WARRANTY is effective this _____ day of _____

_____, _____ for term of two (2) year(s) from this date, provided any defects result from defective material or workmanship and are not caused by other mechanics, fire, accidents or by acts of Providence over which we have no control.

For fire and life safety related work that includes but is not limited to fire alarm, fire sprinkler, emergency lighting, exit lighting, and exiting pathway systems such as: (elevator, wheelchair lifts, etc.) the subcontractor and General Contractor adhere to the following statement, **“in the event of our failure to respond and act within 3 hours after being notified in writing by the District, we authorize the District to proceed to have the defects repaired or replaced and made whole, together with any other adjacent work which may be displaced or damaged by so doing, at our expense, and we will honor and pay the costs and charges therefore upon demand. This work shall not invalidate any and all warranties and guarantees.”**

(Signature)

(Title)

(Company Name)

(Date)

END OF DOCUMENT

GUARANTY

We, **(insert name of company or contractor)**, agree to maintain _____

On the below mentioned building for the period indicated. This agreement is to maintain the systems, subject to the conditions outlined below.

Owner of Building: **Peralta Community College District**

School Name: Laney College

Project Name: Title IX Locker Room Renovation Project

Street Address: 900 Fallon Street, Oakland, CA 94607

City: **Oakland**

State: **California**

This GUARANTEE is effective this _____ day of _____, _____ for term of

two (2) year(s) from this date, provided any defects result from defective material or workmanship and are not caused by other mechanics, fire, accidents or by acts of Providence over which we have no control.

(Signature)

(Title)

(Company Name)

(Date)

END OF DOCUMENT

END OF SECTION

SECTION 00 50 00
AGREEMENT

DESIGN-BUILD PROJECT:
TITLE IX LOCKER ROOM RENOVATION PROJECT

BY AND BETWEEN

PERALTA COMMUNITY COLLEGE DISTRICT

AND

[DESIGN/BUILDER]

Dated as of _____, 2020

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	2
2. GENERAL PROVISIONS	6
3. DESIGN/BUILDER’S DUTIES AND RESPONSIBILITIES: DESIGN	9
4. DESIGN/BUILDER’S DUTIES AND RESPONSIBILITIES: CONSTRUCTION	13
5. DISTRICT’S DUTIES AND RESPONSIBILITIES.....	26
6. SUBCONTRACTING	27
7. STATE LABOR, WAGE AND HOUR, APPRENTICE, AND RELATED PROVISIONS	29
8. PAYMENTS AND COMPLETION.....	36
9. SCHEDULE	48
10. EXTENSIONS OF TIME – LIQUIDATED DAMAGES.....	55
11. CHANGES IN THE WORK	57
12. TERMINATION AND SUSPENSION.....	64
13. DISPUTES AND CLAIMS	69
14. PROJECTION OF PERSONS AND PROPERTY.....	76
15. INSURANCE, BONDS, AND INDEMNIFICATION	78
16. SEPARATE CONTRACTS.....	86
17. MISCELLANEOUS	87

EXHIBIT A – CRITERIA DOCUMENTS

EXHIBIT B – PROJECT MILESTONE SCHEDULE

EXHIBIT C – PROJECT LABOR AGREEMENT

DESIGN-BUILD AGREEMENT

This design-build agreement ("Contract"), dated as of _____, 2020 ("Effective Date"), is made and entered into by and between [Design/Builder] ("Design/Builder"), a [ENTITY TYPE] duly organized and existing under the laws of the State of [California], and Peralta Community College District, a community college district duly organized and validly existing under the laws of the State of California (each a "Party" and, together, "Parties").

RECITALS

WHEREAS, the District is authorized under Education Code section 81700 et seq. to contract for the design and construction of community college facility projects in excess of \$2.5 million using a design-build project delivery method;

WHEREAS, the District wishes to provide for the design and construction of certain work to be known as [Name Of] Project ("Project"), located at the [ADDRESS] ("Site");

WHEREAS, the District retained Taylor Design ("Criteria Architect") to prepare documents setting forth the criteria for the Project (the "Criteria Documents"), which may establish, without limitation, the size, type, and desired design character of the Project, performance specifications covering the quality of materials, equipment, workmanship, and preliminary plans or building layouts;

WHEREAS, it is the intent of this Contract that the Design/Builder assume full responsibility for administering, managing, designing, constructing, and commissioning the Project to the requirements established by the Criteria Documents;

WHEREAS, the members of Design/Builder are [INSERT MEMBERS], and represent that they are able to provide appropriately licensed contracting, architectural, and engineering services, as needed, pursuant to this Contract;

WHEREAS, the Design/Builder was selected for the Project based on a fair and impartial competitive selection process, in accordance with Education Code section 81700 et seq.

WHEREAS, the Governing Board of the District ("Board") has determined that Design/Builder's proposal offered the best value to the public, in accordance with the District's best value selection methodology;

WHEREAS, Design/Builder has reviewed the Contract; and

WHEREAS, Design/Builder represents that it has the expertise and experience to perform the services set forth in this Contract; and

WHEREAS, the Parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Contract and all those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Contract; and

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained, the Parties hereto do hereby agree as follows:

1. DEFINITIONS

In addition to the terms and entities defined above or in subsequent provisions, and unless the context otherwise requires, the terms defined in this section shall, for all purposes of this Contract, have the meanings herein specified.

1.1 Adverse Weather: Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, or extreme temperature conditions in excess of the norm for the location and time of year it occurred based on the closest weather station data averaged over the past five years, (2) that is unanticipated and would cause unsafe work conditions and/or is unsuitable for scheduled work that should not be performed during inclement weather (i.e., exterior finishes), and (3) at the Project.

1.2 Agreement or Contract: The agreement between the District and Design/Builder contained in the Contract Documents.

1.3 Approval, Approved, and/or Accepted: Written authorization, unless stated otherwise.

1.4 Architect of Record: _____, who is licensed in the State of California and employed or contracted as a member of Design/Builder to design and prepare Construction Documents for the Project and to provide construction phase services during the Project. The Architect of Record is the Design Professional in General Responsible Charge as defined by the DSA.

1.5 As-Builts: Reproducible blue line prints of drawings to be prepared on a monthly basis pursuant to the Contract Documents, that reflect changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed since the preceding monthly submittal. See Record Drawings.

1.6 Authorized Representatives: District's Representative(s) as communicated to the Design/Builder.

1.7 Beneficial Occupancy: District's occupancy or use of any completed or partially completed portion of the Work.

1.8 Board: the Governing Board of the Peralta Community College District.

1.9 Criteria Architect: Taylor Design, the architect retained by the District to develop the Criteria Documents and define functional, performance and aesthetic characteristics establishing the design intent for the Project.

1.10 Criteria Documents: the Design Requirements, Specifications, and the Drawings prepared by the District's Criteria Architect and incorporated by reference into the Contract.

1.11 Change Order: a change to the Contract and/or Contract Documents signed by the Design/Builder and the District authorizing a change in the Work, which may

also adjust the Contract Price and/or the Contract Time. The Contract Price and/or Contract Time may be changed only by Change Order.

1.12 Change Proposal: a proposal for a Change Order, submitted by the Design/Builder at the request of the District, or by the Design/Builder's own initiative.

1.13 Commissioning: a quality assurance process for achieving, validating and documenting that the new facility and its systems are planned, designed, installed, tested and capable of being operable and maintained to perform in conformity with the Criteria Documents.

1.14 Completion: The earliest of the date of acceptance by the District or the cessation of labor thereon for a continuous period of sixty (60) days.

1.15 Construction Documents: the drawings and specifications prepared and sealed by the Architect of Record on behalf of the Design/Builder for construction of the Project.

1.16 Construction Manager: The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.

1.17 Contract Documents: The Contract Documents consist exclusively of the documents evidencing the agreement of the District and Design/Builder. The Contract Documents consist of the following documents:

- 1.17.1** Payment Bond (Design/Builder's Labor & Material Bond)
- 1.17.2** Performance Bond
- 1.17.3** Registered Subcontractors List
- 1.17.4** Hazardous Materials Procedures and Requirements
- 1.17.5** Workers' Compensation Certification
- 1.17.6** Prevailing Wage Certification
- 1.17.7** Disabled Veterans Business Enterprise Participation Certification
- 1.17.8** Drug-Free Workplace Certification
- 1.17.9** Tobacco-Free Environment Certification
- 1.17.10** Hazardous Materials Procedures and Requirements
- 1.17.11** Lead-Based Materials Certification
- 1.17.12** Imported Materials Certification (if applicable)

- 1.17.13** Skilled and Trained Workforce Certification (if applicable)
- 1.17.14** Escrow Agreement for Security Deposits in Lieu of Retention (if used)
- 1.17.15** Warranty Form
- 1.17.16** Agreement and Release of Any and All Claims
- 1.17.17** Guaranty Form
- 1.17.18** Fire and Life Safety – Certificate of Guarantee (if applicable)
- 1.17.19** Fire and Life Safety – Certificate of Warranty (if applicable)
- 1.17.20** All Criteria Documents, Technical Specifications, and Design
- 1.17.21** Any and all addenda to any of the above documents
- 1.17.22** Any and all change orders or written modifications to the above documents if approved in writing by the District.
- 1.17.23** Design-Builder Proposal

1.18 Contract Time: The time stated in the Contract for the completion of the Work. See Paragraph 9.1, Contract Time

1.19 Day(s): calendar day(s), unless otherwise specifically designated as a business or working day(s). If a day requiring notice or action falls on a weekend or national or state holiday, then the next non-weekend or non-holiday shall be applicable. Business day(s) are days other than weekend days or federal or state holidays.

1.20 Design/Builder: _____ a [INSERT ENTITY TYPE] able to provide appropriately licensed construction contracting, and professional architectural and engineering services required hereunder.

1.21 District: The community college district for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time:

1.21.1 Direct the Design/Builder to communicate with or provide notice to the Construction Manager or the Criteria Architect on matters for which the Contract Documents indicate the Design/Builder will communicate with or provide notice to the District; and/or

1.21.2 Direct the Construction Manager or the Criteria Architect to communicate with or direct the Design/Builder on matters for which the Contract Documents indicate the District will communicate with or direct the Design/Builder.

1.22 DSA: Division of the State Architect.

1.23 Completion: The earliest of the date of acceptance by the District or the cessation of labor thereon for a continuous period of sixty (60) days.

1.24 Final Completion: The point at which the Work has been completed in accordance with the terms and conditions of the Contract Documents.

1.25 Contract Price: The price established as the compensation to the Design/Builder for the design and construction of the Project.

1.26 Job Cost Reports: Any and all reports or records detailing the costs associated with work performed on or related to the Project that Design/Builder shall maintain for the Project. Specifically, Job Cost Reports shall contain, but are not limited by or to, the following information: a description of the work performed or to be performed on the Project; quantity, if applicable, of work performed (hours, square feet, cubic yards, pounds, etc.) for the Project; Project budget; costs for the Project to date; estimated costs to complete the Project; and expected costs at completion. The Job Cost Reports shall also reflect all Contract cost codes, change orders, elements of non-conforming work, back charges, and additional services.

1.27 Notice to Proceed with Design: the notice given by the District to the Design/Builder stating that the Design/Builder is authorized to commence design of the Project.

1.28 Notice to Proceed with Construction: the notice given by the District to the Design/Builder, following completion of the design phase and approval of the plans by the Division of the State Architect, stating that the Design/Builder is authorized to commence construction of the Project.

1.29 Program Manager: The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Program Manager is designated for the Project that is the subject of the Contract Documents, then all references to Program Manager herein shall be read to refer to District.

1.30 Project: The planned undertaking as provided for in the Contract Documents.

1.31 Project Inspector: The individual(s) retained by the District in accordance with title 24 of the California Code of Regulations to monitor and inspect the Project.

1.32 Project Labor Agreement (or PLA): A prehire collective bargaining agreement in accordance with Public Contract Code section 2500 et seq. that establishes terms and conditions of employment for a specific construction project or projects and/or is an agreement described in Section 158(f) of Title 29 of the United States Code. A copy of the PLA applicable to this project is attached hereto as **Exhibit "C."**

1.33 Proposed Change Order: A Proposed Change Order ("PCO") is a written request prepared by the Design/Builder requesting that the District, the Construction Manager and the Criteria Architect issue a Change Order based upon a proposed change to the Work.

1.34 Site: The Project site as shown on the Criteria Documents.

1.35 Subcontractor: A contractor and/or supplier who is under contract with the Design/Builder or with any other subcontractor, regardless of tier, to perform a portion of the Work of the Project.

1.36 Substantial Completion: The date at which (i) such Work can be fully enjoyed and beneficially occupied and utilized by District for its intended purpose (except for minor items which do not impair District's ability to occupy and use such Work); (ii) any permits, approvals and certificates by governmental authorities required to occupy and use such Work have been issued; and (iii) all systems included in such Work are installed and operational as specified, all designated or required inspections and certifications by governmental authorities have been made and posted, and instructions of District's personnel in the operation of such systems has been completed.

1.37 Surety: The person, firm, or corporation that executes as surety the Design/Builder's Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.

1.38 Unforeseen Conditions: Concealed physical conditions at the site with an adverse impact on the Work or schedule that are materially different from those conditions (i) indicated in or reasonably inferred from the Contract Documents and (ii) ordinarily found to exist and generally recognized in construction activities of the type required by the Contract Documents

1.39 Work: All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for the construction and completion of the Project.

1.40 GENERAL PROVISIONS

1.41 Scope of Work

1.42 The Design/Builder shall be responsible for the performance of all design and construction services, and provide all materials, labor, tools, and equipment necessary to complete, in a good and workmanlike manner, the Work described in and reasonably inferable from the Contract Documents, in accordance with the Criteria Documents, attached hereto as **EXHIBIT A**, for the Contract Price.

1.42.1 Design/Builder shall be responsible for achieving the Milestones Dates in the Project Milestone Schedule as shown in **EXHIBIT B**. The Project Milestone Schedule may only be modified pursuant to the provisions of the Contract Documents.

1.42.2 Except as otherwise noted, Design/Builder shall provide and pay for all labor, materials, equipment, permits (excluding DSA), fees, licenses, facilities, transportation, taxes, bonds and insurance, and services necessary for the proper execution and completion of the Work.

1.43 Status of Design/Builder

1.43.1 Design/Builder is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in

which it and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the District, or any of the District's employees or agents, and Design/Builder or any of Design/Builder's Subcontractors, agents or employees. Design/Builder assumes exclusively the responsibility for the acts of its agents and employees as they relate to the services to be provided during the course and scope of their employment. Design/Builder, its Subcontractors, and its agents and employees shall not be entitled to any rights or privileges of District employees. District shall be permitted to monitor the Design/Builder's activities to determine compliance with the terms of the Contract Documents.

1.43.2 As required by law, Design/Builder and all Subcontractors shall be properly licensed and regulated by the Contractors State License Board.

1.43.3 As required by law, Design/Builder and all Subcontractors shall be properly registered as public works contractors by the Department of Industrial Relations.

1.43.4 Design/Builder represents that it has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Work required under this Contract and that no person having any such interest shall be employed by Design/Builder.

1.44 Execution, Correlation and Intent:

1.44.1 The Contract will not be binding on the District until approved by the District's Board.

1.44.2 Execution of the Contract by Design/Builder is a representation that the Design/Builder has the expertise and experience for and understands and accepts the methodology under which the Work is to be performed and the requirements of the Contract Documents.

1.44.3 The intent of the Contract Documents is to include all necessary criteria to establish the scope, quality and performance requirements for completion of the Work by Design/Builder. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

1.44.4 Unless otherwise stated in the Contract Documents, words and phrases shall be interpreted consistent with construction and design industry standards for California community college districts.

1.44.5 Work shall be in compliance with applicable laws, codes, ordinances and regulations, including but not limited to Title 24 of the California Code of Regulations. Higher levels of performance, material, and or function, may be required or reasonably inferred from the Contract Documents.

1.45 Conflicts in the Contract Documents

1.45.1 The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict. However, if Design/Builder

observes any conflict in the Contract Documents, Design/Builder shall promptly notify District and Criteria Architect in writing. In the event of conflict in the Contract Documents, the precedence shall be as follows:

1.45.1.1 Addenda shall govern over other sections of the Contract Documents to the extent specifically noted; subsequent Addenda shall govern over prior Addenda only to the extent specified.

1.45.1.2 The Contract shall govern over other Contract Documents except for specific modifications stated in amendments to the Contract and Addenda.

1.45.1.3 In case of conflict between the Criteria Document drawings, Technical Specification Sections 2-49, and the Division 0 and 1 Specifications, the Design/Builder shall obtain written clarification from the District as to the governing document.

1.45.1.4 In the case of conflict within the Criteria Document drawings, the following shall govern:

1.45.1.4.1 Schedules, when identified as such, shall govern over all other portions of the drawings.

1.45.1.4.2 Specific notes shall govern over all other notes and all other portions of the drawings, except schedules described in the preceding sub clause.

1.45.1.4.3 Larger scale drawings shall govern over smaller scale drawings.

1.45.1.4.4 Figured or numerical dimensions shall govern over dimensions obtained by scaling.

1.45.1.4.5 In the case of other conflict within the drawings, the Design/Builder shall obtain written clarification from the District as to the governing document.

1.45.2 The District and Design/Builder acknowledge that the Contract Documents may differ in some respects from other documents upon which Design/Builder based its proposal. The District and Design/Builder agree that the Contract Documents shall supersede any prior or inconsistent versions.

1.46 Clarifications and Additional Instructions

1.46.1 Conflicts, omissions, errors, interpretation or clarification, insufficiency of detail or explanation in the Contract Documents relative to the timely or material execution of the Work shall be immediately brought to the attention of the District in writing to request interpretation, clarification, or furnishing of additional detailed instructions. Such questions shall be resolved and instructions to the Design/Builder issued within a reasonable time by the District. The District's decision shall be final and conclusive. Should the Design/Builder proceed with the work before receipt of instructions from the District, the Design/Builder shall make adjustments to conform to the

District's instructions and Design/Builder shall be solely responsible for any resultant damage, defect or added costs.

1.46.2 The District may furnish additional written instructions to explain the work more fully, and such instructions shall become, upon issuance, a part of the Contract Documents requirements. Should additional instructions, in the opinion of the Design/Builder, constitute work in excess of the scope of the Work, the Design/Builder shall submit written notice to the District within ten (10) calendar days following receipt of such instructions, and in any event prior to commencement of the work on that scope of work. After considering the notice, and if justified in the District's judgment, the District will authorize the extra work.

2. DESIGN/BUILDER'S DUTIES AND RESPONSIBILITIES: DESIGN

2.1 Design Phase Responsibilities

2.1.1 The Design Phase includes the preparation of the design and Construction Documents for the Project including, but not limited, to all necessary architectural design, specialty consultant services, civil engineering, structural engineering, mechanical engineering, plumbing and HVAC design, fire protection system engineering, landscape architecture, electrical engineering, security system design, telecommunications, data and low-voltage signaling design, geotechnical engineering, topographic and boundary surveying, interior design, modular furniture systems and fixtures, furniture and equipment coordination and space planning, and acoustical engineering. The Design Phase shall also include all plan check and permitting activities required for the construction activities.

2.2 Design/Builder's Responsibilities

2.2.1 Design/Builder agrees to design and construct the Project in consideration for the District's payment up to the Contract Price, which may only be adjusted pursuant to the provisions of this Contract.

2.2.2 General Responsibilities

2.2.2.1 Upon receipt of the Notice to Proceed with Design, the Design/Builder shall instruct the Architect of Record to commence with the design of the building systems and the preparation of the Construction Documents. In accordance with the Criteria Documents, the Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality.

2.2.2.2 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 Design/Builder shall be responsible to design, prepare Construction Documents and coordinate all disciplines for the entire Project including, but not limited to: all structural elements, building enclosure, roofing, waterproofing, site work, public right-of-

way improvements, new parking lots, hardscape, landscape, utilities, and all building systems.

2.2.2.3 Responsibilities also include all design coordination necessary for accommodation of interior space construction, modular furniture coordination, finishes, furnishings, fixtures and equipment, and related infrastructure. The Project's design shall meet or exceed the design and performance criteria stipulated in the Criteria Documents.

2.2.2.4 Deliver to the District any and all design materials. These materials include, but are not limited to: calculations, preliminary drawings, construction drawings, shop drawings, samples, 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.

2.2.2.5 Design Confirmation Phase

2.2.2.5.1 Following receipt of a Notice to Proceed with Design, the Design/Builder shall meet at least weekly with District and provide such information as necessary to inform District of the Project design status, and obtain District input and approval regarding design issues. The Design/Builder shall be responsible for scheduling and coordinating the participation in these meetings. Design/Builder's documents shall depict the materials, equipment, design, layout and general coordination of each major building system (i.e.: structural, exterior closure, mechanical, plumbing, electrical, etc.) in sufficient detail to confirm compliance with the Criteria Documents.

2.2.2.5.2 Conduct value engineering analysis on building components to determine best value based on initial cost, life expectancy, cost of operation and maintenance. The value engineering analysis shall be performed concurrent with the Design Confirmation effort.

2.2.2.5.3 Prepare and update at each document submittal milestone detailed estimates of the cost of construction to substantiate that the Project will not exceed the Contract Price.

2.2.2.5.4 Prepare and update monthly the detailed construction schedule to confirm Project delivery within the Milestone Dates.

2.2.2.5.5 Provide services to develop a final space program and prepare plan layouts to reflect the requirements of all tenant departments.

2.2.2.6 Construction Documents Phase

2.2.2.6.1 Prepare Construction Documents for the entire Project as required in Section 01 11 20 Design Services and Deliverables, in full compliance with all applicable laws, building codes, ordinances, and other requirements by regulatory authorities. The completed Construction Documents are to be delivered to the District and shall consist of the following:

2.2.2.6.1.1 Drawings. Provide one reproducible original, and ten (10) printed copies of all approved construction document drawings. Provide one copy of all approved construction document drawings on compact discs (CD) using Computer-Aided Design (CAD) software, using AutoCAD 2010.

2.2.2.6.1.2 Specifications. Provide original and ten (10) printed copies of approved specifications, bound and organized. Provide approved specifications on CDs for all sections for all work applicable to the Project, using a format that complies with the current edition of the Construction Specifications Institute's "Master Format" as directed by the District and in accordance with the following:

2.2.2.6.1.2.1 Electronic computer software in Microsoft Word, latest version for Windows.

2.2.2.6.1.2.2 Where articles, materials, and equipment are identified by brand names, at least two brand names shall be specified, and shall be followed by the words "or equal". Specifications shall not contain restrictions that will limit competitive bids. Exceptions shall only be as permitted by California Public Contract Code section 3400.

2.2.2.6.1.2.3 All CDs provided shall be indexed and clearly labeled to indicate files contained thereon and the date that the CD was produced. All electronic files shall use fonts and formats used by the District and the discs shall be formatted for easy printing.

2.2.2.6.1.3 Specifications shall not contain restrictions that will limit competitive bids. Where articles, materials, and equipment are identified by brand names, at least two brand names shall be specified, and shall be followed by the words "or equal". Exceptions shall only be as permitted by California Public Contract Code section 3400.

2.2.2.6.2 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. Such

review shall not relieve the Design/Builder from its responsibilities under the 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 in writing by the District.

2.2.2.6.3 The Design/Builder shall submit completed packages of the Construction Documents, in the quantities required by the District to all applicable authorities having jurisdiction (including but not limited to DSA), at the times indicated on the Design/Builder's Baseline Schedule. Design/Builder is responsible for completing the designs and submitting them to DSA in a timely fashion in order to obtain DSA approval and complete all Work according to the Project Milestone Schedule. All Work is to be performed in accordance with the requirements of the DSA and the Design-Builder shall be solely responsible for obtaining all approvals from DSA at no additional cost to District.

2.2.2.7 Ownership of Design Materials

2.2.2.7.1 All materials and documents developed in the performance of this Contract are the property of the District. The District shall have unlimited rights, for the benefit of the District, in all drawings, designs, specifications, notes, and other work developed in the performance of this Contract, including the right to use same on any other District project at no additional cost to the District.

2.2.2.7.2 Design/Builder agrees to and does grant to the District a royalty-free license to all such data that Design/Builder may cover by copyright and to all designs as to which Design/Builder may assert any rights or establish any claim under United States patent or copyright laws. The Design/Builder for a period of three (3) years after completion of the Project agrees to furnish and to provide access to the originals or copies of all such materials upon the request of the District.

2.2.2.7.3 The District agrees to make no demand on Design/Builder and indemnifies the Design/Builder for any damages caused by the District's use of such materials for any other District project that is not the subject of an agreement between the District and Design/Builder for such use.

2.2.2.7.4 The Design/Builder shall perform the work required under this Contract with Computer-Aided Design (CAD) software, using the latest version of Revit, and shall deliver to the District the CDs containing the electronic files of all approved Construction Document drawings, in both Revit and

AutoCAD 2010 format As well as PDF format. The format of electronic documents delivered to the District will be determined in conjunction with the District in order to facilitate retrieval of information.

2.2.2.7.5 The District does not assume any obligation to retain the Design/Builder's services or pay Design/Builder royalties of any type as to future programs.

2.2.2.8 Design Errors

The Design/Builder shall be solely responsible for all design errors and for correction of the same at no additional cost to District, including, but not limited to: errors, inconsistencies or omissions in the Construction Documents, and errors, omissions and inconsistencies that do not conform to the standards established in the Contract Documents and the Criteria Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and other information known to the Design/Builder from the Contract Documents and the Criteria Documents before commencing Design activities.

3. DESIGN/BUILDER'S DUTIES AND RESPONSIBILITIES: CONSTRUCTION

3.1 Construction Phase Design Responsibilities

The Design/Builder shall meet weekly at the field offices of the Design/Builder and shall provide all labor, materials, equipment, temporary utility services and facilities necessary to construct the entire Project as required by the Contract Documents, including, but not limited to:

3.1.1 Prepare an existing conditions survey of all surrounding and adjacent properties, including streets and observable and recorded utilities, prior to the start of construction. Design/Builder will endeavor to gain access to non-District owned properties as necessary.

3.1.2 The Design/Builder shall provide modular buildings for use as a Project Field Office for both the Design/Builder and the District's Project Management Team. The Project Field Office for the Design/Builder and District's Project Management Team shall be secured, alarmed and monitored to detect entry Section 01 52 00 (Construction Facilities) further delineates the field office requirements for the District's Project Management Team. The field office shall be available and fully operational for the District's Project Management Team no later than forty-five (45) calendar days after the date of execution of this Contract, or by a date agreed to by the District, and shall be vacated in an "as found" condition within sixty (60) days after Completion.

3.1.3 All portions of the construction Work awarded by the Design/Builder to a subcontractor not listed in the Design/Builder's proposal shall be awarded by the Design/Builder in conformity with the requirements of California Education Code section 81704, subdivision (c), and the District's bidding procedures. All subcontractors bidding on work to be awarded by the Design/Builder shall be afforded the protections contained in Division 2, Part

1, Chapter 4 of the California Public Contract Code Section 4100 et seq. The Design/Builder shall provide public notice of the availability of work to be subcontracted in accordance with state law applicable to the competitive bidding process and provide a fixed date and time on which the subcontracted work will be awarded. Any subcontractor awarded a subcontract for this Project in this manner is then afforded the protections as set forth in California Public Contract Code Section 4107.

3.1.4 If a discovery is made of items of archaeological interest on site during excavation activities, the Design/Builder shall immediately cease excavation in the area of discovery and shall not continue until directed by the District. Design/Builder shall cooperate with and provide access to the archaeologist or the county coroner pursuant to California Health and Safety Code Section 7050.5.

3.1.5 The Design/Builder shall prepare space plans showing all free standing furniture, fixtures, equipment and modular systems furniture (MSF) workstations for the Project. Design/Builder shall conduct furniture inventories of existing furniture and, in consultation with the District, shall indicate the re-use and placement of such existing furniture in the space plans.

3.1.6 The Design/Builder shall coordinate with the District's furniture vendor/installer, staff and stakeholders to confirm dimensions, details, materials and other pertinent information, and coordinate the design and development process with the District's furniture vendor/installer, staff and stakeholders for furniture fixtures, and equipment provided by the District. The Design/Builder will prepare fully dimensioned floor plans including clear dimension requirements, furniture, fixture, and equipment requirements including work surfaces, storage units, computer related components and other accessories.

3.1.7 The District's furniture vendor/installer will utilize the Design/Builder's drawings to prepare installation drawings, which will be reviewed and approved by Design/Builder for conformance to the space plan drawings. The Design/Builder will make available loading dock and elevator operators as needed to support the District's furniture vendor/installer delivering, distributing, and installing the furniture, fixture, and equipment components. Upon installation of the furniture, fixture, and equipment, Design/Builder shall install and connect the necessary telecommunications cable within the MSF workstations, and connect the electrical power to the MSF workstations as required.

The Design/Builder will assist the District in planning and implementing a coordinated Move-In and Occupancy Plan. Design/Builder shall provide all labor necessary to assist the District in managing the process for scope and schedule for FF&E relocation, including elevator operators, electricians, plumbers, furniture installer/vendors, temporary protection of finishes, etc.

3.1.8 The Design/Builder shall be required to take daily job site photos with a high quality camera. The Design/Builder shall provide a fixed webcam mounted appropriately for good visibility throughout the duration of the construction.

Except as otherwise specifically approved by the District, Design/Builder will prepare and submit the photographs monthly from groundbreaking through Project completion, within three (3) calendar days of the date of the Design/Builder's application for progress payment. To the maximum extent practicable, Design/Builder will make photographs at approximately the same time of day throughout the progress of the work. When inclement weather is anticipated, Design/Builder will consult with the District to determine acceptable alternative arrangements.

Design/Builder will identify each location by word description, by marked drawing, or by such other means as acceptable to the District, to enable future photographs to be taken from the same position.

3.2 Standards of Performance.

3.2.1 The Work on the Project shall be performed in accordance with the professional standards and quality of care applicable to projects, buildings or work of similar size, complexity, quality and scope constructed within a similar California environment.

3.2.2 The Design/Builder has been selected to perform the Work herein because of the skills and expertise of key individuals. The Design/Builder agrees that the following key people shall be utilized by Design/Builder on the Project in the following capacities:

Principal In Charge: _____

Project Director: _____

Project Architect(s): _____

Project Architect(s): _____

Other: _____

Major Consultants:

Electrical: _____

Mechanical: _____

Structural: _____

Civil: _____

Other: _____

3.2.2.1 Design/Builder shall not change any of the key personnel listed above without prior written approval by the District, unless said personnel cease to be employed by Design/Builder. In either case, the District shall be allowed to interview and approve replacement personnel.

3.2.2.2 If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice Design/Builder shall have five (5) calendar days to remove that person from the Project and replace that person with one acceptable to the District.

3.2.3 The Design/Builder shall employ full-time, competent on site Project management, including but not limited to the Project Manager or superintendent(s), who shall be in attendance at the Project Site during the construction of the Project. The Project Manager shall represent the Design/Builder and communications given to and by the Project Manager shall be as binding as if given directly to and by the Design/Builder. The Design/Builder shall confirm all communications in writing.

3.2.4 At any time when the Project Manager is absent from the Project Site, either when work is being performed or when no work is being performed, the Project Manager, or his or her designated representative acceptable to the District, shall be readily reachable and available for consultation at the Project Site at any time.

3.2.5 Any persons that the District may deem incompetent or disorderly shall be promptly removed from the Project by the Design/Builder upon written notice from the District, and shall not be reemployed for the duration of the Project.

3.3 Applicable Laws and Codes

3.3.1 The Design/Builder shall comply with all applicable laws, codes, and ordinances and shall give notices as applicable. Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the work and shall secure and pay as part of the Contract Price, for all plan check and permits fees, licenses and inspections required, including any fees charged by DSA. Notwithstanding the foregoing, the DSA Project Inspector and the third party special inspection and materials testing laboratory services will be paid for by the District.

3.3.2 Design/Builder shall promptly notify the District, in writing, of variances observed between the Contract Documents and applicable laws. If no notice is provided to the District, the Design/Builder shall bear responsibility for any costs for work performed known to be contrary to applicable laws.

3.3.3 Design/Builder is subject to all laws, rules, or regulations pertaining to building permits or regulating the design or construction of buildings upon District property and shall be solely responsible for meeting these requirements.

3.4 Project Inspector

No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Design/Builder shall furnish Project Inspector(s) reasonable opportunities for obtaining such

information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials, including, but not limited to, submission of form DSA 156 (or the most current version) to the Project Inspector at least 48 hours in advance of the commencement and completion of construction of each and every aspect of the Work. Inspection of Work shall not relieve Design/Builder from an obligation to fulfill this Contract. Project Inspector(s) and the DSA are authorized to suspend work whenever the Design/Builder and/or its subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or DSA shall be without liability to the District. Design/Builder shall instruct its subcontractors and employees accordingly.

3.5 Permits, Fees and Notices

3.5.1 Unless otherwise provided in the Contract Documents, the Design/Builder shall be responsible for required permits, governmental fees, licenses, registrations, inspections, approvals, notices and actions necessary to complete the Work and to prepare all documents customarily required for regulatory agency approvals, including DSA. Design/Builder shall be responsible for the cost of all permits, fees and licenses required for the proper execution and completion of the Work and such appropriate costs shall be included in the Contract Price.

3.5.2 Design/Builder shall assume responsibility for all utility assessments and connection fees levied by all utility service providers. In addition, Design/Builder shall coordinate all applications with the District to ensure the lowest cost, including utilizing any special rate structures available to the District.

3.6 Use of Project Site

3.6.1 Design/Builder shall confine operations at the Project Site to areas permitted by law, ordinances, permits, and the Contract Documents.

3.6.2 Design/Builder shall perform no operations of any nature on or beyond the limits of the Work or premises, except as such operations are authorized in the Contract Documents, or authorized by the District.

3.6.3 Design/Builder shall provide and maintain a temporary construction fence and suitable temporary barriers to prevent public entry; protect the work and existing facilities, persons, trees and plants from damage or injury from construction operations, or trespassers. Temporary barriers shall be maintained in a structurally sound condition and neat appearance.

3.6.4 Should regulatory requirements necessitate construction of temporary barriers, barricades, or pedestrian walkways not indicated or specified, Design/Builder shall construct such barriers at no increase to the Contract Price. If required, Design/Builder will paint such items in a color selected by the District.

3.7 Cutting and Patching

3.7.1 Design/Builder shall be responsible for all cutting, fitting or patching required to complete the Work, and comply with the requirements of Section 01 73 29 (Cutting and Patching).

3.7.2 Design/Builder shall not damage or endanger the existing property or facilities, including but not limited to utilities, by cutting, patching or otherwise altering the construction, and shall not cut nor otherwise alter the construction without prior written consent of District.

3.8 Cleaning

3.8.1 Design/Builder shall keep the Project Site safe and surrounding areas free from waste materials and/or rubbish caused by operations under the Contract and at other times when directed by the District, complying with the requirements of Section 01 77 00 (Cleaning and Closeout Procedures). At all times while finish work is in progress, floors shall be kept clean, free of dust, construction debris and trash. Prior to issuance of the Notice of Completion, Design/Builder shall remove from the Project Site the Design/Builder's tools, construction equipment, machinery, and any waste materials not previously disposed of, leaving the Project site thoroughly clean, and ready for District's final inspection.

3.8.2 If Design/Builder fails to clean up as provided in the Contract Documents, the District may do so and the cost thereof deducted from the final payment due to Design/Builder.

3.9 Site Availability

3.9.1 The District shall turn over the Site to the Design/Builder as described in the Notice to Proceed with Construction and as further described in **EXHIBIT B** – Project Milestone Schedule, at which time the Design/Builder shall be obligated to take control and responsibility. The Design/Builder shall provide the District, Construction Manager and other District consultants with continuous access to the Site.

3.9.2 Temporary parking facilities shall meet all applicable regulatory requirements applicable to design and construction. Design/Builder shall be responsible for all permits, design, and construction required including, but not limited to lighting, access, signage, handicap accessibility, and maintenance. At the end of the Project, all temporary parking and utilities shall be removed and those areas of the Project Site restored to its previous condition.

3.10 Site Conditions

3.10.1 The Design/Builder represents that it has taken the necessary steps to ascertain the nature, location and extent of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work, such as:

3.10.1.1 conditions bearing on transportation, disposal, handling and storage of materials;

- 3.10.1.2** the availability of labor, water, power and roads;
- 3.10.1.3** normal weather conditions;
- 3.10.1.4** physical conditions at the Site;
- 3.10.1.5** the conditions of the ground; and
- 3.10.1.6** the character of equipment and facilities needed prior to and during the performance of the Work.

3.10.2 To the extent the Design/Builder encounters subsurface conditions or hazardous materials which differ materially from that actually known by the Design/Builder, or from those ordinarily known to exist or could have been reasonably discovered, or generally recognized as inherent in the area, then notice by the Design/Builder shall be immediately given to the District, before conditions are disturbed, and in no event later than two (2) business days after the first observance of the conditions. If such conditions could not have been reasonably identified by Design/Builder's site investigations and available existing data, and the Design/Builder incurs significant additional costs or delays as a result of such concealed conditions, such conditions may be the subject of a Change Proposal.

Should any existing utilities or services be disturbed, disconnected or damaged during construction, the Design/Builder shall be responsible, at no additional cost or time to the District, for all expenses and consequential damages of whatever nature arising from such disturbance or the replacement or repair thereof and shall repair such items as required to maintain continuing service, including emergency repairs.

3.10.3 The Design/Builder is responsible for foreseeable site conditions and hazardous materials to the extent described in the Contract Documents and/or could be reasonably inferred by Design/Builder based on its experience and expertise on similar Projects in similar areas.

3.11 Hazardous Materials

3.11.1 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 as can be reasonably implied from previous testing and inspections of the site included or referred to in the Contract Documents. Design/Builder shall comply with the requirements of Section 01 88 20 (Miscellaneous Facility Decommissioning Procedures Requirements).

3.11.2 Any hazardous materials that are encountered beyond those described in the Contract Documents, or which reasonably could not have been discovered by the Design/Builder before executing this Contract, may properly be the subject of a Change Proposal. 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.

3.11.3 "Hazardous materials" means any substance, the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or order petroleum hydrocarbons; which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality or the District; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by the Design/Builder or the District; or as defined in the California Health and Safety Code.

3.11.4 "Environmental Requirements" means all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentality's of the State of California and United States and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: all requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of hazardous materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials; and all requirements pertaining to the protection of the health and safety of employees or the public.

3.12 Shop Drawings, Product Data, Samples, Materials, and Equipment.

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

3.12.2 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.

3.12.3 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.

3.12.4 Prior to placement of material orders or start of component fabrication, the Design/Builder shall submit to the District all shop drawings approved by the Architect of Record and samples of submittals that relate to finish materials and products. The Design/Builder is to issue a submittal schedule to the District for comment and the District shall designate the submittals that the Design/Builder is to submit to the District to review for contract compliance.

3.12.5 Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in the Work as the standard. Any variation in quality must be approved by the District.

3.13 Field Engineering

3.13.1 The Design/Builder shall retain and pay expenses of a qualified civil engineer or land surveyor to establish on the Site the required reference points and bench marks, 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. Design/Builder shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed.

3.13.2 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.

3.13.3 Design/Builder shall follow best practices, including but not limited to pot holing to avoid utilities. District shall not be liable for any claim for allowances because of Design/Builder's error, failure to follow best practices, or negligence in acquainting itself with the conditions at the Site.

3.13.4 Design/Builder shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of District. Design/Builder shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and with District's approval.

3.14 Geotechnical Data and Existing Site Conditions

3.14.1 The District has provided the Design/Builder with preliminary geotechnical data and site conditions, and Title Reports. These documents are provided "for information only". Design/Builder shall be responsible to verify the accuracy of the information provided and, at its cost, obtain any additional measurements, verifications, or supplemental geotechnical report or land survey required to perform their work.

3.14.2 Design/Builder shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work and provide a drawing that documents these verified conditions as part of their Construction Documents.

3.14.3 The Design/Builder shall obtain, and pay for, the services of geotechnical engineers licensed in the State of California and other consultants to provide services deemed necessary by the Design/Builder. Such services may include reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, and other necessary operations for determining subsoil, air and water conditions, with reports and appropriate professional interpretations and recommendations thereof.

3.14.4 By executing this Contract, Design/Builder agrees that District has responded to and resolved any conflict, error or ambiguity in the Existing Conditions data and Contract Documents that Design/Builder has brought to District's attention. During performance of the Contract, Design/Builder will be charged with knowledge of all information that it should have learned in performing its required preconstruction services and preconstruction investigations and other obligations, and shall not be entitled to Change Orders (time or compensation) due to any information, error, inconsistency, omission, or conditions that Design/Builder should have known as a part of this Work. Design/Builder shall be responsible for the resultant losses, including, without limitation, the cost of correcting defective work.

3.15 Meetings and Reports

3.15.1 Prior to commencement of the Work, the Design/Builder shall attend a Project Kick-off meeting, at a time and a place selected by the District's Representative, to discuss procedures to be followed during the course of the work. Design/Builder shall follow the procedures as set forth by the District's Representative and as provided in the Design/Builder's procedure manual to be supplied at the Kick-off conference. The purpose of the meeting will be to introduce the District's key personnel and to review the contract provisions and any other items pertaining to the Project.

3.15.2 Once a week, or at such interval as mutually agreed to by the parties, the District's Representative will meet with the Design/Builder to review the overall Project progress, the status of the design and/or construction, and to discuss any problems that may arise. Design/Builder and its Architect shall attend all progress meetings. Subconsultants, subcontractors and vendor representatives shall attend the progress meetings as appropriate to the particular stage of the work.

3.15.3 Each month the Design/Builder shall attend a payment meeting with the District's Representative to agree on the percentage of the work completed during the current month to establish an amount to be requested in the Application for Payment.

3.15.4 The Design/Builder shall prepare and submit to the District, during design completion, the Construction Document 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.

3.15.5 Thirty (30) days prior to the estimated Completion, the Design/Builder shall hold a meeting to review maintenance manuals, guarantees, warranties,

close-out submittals, bonds, and service contracts for materials and equipment. Design/Builder shall also implement repair and replacement of defective items, and extend service and maintenance contracts as desired by the District.

3.16 Other Reports

3.16.1 The Design/Builder will cooperate with the District, and as may be requested, assist in preparing periodic Project reports required by the District's Board, the District's Citizens' Bond Oversight Committee, or other District committees or boards.

3.17 Notices of Labor Disputes

3.17.1 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. Design/Builder shall refer to the Project Labor Agreement for additional requirements.

3.17.2 Design/Builder agrees to insert the substance of this Article including this Clause 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.

3.18 Guarantee

3.18.1 The Design/Builder unconditionally guarantees the building systems and equipment, including but not limited to the fire and life safety systems and equipment, were installed and will work in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of two (2) years from the date of Completion. For such equipment or building components started in operation prior to Completion, the Design/Builder's guarantee shall, be in force for two (2) full years after Completion is declared by the District notwithstanding the components operation began prior to the District's declaration of Completion. The completion of LEED Certification and/or other incidental administrative completion items identified by the District shall be completed no later than six (6) months following the date for Completion.

3.18.2 The Design/Builder shall repair or replace any and all guaranteed building systems and equipment, including but not limited to the specialty equipment, fire and life safety systems and equipment, together with any adjacent work that may have been damaged or displaced by the guaranteed systems or equipment, that may be defective in its workmanship or material or becomes inoperable within the guarantee period specified in the Contract Documents, without any expense whatsoever to the District; ordinary wear and tear excepted.

3.18.3 The Design/Builder further agrees, within seven (7) days 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 will proceed to have the work completed at the Design/Builder's expense and the Design/Builder will pay costs of the work upon demand. The District will be entitled to all costs, including reasonable attorney's fees necessarily incurred upon the Design/Builder's refusal to pay the above costs.

3.18.4 Notwithstanding the foregoing subparagraph, in the event of an emergency constituting an immediate danger to health or safety of District employees, property, or invitees, 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.

3.19 Warranty

The Design/Builder warrants, for a period of two (2) years from the date of Completion, to the District that any and all materials, equipment and furnishings incorporated in the Work will be of good quality and new unless otherwise required or permitted by the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes improper operation, or normal wear and tear under normal usage under the control of the District.

3.20 Patents, Trademarks, and Copyrights

The Design/Builder shall pay, as part of the Contract Price, all applicable royalties and license fees on any and all matters arising in connection with the Work. The Design/Builder shall defend the District for all suits or claims for infringement of patent, trademark, and copyrights against the District, and shall indemnify, defend, and hold harmless the indemnified parties from any claims, causes of action, losses, or costs related to any and all matters arising in connection with Work on the Project (such costs to be paid as part of the Contract Price), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified or required by the District, other than pursuant to the recommendation or suggestion of the Design/Builder; provided, however, if the Design/Builder has reason to believe that the design, process, or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the District with prompt written notice of the Design/Builder's belief, and the District has nevertheless elected to go forward with such design, process, or product so specified.

3.21 Taxes

The Design/Builder shall pay all applicable taxes for the Work, or portions thereof provided by the Design/Builder, whether or not yet effective or merely

scheduled to go into effect. Any federal, state, or local taxes payable on any materials, labor or any other thing to be furnished by Design/Builder under the Contract Documents shall be included in the Contract Price and paid by Design/Builder.

3.22 Tests and Inspections

3.22.1 The Design/Builder shall be responsible for requesting and scheduling all tests and inspections necessary to ensure the quality of the Work are in accordance with the terms of the Contract Documents, including Section 01 45 00 (Quality Control) and Section 01 45 23 (Testing and Inspection). The Design/Builder shall at all times permit the District and its agents, inspectors, officers, and employees access to the Project Site and inspect the Work and such other locations where the Work is in preparation. This obligation shall include maintaining proper facilities and safe access for such inspection. When the Contract Documents require a portion of the work to be tested, such portion of work shall not be covered up until inspected and approved. The Design/Builder shall be solely responsible for notifying the District and the Inspector of Record where and when the work is ready for inspection and testing at least forty eight (48) hours in advance of the commencement and completion of construction of each and every aspect of the Work. The District shall provide inspectors to review and verify compliance of the Design/Builder's quality control and assurance teams with the contract documents.

3.22.2 Should any work be covered without the required testing or witnessed by the District, such work shall be uncovered at the Design/Builder's expense. Whenever the Design/Builder intends to perform work on Saturday, Sunday, or a legal holiday, the Design/Builder shall give written notice to the District of such intention at least forty eight (48) hours prior to performing the work, so that the District may make necessary arrangements.

3.22.3 If the District determines that portions of the Work require additional testing or inspection that is not included in the Contract Documents, the District will instruct the Design/Builder, in writing, to make arrangements for additional testing or inspection by an entity acceptable to the District, and the Design/Builder shall give forty eight (48) hours written notice to the District of where and when tests and inspections will be conducted so that the District may observe the procedures.

3.22.4 If procedures for testing, inspection or approval reveal failure of a portion(s) of the work to comply with the Contract Documents, the Design/Builder shall bear all costs and time made necessary by such failure(s) including those of repeated procedures and compensation for the District's services and expenses. The Design/Builder shall notify the District in writing within 24 hours of any test conducted by the independent testing agency that reveals work failing to comply with the Construction Documents. Inspection of Work shall not relieve Design/Builder from an obligation to fulfill this Contract. Project Inspector(s) and the DSA are authorized to suspend work whenever the Design/Builder and/or its subcontractor(s) are not complying with the Construction Documents. Any work suspension by the Project Inspector(s) and/or DSA shall be without liability to the District.

3.22.5 Required certificates of testing and inspection shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and delivered to the District within seven (7) days after each test.

3.22.6 Provide qualified on-site personnel to review and record daily construction activities, including subcontract activities, to determine adequacy of work and compliance with the approved plans and specifications. Provide written daily reports including, but not limited to: Project title, date of work, contract day, weather and conditions (temperature, wind, humidity, etc.), a description of the work in progress by corresponding schedule activity number(s), name of each subcontractor on site and work being performed, location of each trade on the Project site, total daily workforce per trade (including the Design/Builder's work force), material deliveries and quantities, equipment deliveries, potential delays and delays encountered, orders of instruction, unsatisfactory work, tests performed, safety concerns, visitors, and any other issues to document work performed and areas of concern.

3.22.7 Daily reports shall be signed by the Design/Builders' Quality Assurance Manager and Project Manager and submitted to the Construction Manager no later than 12:00 p.m. following the day work was performed. The Design/Builder shall separately provide written reports to the Construction Manager of any noted deficiencies in the installed work and corrective measures taken, and test reports of work being installed.

3.23 Air Pollution

The Design/Builder and each subcontractor shall comply with all State, District and/or local air pollution control rules, regulations, ordinances, and statutes that apply to any work performed under the Contract. If there is a conflict between the State, District and local air pollution control rules, regulations, ordinances and statutes, the most stringent shall govern.

3.24 Unfair Business Practices

The Design/Builder agrees, and will require all of the Design/Builder's contractors and subcontractors and suppliers to agree, to assign to the awarding body all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), or under the Cartwright Act (commencing with Section 16700 of the Business and Professions Code), arising from the purchase of goods, services or materials, pursuant to the Contract Documents or any subcontract there under. An assignment made by the Design/Builder, and all additional assignments made by subcontractors and suppliers, shall be deemed to have been made and will become effective at the time the District tenders Final Payment to the Design/Builder, without further acknowledgment of the parties.

4. DISTRICT'S DUTIES AND RESPONSIBILITIES

4.1 District's Representative

Functions for which this Contract provides to be performed by the District may be delegated by the District only by written notice to the Design/Builder from the District.

4.2 Communication with the Design/Builder.

During the term of this Contract, the District shall communicate with the Design/Builder, subcontractors, suppliers, and others performing any part of the Work only through the Design/Builder's authorized representatives, as may be amended, subject to any approvals required by the District as described in the Contract Documents.

4.3 District's Consent

The District shall furnish decisions, information, and/or reviews required by this Contract in a timely manner so as not to delay the Work, provided that the District shall have no less time for review than set forth in the Project Baseline Schedule as developed by the Design/Builder and accepted by the District.

5. SUBCONTRACTING

5.1 Subletting and Subcontracting.

5.1.1 The Design/Builder shall adhere to the rules governing subcontracting as set forth in the Subletting and Subcontracting Fair Practices Act, commencing with Public Contract Code Section 4100. Subcontractor substitutions shall be in accordance with the Subletting and Subcontracting Fair Practices Act. Any violation may subject the Design/Builder to penalties and disciplinary action as provided by the Subletting and Subcontracting Fair Practices Act, including termination of this Contract.

5.1.2 The Design/Builder shall be responsible for all Work performed under this Contract. All persons engaged in the Project will be considered employees of the Design/Builder. The Design/Builder shall give personal attention to fulfillment of the Contract and shall keep the Work under the Design/Builder's control. If Design/Builder subcontracts any part of the Work called for by the Contract Documents, Design/Builder shall be as fully responsible to District for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, including Subcontractor caused Project delays, as it is for acts and omissions of persons directly employed by Design/Builder. When any subcontractor fails to execute a portion of the work in a manner satisfactory to the District, the Design/Builder shall remove such subcontractor pursuant to the requirements of law immediately upon written notice from the District.

5.1.3 Design/Builder shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project.

5.1.4 The District may not permit a subcontractor who is ineligible to bid or work on, or be awarded, a public works Project pursuant to Sections 1777.1 or 1777.7 of the Labor Code.

5.1.5 All subcontractors of any tier performing any part of the Work shall be registered as a Public Works Contractor with the Department of Industrial Relations. The Design/Builder shall be responsible for removing, by

requesting substitution or otherwise, any subcontractors who are not in compliance.

5.1.6 District's consent to, or approval of, or failure to object to, any Subcontractor under the Contract Documents shall not in any way relieve Design/Builder of any obligations under the Contract Documents and no such consent shall be deemed to waive any provisions of the Contract Documents.

5.2 Subcontracting Relations

5.2.1 The Design/Builder shall, by subcontractor agreement, require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Design/Builder by terms of the Contract Documents, and to assume toward the Design/Builder all the obligations and responsibilities which the Design/Builder, by the Contract Documents, assumes toward the District. Each subcontract shall preserve and protect the rights of the District under the Contract Documents with respect to the work to be performed by the subcontractor.

5.2.2 The Design/Builder shall require each subcontractor to enter into similar agreements with sub-subcontractors. The Design/Builder shall make available to each proposed subcontractor, prior to the execution of the subcontractor agreement, copies of those portions of the Contract Documents to which the subcontractor will be bound. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed second and third tier subcontractors.

5.2.3 No contractual relationship exists between the District and any Subcontractor, supplier, or sub-subcontractor by reason of the Contract Documents.

5.2.4 Design/Builder is solely responsible for settling any differences between the Design/Builder and its Subcontractor(s) or between Subcontractors.

5.3 Subcontractor Progress Payments

Within seven (7) days of receipt of each progress payment, the Design/Builder shall make payment to subcontractors in accordance with Business and Professions Code Section 7108.5. The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

5.4 No Obligation of District for Subcontractor Payment

The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

5.5 Joint Checks

District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to the Design/Builder and Subcontractors and/or material or equipment suppliers.

The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, or a material or equipment supplier, or any obligation from the District to such Subcontractor or a material or equipment supplier or rights in such Subcontractor against the District.

5.6 Contract Assignments

Performance of the Contract Documents may not be assigned except upon written consent of the District. Assignment without District's prior written consent shall be null and void. Consent will not be given to an assignment that would relieve the Design/Builder or the Design/Builder's surety of their responsibilities under the Contract Documents. Any assignment of money due or to become due under the Contract Documents 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 services or supplying material to the extent that claims are filed pursuant to the Civil Code, Code of Civil Procedure, Government Code, Labor Code, and/or Public Contract Code, and shall also be subject to deductions for liquidated damages or withholding of payments as determined by District in accordance with the Contract Documents. Design/Builder shall not assign or transfer in any manner to a Subcontractor or supplier the right to prosecute or maintain an action against the District.

6. STATE LABOR, WAGE AND HOUR, APPRENTICE, AND RELATED PROVISIONS

6.1 Labor Compliance and Enforcement

Since this Project is subject to labor compliance and enforcement by the Department of Industrial Relations ("DIR"), Design/Builder specifically acknowledges and understands that it shall perform the Work of this Contract while complying with all the applicable provisions of Division 2, Part 7, Chapter 1, of the Labor Code and Title 8 of the California Code of Regulations, including, without limitation, the requirement that the Design/Builder and all Subcontractors shall timely furnish complete and accurate electronic certified payroll records directly to the DIR. The District may not issue payment if this requirement is not met.

6.2 Wage Rates, Travel, and Subsistence

6.2.1 Pursuant to the provisions of Article 2 (commencing at section 1770), Chapter 1, Part 7, Division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute the Contract Documents are on file at the District's principal office and copies will be made available to any interested party on request. Design/Builder shall obtain and post a copy of these wage rates at the job site.

6.2.2 Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall

be paid need not be specified by the District, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

6.2.3 Design/Builder shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations ("DIR") ("Director"), regardless of any contractual relationship which may be alleged to exist between Design/Builder or any Subcontractor and such workers.

6.2.4 If, prior to execution of the Contract, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract Documents is to be performed, such change shall not alter the wage rates in the Contract Documents subsequently awarded.

6.2.5 Pursuant to Labor Code section 1775, Design/Builder shall, as a penalty, forfeit the statutory amount (believed by the District to be currently two hundred dollars (\$200) to District for each calendar day, or portion thereof, for each worker paid less than the prevailing rates, determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Design/Builder or by any Subcontractor under it. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Design/Builder.

6.2.6 Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and that minimum wage rate shall be retroactive to time of initial employment of the person in that classification.

6.2.7 Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by Labor Code section 3093, and similar purposes.

6.2.8 Design/Builder shall post at appropriate conspicuous points on the Project Site a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Design/Builder shall post a sign-in log for all workers and visitors to the Site, a list of all Subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

6.3 Hours of Work

6.3.1 As provided in Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal day of work. The time of service of any worker employed at any time by Design/Builder or by any Subcontractor on any subcontract under the Contract Documents upon the Work or upon any part of the Work contemplated by the Contract Documents shall be limited and restricted by Design/Builder to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Design/Builder in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

6.3.2 Design/Builder shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Design/Builder in connection with the Work or any part of the Work contemplated by the Contract Documents. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Standards Enforcement of the DIR.

6.3.3 Pursuant to Labor Code section 1813, Design/Builder shall, as a penalty, forfeit the statutory amount (believed by the District to be currently twenty-five dollars (\$25)) to the District for each worker employed in the execution of the Contract Documents by Design/Builder or by any Subcontractor for each calendar day during which a worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at section 1810), Chapter 1, Part 7, Division 2, of the Labor Code.

6.3.4 Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the District.

6.4 Payroll Records

6.4.1 Design/Builder shall upload, and shall cause each Subcontractor performing any portion of the Work under this Contract to upload, an accurate and complete certified payroll record ("CPR") electronically using DIR's eCPR System by uploading the CPRs by electronic XML file or entering each record manually using the DIR's iform (or current form) online on a weekly basis and within ten (10) days of any request by the District or Labor Commissioner at <http://www.dir.ca.gov/Public-Works/Certified/Payroll-Reporting.html> or current application and URL, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Design/Builder and/or each Subcontractor in connection with the Work.

6.4.2 The CPRs enumerated hereunder shall be filed directly with the DIR on a weekly basis or to the requesting party, whether the District or DIR, within

ten (10) days after receipt of each written request. The CPRs from the Design/Builder and each Subcontractor for each week shall be provided on or before Wednesday of the week following the week covered by the CPRs. District may not make any payment to Design/Builder until:

6.4.2.1 The Design/Builder and/or its Subcontractor(s) provide CPRs acceptable to the District and DIR.

6.4.2.2 Any delay in Design/Builder and/or its Subcontractor(s) providing CPRs to the District or DIR in a timely manner may directly delay the District's review and/or audit of the CPRs and Design/Builder's payment.

6.4.3 All CPRs shall be available for inspection at all reasonable hours at the principal office of Design/Builder on the following basis:

6.4.3.1 A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

6.4.3.2 CPRs shall be made available for inspection or furnished upon request or as required by regulation to a representative of the District, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the DIR.

6.4.3.3 CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the District, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Design/Builder, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Design/Builder.

6.4.4 Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, Division of Labor Standards Enforcement, or DIR 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 Project under the Contract Documents or performing under the Contract Documents shall not be marked or obliterated.

6.4.5 Design/Builder shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days of a change in location of the records, provide a notice of change of location and address.

6.4.6 In the event of noncompliance with the requirements of this section, Design/Builder shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Design/Builder must

comply with this section. Should noncompliance still be evident after the ten (10) day period, Design/Builder shall, as a penalty, forfeit up to one hundred dollars (\$100) to District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Labor Commissioner, these penalties shall be withheld from payments then due.

6.5 Apprentices

6.5.1 Design/Builder acknowledges and agrees that, if the Contract Documents involve a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5 and 29 CFR part 5. It shall be the responsibility of Design/Builder to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

6.5.2 Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

6.5.3 Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.

6.5.4 Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at section 3070), Division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

6.5.5 Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Design/Builder and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Design/Builder or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

6.5.6 Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Design/Builder and any Subcontractor may be required to make contributions to the apprenticeship program.

6.5.7 If Design/Builder or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

6.5.7.1 Be denied the right to bid on any subsequent project for one (1) year from the date of such determination.

6.5.7.2 Forfeit, as a penalty, to District the full amount stated in Labor Code section 1777.7. Interpretation and enforcement of these

provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

6.5.7.3 Design/Builder and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

6.5.7.4 Design/Builder shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and Title 8, California Code of Regulations, Section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, 9th Floor, San Francisco, California 94102.

6.6 Skilled and Trained Workforce

6.6.1 Design/Builder and its subcontractors at every tier hereby provides an enforceable commitment to comply with Public Contract Code section 2600 et seq., which requires use of a skilled and trained workforce to perform all work on the Contract or Project that falls within an apprenticeable occupation in the building and construction trades.

6.6.1.1 "Apprenticeable Occupation" means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations ("Chief") had approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.

6.6.1.2 "Skilled and Trained Workforce" means a workforce that meets all of the following conditions:

6.6.1.2.1 All of the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief.

6.6.1.2.2 That, for the applicable dates, either (A) the number of the skilled journeypersons employed to perform work on the Contract or Project by the Design/Builder or its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief pursuant to Labor Code section 3075 or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor, or (B) the hours of work performed by skilled journeypersons who have graduated from an approved apprenticeship program meet at least the percentages set forth in the following chart:

APPLICABLE DATES	% REQUIREMENT	EXCLUDED OCCUPATIONS
1/1/2016 – 12/31/2017	At least 30%	Teamster – no percentage requirement.
1/1/2018 – 12/31/2018	At least 40%	Teamster – no percentage requirement. Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, and tile layer, setter, or finisher. - Requirement remains at least 30% for each.
1/1/2019 – 12/31/2019	At least 50%	
On or after 1/1/2020	At least 60%	

6.6.1.2.3 For an apprenticeable occupation in which no apprenticeship program has been approved by the Chief before January 1, 1995, up to one-half of the above graduation percentage requirements set forth in the above chart may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the Chief’s approval of an apprenticeship program for that occupation in the county in which the Project is located.

6.6.1.2.4 The contractor or subcontractor need not meet the apprenticeship graduation requirements if:

6.6.1.2.4.1 During a calendar month, the Design/Builder or subcontractor employs skilled journeypersons to perform fewer than 10 hours of work on the Contract or Project; or

6.6.1.2.4.2 The subcontractor was not a listed subcontractor under Public Contract Code section 4104 or a substitute for a listed subcontractor, and the subcontract does not exceed one-half of 1 percent (0.5%) of the price of the prime contract.

6.6.1.3 “Skilled Journeyperson” means a worker who either:

6.6.1.3.1 Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief or located outside of California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor; or

6.6.1.3.2 Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the Chief.

6.6.2 Design/Builder and its subcontractors will demonstrate its compliance with the Skilled and Trained Workforce requirements by either of the following:

6.6.2.1 Provide monthly reports to the District demonstrating that the Design/Builder and its subcontractors are complying with the requirements of Public Contract Code section 2600 et seq., which shall be a public record under California Public Records Act, Government Code section 6250 et seq.; or

6.7 Provide evidence that Design/Builder and its subcontractors have agreed to be bound by: (1) a project labor agreement entered into by the District that binds all contractors and all its subcontractors at every tier performing work on the Project to use a skilled and trained workforce; (2) the extension or renewal of a project labor agreement entered into by the District prior to January 1, 2017; or (3) a project labor agreement that binds all contractors and all its subcontractors at every tier performing work on the Project to use a skilled and trained workforce.

6.8 Non-Discrimination

6.8.1 Design/Builder herein agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in Part 2.8 of Division 3 of Title 2 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Design/Builder and Subcontractor.

6.8.2 Special requirements for Federally Assisted Construction Contracts: During the performance of the requirement of the Contract Documents, Design/Builder agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

6.9 Labor First Aid

Design/Builder shall maintain emergency first aid treatment for Design/Builder's laborers and mechanics on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) and the California Occupational Safety and Health Act of 1973 (Lab. Code, § 6300 et seq.; 8 Cal. Code of Regs., § 330 et seq.).

7. PAYMENTS AND COMPLETION

7.1 Contract Price

In consideration of Design/Builder's obligations under the Contract Documents, Design/Builder will be compensated in an amount not-to-exceed Eight Million Five Hundred Thousand Dollars (\$8,500,000), in accordance with the payment procedures set forth herein. Except as otherwise provided in the Contract Documents, the Contract Price will fully compensate Design/Builder for all of the services required under the Contract Documents, including the

scope of services described in this Contract, and Design/Builder will not seek additional compensation from District in excess of that amount.

7.1.1 Any unused portion of the Contract Price shall be considered as cost savings and retained by the District.

7.2 Compensation for Design Phase Services

District agrees to reimburse Design/Builder in the total amount not to exceed [Amount in Words] Dollars [Amount in Numbers] ("Design Fee"), for the performance of all design phase services contemplated under the Contract Documents. Design/Builder shall be paid monthly for the actual fees and allowed costs and expenses for all time and materials required and expended for work requested and specified by the District as completed. Said amount shall be paid within thirty (30) days upon submittal to and verification by the District of a monthly billing statement showing completion of the tasks for that month on a line item basis. The Design Fee is included in, and not in addition to, the Contract Price.

7.3 Compensation for Construction Phase Services

Pursuant to the Contract, Design/Builder will cause the Project to be constructed for the Contract Price. The Contract Price will consist of the amounts to be identified in Contract Price. Except as indicated herein for modifications to the Project approved by the District, Design/Builder will not seek additional compensation from District in excess of the Contract Price.

Following District's issuance of the Notice to Proceed with Construction, District shall pay Design/Builder up to the Contract Price less the Design Fee for all pre-construction phase services contemplated under the Contract Documents, in accordance with the payment procedures set forth herein.

7.3.1 Cost of the Work

The term Cost of the Work shall mean the costs necessarily incurred in the proper performance of the Work contemplated by the Contract Documents. Such costs shall be at rates no higher than the standard paid at the place of the Project except with the prior consent of the District. The Cost of the Work shall include only the items set forth in this section and approved by the District.

7.3.1.1 General Conditions

The General Conditions as set forth in Contract Price shall be included in a progress billing as incurred. Said rates shall include all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Design/Builder for insurance, permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, incentives to the extent contemplated in Attachment 1, whether required by law or collective bargaining agreements or otherwise paid or provided by Design/Builder to its employees. The District reserves the right to

request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the District shall be entitled to a reduction in the cost of General Conditions based on the rates set forth in Attachment 1.

7.3.1.2 Subcontract Cost

Payments made by the Design/Builder to Subcontractors (inclusive of the Subcontractor's bonding, if required, and insurance costs, which shall be included in the subcontract amount), which payments shall be made in accordance with the requirements of the Contract Documents.

7.3.1.3 Design/Builder Performed Work

Costs incurred by the Design/Builder for self-performed work at the direction of District or with the District's prior approval, as follows:

7.3.1.3.1 Actual costs to the Design/Builder of wages of construction workers, excluding all salaried and/or administrative personnel, directly employed by the Design/Builder to perform the construction of the Work at the site.

7.3.1.3.2 Wages or salaries and customary benefits, such as sick leave, medical and health benefits, holidays, vacations, incentive programs, and pension plans of the Design/Builder's field supervisory, safety and administrative personnel when stationed at the site or stationed at the Design/Builder's principal office, only for that portion of their time required for the Work.

7.3.1.3.3 Wages and salaries and customary benefits, such as sick leave, medical and health benefits, holidays, vacations, incentive programs and pension plans of the Design/Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

7.3.1.3.4 Costs paid or incurred by Design/Builder for taxes, insurance, contributions, assessments required by law or collective bargaining agreements and for personnel not covered by such agreements, and for customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work.

7.3.1.3.5 Costs, including transportation and storage, of materials and equipment incorporated in the completed construction, including costs of materials in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the District's

property at the completion of the Work or, at the District's option, shall be sold by the Design/Builder. Any amounts realized from such sales shall be credited to the District as a deduction from the Cost of the Work.

7.3.1.3.6 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, machinery and equipment not customarily owned by construction workers, that are provided by the Design/Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design/Builder. Cost for items previously used by the Design/Builder shall mean fair market value.

7.3.1.3.7 Rental charges for temporary facilities, machinery, equipment, vehicles and vehicle expenses, and hand tools not customarily owned by construction workers that are provided by the Design/Builder at the site, whether rented from the Design/Builder or others, and the costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof and costs of Design/Builder's Project field office, overhead and general expenses including office supplies, parking, office equipment, and software. Rates and quantities of equipment rented shall be subject to the District's prior approval.

7.3.1.3.8 Costs of removal of debris from the site, daily clean-up costs and dumpster charges not otherwise included in the cost of the subcontracts which exceeds the clean-up provided under the General Conditions.

7.3.1.3.9 Costs of that portion of the reasonable travel, parking and subsistence expenses of the Design/Builder's personnel incurred while traveling and discharging duties connected with the Work.

7.3.1.3.10 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the District.

7.3.1.4 Allowances

Because it is impossible at the time of execution of the Contract to determine the exact cost of performing certain tasks, the Cost of the Work shall include the following Allowances as noted here:

Task/Work	Allowance Amount
District Allowance for Unforeseen Conditions	\$1,000,000
Total Allowance Amount	\$1,000,000

The District shall have sole discretion to authorize all expenditures from the Allowances. The District shall process expenditures from the Allowances in the form of an Allowance Expenditure Directive ("AED"). The Allowances are included in the Contract Price. Any unused Allowance or unused portion thereof shall be deducted from the Cost of the Work to the benefit of the District.

7.3.1.5 Miscellaneous Costs

7.3.1.5.1 Where not included in the General Conditions, and with the prior approval of District, costs of document reproductions (photocopying and blueprinting expenses), long distance telephone call charges, postage, overnight and parcel delivery charges, telephone costs including cellular telephone charges, facsimile or other communication service at the Project site, job photos and progress schedules, and reasonable petty cash expenses of the site office. Design/Builder shall consult with District to determine whether District has any vendor relationships that could reduce the cost of these items and use such vendors whenever possible.

7.3.1.5.2 Sales, use, gross receipts, local business and similar taxes imposed by a governmental authority that are related to the Work.

7.3.1.5.3 Fees and assessments for permits, plan checks, licenses and inspections for which Design/Builder is required by the Contract Documents to pay including, but not limited to, permanent utility connection charges, street use permit, street use rental, OSHA permit and sidewalk use permit and fees.

7.3.1.5.4 Fees of laboratories for tests required by the Contract Documents.

7.3.1.5.5 Deposits lost for causes other than the Design/Builder's or its subcontractors' negligence or failure to fulfill a specific responsibility to the District as set forth in the Contract Documents.

7.3.1.5.6 Expenses incurred in accordance with the Design/Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work if approved in advance by District.

7.3.1.5.7 Where requested by District, costs or expenses incurred by Design/Builder in performing design services for the design-build systems.

7.3.1.5.8 Other costs incurred in the performance of the Work if, and to the extent, approved in advance by District.

7.3.1.5.9 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and/or property.

7.3.1.5.10 Provided all other eligible costs have been deducted from the contingency and as part of the calculation of amounts due Design/Builder for Final Payment, costs of repairing and correcting damaged or non-conforming Work executed by the Design/Builder, Subcontractors or suppliers, providing that such damage or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design/Builder and only to the extent that the cost of repair or correction is not recovered by the Design/Builder from insurance, sureties, Subcontractors or suppliers.

7.3.1.6 Excluded Costs

The following items are considered general overhead items and shall not be billed to the District:

7.3.1.6.1 Salaries and other compensation of the Design/Builder's personnel stationed at Design/Builder's principal office or offices other than the Project Field Office, except as specifically provided in Section 8.1.1.3.

7.3.1.6.2 Expenses of the Design/Builder's principal office and offices other than the Project Field Office.

7.3.1.6.3 Overhead and general expenses, except as may be expressly included in this Section 8.1.1.

7.3.1.6.4 The Design/Builder's capital expenses, including interest on the Design/Builder's capital employed for the Work.

7.3.1.6.5 Costs that would cause the any Phase Contract Price or Contract Price (as adjusted by Change Order) to be exceeded.

7.3.1.7 Bonds and Insurance

For insurance and bonds required under this Contract (exclusive of those required by Subcontractors, which costs are included in the subcontract amounts), that portion of insurance and bond premiums which are directly attributable to this Contract, which shall be calculated at a rate of _____ percent (___%) of the Cost of the Work

for insurance and _____ percent (___%) of the Cost of the Work for payment and performance bonds.

7.3.1.8 Contingency

7.3.1.8.1 The Contract Price includes a Contingency of _____ percent (_____%) of the Cost of the Work, as described in Section 8.1.1, for potential additional construction costs for unforeseen conditions that occur over the course of construction and/or scope gaps between the subcontract categories of the Work.

7.3.1.8.2 The Contingency is not intended for such things as scope changes.

7.3.1.8.3 The Contingency shall not be used without the agreement of the District.

7.3.1.8.4 The unused portion of the Contingency shall be considered as cost savings and retained by the District at the end of the Project.

7.4 Open Book Policy

There will be an open book policy with Design/Builder and its construction team. District shall have access to all subcontractor bids, value engineering back-up, contingency breakdown and tracking, and fees.

7.5 Changes to Contract Price

7.5.1 The Parties acknowledge that the Contract Price, including all Phase Contract Prices, is full compensation for all Work required by the Contract Documents, including the plans and specifications.

7.5.2 As indicated in Section 11, the Parties may add to or remove from the Project specific scopes of work. Based on these change(s), the Parties may agree to a reduction or increase in the Contract Price, or any Phase Contract Prices. If a cost impact of a change is agreed to by the Parties, it shall be paid upon the payment request from the Design/Builder for the work that is the subject of the change in accordance with Section 11. The amount of any change to the Contract Price and/or Phase Contract Price shall be calculated in accordance with Section 11.

7.5.3 The Parties agree to reduce the Contract Price, or Phase Contract Price as appropriate, for the unused portion of the Design/Builder Contingency, if any.

7.5.4 Cost Savings

Design/Builder shall work cooperatively with Criteria Architect, Construction Manager, subcontractors, and District, in good faith, to identify appropriate opportunities to reduce the Project costs and promote cost savings. Any identified cost savings from the Contract

Price shall be identified by Design/Builder, and approved in writing by the District. In the event Design/Builder realizes a savings on any aspect of the Project, such savings shall be added to the Contingency and expended consistent with the Contingency. In addition, any portion of Allowance remaining after completion of the Project shall be added to the Contingency. If any cost savings require revisions to the Construction Documents, Design/Builder shall work with the District and Criteria Architect with respect to revising the Construction Documents and, if necessary, obtaining the approval of DSA with respect to those revisions. Design/Builder shall be entitled to an adjustment of Contract Time for delay in completion caused by any cost savings adopted by District pursuant to Section 11, if requested in writing before the approval of the cost savings.

7.6 Schedule of Values

Within ten (10) days after the date of Notice to Proceed with Construction and prior to the first Application for Payment, the Design/Builder shall submit to the District a Schedule of Values to complete the Project, supported by such data to substantiate the accuracy as the District may require. This Schedule of Values, unless objected to by the District within fifteen (15) days of receipt, shall be used as a basis for progress payments.

7.6.1 This Schedule of Values may be adjusted from time-to-time as the subcontracting plan is finalized.

7.7 Application for Payment.

7.7.1 The Design/Builder shall deliver to the District on the last business day of each month, or as otherwise agreed by both parties, an Application for Payment, in the format approved by the District, covering that portion of the Contract Price allocated to the Work completed during each month and in accordance with the Schedule of Values. Invoices shall include the contract number, the Project number, the amendment number, Design/Builder's Federal Employer Identification Number (FEIN); and shall be submitted to the District in care of the District's Construction Manager.

7.7.2 Application for payment shall not be submitted more frequently than once monthly. The application for payment shall be signed by an officer or designee of the Design/Builder's firm. Provided the Application for Payment is received and approved by the District, the District shall make payment to the Design/Builder not later than thirty (30) days after receipt by the District of a payment application that is strict conformance with the requirements herein. With each Application for Payment, the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred in accordance with the Schedule of Values during such month and the percentage of completion of each category of Work.

7.8 Progress Payments

The District shall pay the Design/Builder the progress payments through the period covered by the Application for Payment, as provided herein. Upon receipt of an Application for Payment from the Design/Builder, the District will

promptly review the same to determine if it is a proper Application for Payment based on the approved Schedule of Values. Any Application for Payment determined by the District not to be in strict conformance with the requirements herein set for payment shall be rejected, and returned to Design/Builder to be modified and processed per the Contract. The District's reason(s) for rejecting the Application for Payment shall be stated in writing.

7.9 Withholding of Payment

7.9.1 The District shall withhold payment in whole, or in part, as required by statute. In addition, the District may withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required herein cannot be made. Payment, in whole, or in part, will be withheld based on the need to protect the District from loss because of, but not limited to, any of the following:

7.9.1.1 Defective Work not remedied within FORTY-EIGHT (48) hours of written notice to Design/Builder.

7.9.1.2 Stop Payment Notices or other liens served upon the District as a result of the Contract.

7.9.1.3 [RESERVED]

7.9.1.4 [RESERVED]

7.9.1.5 Failure to cure non-compliance with the Skilled and Trained Workforce Requirements.

7.9.1.6 Liquidated damages assessed against the Design/Builder.

7.9.1.7 The cost of completion of the Contract if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price or by the Contract Time.

7.9.1.8 Damage to the District or other contractor(s).

7.9.1.9 Unsatisfactory or untimely prosecution of the Work by the Design/Builder.

7.9.1.10 Failure to store and properly secure materials.

7.9.1.11 Failure of the Design/Builder to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, Schedule(s), Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports.

7.9.1.12 Failure of the Design/Builder to maintain As-Built Drawings.

7.9.1.13 Unauthorized deviations from the Contract Documents.

7.9.1.14 Failure to provide acceptable electronic certified payroll records, as required by the Labor Code, by these Contract Documents or by written request for each journeyman, apprentice, worker, or other employee employed by the Design/Builder and/or by each Subcontractor in connection with the Work for the period of the Application for Payment or if payroll records are delinquent or inadequate.

7.9.1.15 Failure to properly pay prevailing wages as required in Labor Code section 1720 et seq., failure to comply with any other Labor Code requirements, and/or failure to comply with labor compliance monitoring and enforcement by the DIR.

7.9.1.16 Failure to properly maintain or clean up the Site.

7.9.1.17 Failure to timely indemnify, defend, or hold harmless the District.

7.9.1.18 Failure to perform any implementation and/or monitoring required by the General Permit, including without limitation any SWPPP for the Project and/or the imposition of any penalties or fines therefore whether imposed on the District or Design/Builder.

7.9.1.19 Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits.

7.9.1.20 Failure to pay any royalty, license or similar fees.

7.9.1.21 Failure to pay Subcontractor(s) or supplier(s) as required by law and Design/Builder's subcontract agreement and by the Contract Documents; and

7.9.1.22 Design/Builder is otherwise in breach, default, or in substantial violation of any provision of the Contract Documents.

7.10 Payment for Stored Materials

Unless otherwise provided in the Contract Documents, payment will be made on account for materials or equipment not incorporated in the Work but delivered and suitably stored at the Site and/or if approved in advance by the District, and at the District's discretion on case-by-case basis, payments may be made for materials or equipment stored at some other bonded or otherwise secure location agreed upon in writing. Payments made for materials or equipment stored on or off-site shall be conditioned upon submission by the Design/Builder of bills of sale or such other procedures satisfactory to the District to establish District's title to such materials or equipment or otherwise protect the District's interest, including applicable insurance and transportation to the Site for those materials and equipment stored off-site.

7.11 Payments as Trust Funds

Any and all funds payable to the Design/Builder are hereby declared to constitute trust funds in the hands of the Design/Builder to be applied first to payment of claims of subcontractors, sub-subcontractors, architects, engineers, surveyors, laborers, material men or employees arising out of the described Work, to obligations for utilities furnished, tax imposed or such to the payment of premiums on security or other bonds, and to payment of insurance premiums relating to the Project and to payments and contributions to union pension plans and trust funds before application to any other purpose.

7.12 Payment Not a Waiver

7.12.1 No payment hereunder, including Final Payment to Design/Builder, nor District's use or Beneficial Occupancy of the Work, shall release Design/Builder with respect to design, construction, workmanship, materials, equipment or machinery incorporated in the Work which is found to be defective, unsound or improper.

7.12.2 No payment made under the Contract, shall be evidence of performance thereof, either wholly or in part, nor shall it be construed to be acceptance of defective work or improper material, or an approval of any items in any application for payment.

7.13 Waiver of Stop Payment Notice and Payment Bond Rights

The Design/Builder shall attach to each application for payment, a waiver of all stop payment notice and payment bond rights as provided in Civil Code sections 8132 or 8136, as applicable, with respect to all amounts requisitioned up to and including the then current requisition from the Design/Builder, which waiver of lien and payment bond rights covers all amounts requisitioned from the Design/Builder's subcontractors and all tiers and suppliers. Design/Builder shall attach to each application for payment, a waiver of stop payment notice and payment bond rights as provided in Civil Code section 8134, with respect to amounts requisitioned from the previous requisition from the Design/Builder from its subcontractors of all tiers and suppliers.

7.14 Retention

7.14.1 The District will retain five percent (5%) of such estimated value of all Work completed (including design and other professional services) and a like percentage within limits established by law, of the value of materials so estimated to have been furnished, delivered and unused, as aforesaid, as part of security for fulfillment of the Contract Documents by the Design/Builder. The District will pay monthly to the Design/Builder while executing the Work the balance not retained after deducting all previous payments and all sums to be retained under provisions of the Contract Documents.

7.14.2 No interest shall be paid on any retention, or on any amounts withheld due to a failure of the Design/Builder to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the

contrary in any Escrow Agreement between the District and the Design/Builder pursuant to Public Contract Code section 22300.

7.14.3 Investment Alternative.

7.14.3.1 At the request and expense of the Design/Builder, and in accordance with Public Contract Code Section 22300, the District will make payment of the retention earned directly to a state or federally chartered bank in California, as the escrow agent.

7.14.3.2 The escrow agreement shall be substantially similar to the form "Escrow Agreement for Security Deposits in Lieu of Retention" found in Public Contract Code Section 22300.

7.14.3.3 Upon satisfactory completion of the Work, the Design/Builder shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the District, pursuant to the terms of the Escrow Agreement.

7.15 Final Payment, Occupancy, and Completion

7.15.1 The District reserves the right to occupy all or any part of the Project prior to completion of the Work, upon written notice.

7.15.2 The District's occupancy does not constitute acceptance by the District of the Work, or any portion of the Work, nor will it relieve the Design/Builder of responsibility for correcting defective Work or materials found at any time before Completion, or during the guarantee period after District's acceptance. However, when the Project includes separate buildings, and one or more of the buildings is entirely occupied by the District, then upon written request by the Design/Builder and by written consent from the District, the guarantee period will commence to run for a building or buildings from the date of the District's Beneficial Occupancy of a building or buildings.

7.15.3 Beneficial Occupancy. The District may occupy or use any completed or partially completed portion of the Work. Such partial occupancy or use may commence whether or not the portion is complete. Immediately prior to such occupancy, the District and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Work. Unless otherwise agreed, partial occupancy or use of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

7.15.4 When the Design/Builder considers the Work complete, the Design/Builder and the District shall collaboratively prepare a single comprehensive punch list. The Design/Builder shall then proceed promptly to complete and correct the punch list items. Failure to include an item on the punch list does not alter the responsibility of the Design/Builder to complete all work in accordance with the Contract Documents.

7.15.5 Upon completion of the punch list the District will make an inspection to determine whether the work has been completed. The Notice of Completion

shall be issued when all work is complete, and the District has formally accepted the Project.

7.15.6 Waiver of Claims. Acceptance of Final Payment by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of Final Payment.

7.15.7 Final Payment. Upon execution of the Notice of Completion, providing no stop notices have been filed that have not been discharged or bonded, all amounts unpaid under the Contract will be paid to Design/Builder. The District may withhold any reasonable sums payable to Design/Builder for the value of any Work, which the District found defective and ordered to be replaced. Final Payment of withholdings will be made when the Work is completed and/or defective Work replaced.

7.15.7.1 The District shall pay the remaining amount up to the Contract Price due to the Design/Builder, after:

7.15.7.1.1 Acceptance and Close-out of the Work.

7.15.7.1.2 Resolution of all stop payment notices.

7.15.7.1.3 Execution by the Design/Builder of a release of all claims against the District pursuant to this Contract.

7.15.7.1.4 Any and all other requirements in this Contract that provide for satisfaction prior to final payment.

7.15.8 The Design/Builder is required to pay subcontractors from whom retention has been withheld within seven (7) days of receipt from the District of retention proceeds.

8. SCHEDULE

8.1 Contract Time

The "Contract Time" is the period from receipt by Design/Builder of written authorization to begin the Project in the form of a Notice to Proceed with Design from the District, until the scheduled date of Completion of the Work. The Design/Builder agrees to design and manage the Work in accordance with the Project Milestone Schedule and approved Baseline Schedule.

8.2 Completion

By executing this Contract, the Design/Builder confirms that the Contract Time and Milestone Dates, as stated in the Project Milestone Schedule (**EXHIBIT B**) of the Contract Documents, are of the essence of this Contract. The Design/Builder confirms that the Contract Time and Milestone Dates allow a reasonable period of time for achieving the Completion of the Work for the Project.

8.3 Schedules

8.3.1 The Design/Builder shall be responsible for the development and maintenance of the Preliminary Baseline Schedule, the Baseline Schedule, the Progress Schedule and the Short-Term Schedule as described below. The Design/Builder shall submit, as indicated below, each schedule for the execution of the Work for the District's review and response. The District's review of and response to the schedule submissions shall not be construed as relieving the Design/Builder of its control over the means, methods, sequences and techniques for executing the Work. Each schedule shall provide an interrelated means for defining activities involved in the planning, design, construction, and completion of the Project, their sequences and elapsed completion time from the date of the Notice to Proceed.

8.3.2 Each schedule shall utilize CPM (Critical Path Method) and shall be submitted in diagram and listed form. The computer generated schedules shall permit the Design/Builder to obtain several print sorts that aid in identifying various activities and requirements. The Design/Builder shall utilize Primavera Project Planner for Windows software (P6) by Primavera Systems, Inc.

8.3.3 Design/Builder shall Design/Builder will provide all data files electronically by email or on compact disc or flash drive.

8.3.4 Design/Builder's Preliminary Baseline Schedule. Within fourteen (14) calendar days from the Notice to Proceed with Design, the Design/Builder shall submit a Preliminary Baseline Schedule to the District. This schedule shall show, but is not limited to, the general plan for the work to be completed in the first ninety (90) calendar days of the Contract. The Preliminary Baseline Schedule shall contain, but not be limited to:

8.3.4.1 dates established in the District's Project Milestone Schedule;

8.3.4.2 dates to acquire, set up and occupy the field office;

8.3.4.3 dates of all mobilization activities on site, including notices and permits;

8.3.4.4 dates detailing the planned design schedule, including submittals and reviews;

8.3.4.5 anticipated dates for the start and completion of each stage of the design and construction process; and

8.3.4.6 established Milestone Dates representing important events in the first 90 days and major milestones representing the completion of a group of activities in the first year.

8.3.5 The Preliminary Baseline Schedule shall be in the form of a CPM schedule. The District will review the Design/Builder's Preliminary Baseline Schedule for conformance with the Project Milestone Schedule and interrelationships with other activities requiring coordination that may be outside the scope of this Contract. Upon completion of the review, the District may make recommendations to the Design/Builder as to adjustments

to the Preliminary Baseline Schedule. These recommendations, if accepted by both the District and Design/Builder, will be incorporated into the development of the Design/Builder's Baseline Schedule.

8.3.6 Design/Builder Baseline Schedule. Within sixty (60) calendar days after the Notice to Proceed with Design, the Design/Builder, after an initial meeting with the District, shall prepare a proposed Baseline Schedule for the Project. Recognizing that planning activities and design activities need time control to no less degree than construction activities, this schedule shall include, but not be limited to:

8.3.6.1 A CPM format that incorporates all activities with descriptions, sequence, logic relationships, duration estimates, resource-loading, cost loading and other information required for all design, preconstruction and construction activities. Resource loading will be by trade only for each activity. Cost loading will be accomplished through Level of Effort summary activities and not for each schedule activity. The intent of cost loading in this way is to provide a high level comparison of costs and project progress. Each activity shall have a minimum of one predecessor and one successor, with the exception of the first and last activities. The first activity will be denoted as "Notice to Proceed" and the last activity will be denoted as "Completion". Both these activities shall be shown on the baseline and monthly updates as Project Milestones as stipulated in the Contract.

8.3.6.2 The CPM format shall include all Project Milestones defined in this Contract and/or by the Design/Builder's proposed Baseline Schedule, as well as all engineering, fabrication and delivery dates required to support the Project Milestones.

8.3.6.3 Activities indicating the start and finish dates for Project design, engineering, preparation of design development and Construction Documents, government agency plan check and District agency document review.

8.3.6.4 Activities to be integrated and shown in the CPM network shall include all milestones representing the Design/Builder's submittal dates and activities representing the District's review period of each submittal (which review period shall in no case be scheduled for less than ten (10) working days); Design/Builder's procurement of materials and equipment; submittals; manufacture and/or fabrication, testing and delivery to the job-site of special material and major equipment; equipment installation and preliminary, final and performance testing of equipment or systems. A standalone submittal schedule will be provided in lieu of all submittals being enumerated in the CPM Project Schedule. Only major equipment and long lead item submittals will be included in the Project Schedule.

8.3.6.5 Activities showing the start and finish dates for all temporary works; all construction of mock-ups, and prototypes and/or samples.

8.3.6.6 Activities showing start and finish dates of owner-furnished items and interface requirement dates with other contractors; regulatory agency approvals; and permits required for the performance of the work.

8.3.6.7 Activities showing start and finish of tenant programming (as appropriate), modular furniture, tenant improvement work and phased occupancy.

8.3.6.8 Close-out activities, including activities required for DSA certification.

8.3.6.9 The schedule shall consider all foreseeable factors or risks affecting, or which may affect the performance of the Work, including historical and predicted weather conditions, applicable laws, regulations or collective bargaining agreements pertaining to labor, transportation, traffic, air quality, noise and any other applicable regulatory requirements.

8.3.6.10 The Design/Builder shall not use any "float suppression" techniques such as preferential sequencing or logic, special lead/lag constraints or unjustifiably over-estimating activity durations in preparing the schedule. ("Finish no later" constraints will be permissible for Project Milestones only.)

8.3.6.11 The Design/Builder shall attach a narrative report which explains assumptions used for activity durations, its assumptions regarding crew sizes, equipment requirements and production rates, any potential areas of concern or specific areas requiring coordination it may have identified and any long-lead time materials or equipment in the work.

8.3.6.12 The Design/Builder shall formally present the detailed time-scaled CPM network for the duration of the Contract Time, demonstrating compliance with Project Milestones and other requirements to the District clearly showing the critical path(s) of the Project through completion.

8.3.6.13 Time units for all schedules shall be in calendar days, and no construction activity scheduled to commence within sixty (60) days of the Data Date shall have a duration greater than seven (7) calendar days. Activities scheduled to start more than sixty (60) days of the Data Date shall have durations no greater than twenty (20) days.

8.3.7 The proposed Baseline Schedule shall be submitted and reviewed by the District. Changes to the Baseline Schedule shall be reviewed with the District prior to implementation. The District, at its sole discretion, may allow or require the Design/Builder to more fully detail portions of the Baseline Schedule at a later date.

8.3.8 The District shall notify the Design/Builder of acceptance or of any necessary changes to the CPM network within ten (10) working days from the formal presentation, after which the Design/Builder shall make the required

changes and resubmit it for acceptance within five (5) working days certifying in writing that all information contained in it complies with the contract requirements. Upon notification by the District of acceptance of the CPM network, the Design/Builder shall prepare computer plots (36" x 48") and printouts (8 ½" x 11"), and complete its submission of the Baseline Schedule, which shall include the following:

8.3.8.1 Bar Charts generated using the format template provided by the District for:

8.3.8.1.1 Project Milestones only;

8.3.8.1.2 Summary Level (sorted by craft/trade and area);

8.3.8.1.3 Detail (sorted by Early Dates); and

8.3.8.1.4 Detail (sorted by Responsibility).

8.3.8.2 Reports generated separately using the format template, if any, provided by the District for:

8.3.8.2.1 Float (sorted low to high);

8.3.8.2.2 Resource histogram; and

8.3.8.2.3 Cost Summary and Cash flow Projection.

8.3.8.3 Activities shall be coded to the activity code structure, if any, provided to the Design/Builder by the District.

8.3.8.4 Once accepted by the District, this schedule shall become the Baseline Schedule for the Project from which all future Progress Schedules will be generated.

8.3.9 Design/Builder Progress Schedule. Each month, in conjunction with the application for payment process, the Design/Builder and District will conduct monthly reviews to determine: "planned" versus "actual" progress to date; compliance with contract submittal requirements, Project Milestones and the accepted Baseline Schedule; and determination of any changes to the work plan or implementation which must be made by the Design/Builder to comply with the Baseline Schedule. The monthly schedule review shall include, at a minimum:

8.3.9.1 Monthly update/status of electronic database shall include recording of all Actual Start Dates and Actual Finish Dates and status of activities in progress.

8.3.9.2 Review of "Planned" versus "Actual" work force allocations and progress for the preceding month.

8.3.9.3 Reviews of revisions added or deleted work and how those activities are being integrated into the Design/Builder's work plan.

8.3.9.4 Review of Design/Builder's interface and coordination with other work on the Project.

8.3.9.5 Review of all impacts to the work during the preceding month and to date, Design/Builder evaluation of those impacts and any recovery plans or remedial actions required to comply with the Baseline Schedule.

8.3.9.6 Following the review of the above and all other information relevant to the progress of the work, the Design/Builder shall adjust its work plan as required to ensure compliance with the Baseline Schedule. The requirement for additional work force allocations, additional shifts, overtime, etc., will not entitle Design/Builder to additional compensation except to the extent expressly provided for by this Contract or Change Order. The Progress Schedule shall be updated and submitted monthly for the District's review concurrent with each payment application submitted by the Design/Builder. The schedule update shall incorporate actual status to date and shall include the following:

8.3.9.6.1 Computer plotted time-scaled CPM network (36" x 48") in color;

8.3.9.6.2 Bar Charts generated separately using the format template provide by the District for:

8.3.9.6.2.1 Project Milestones only (Baseline vs. forecast);

8.3.9.6.2.2 Summary Level (sorted by craft/trade and area);

8.3.9.6.2.3 Detail (sorted by Early Dates); and

8.3.9.6.2.4 Detail (sorted by Responsibility).

8.3.9.6.3 Reports generated separately using the format template provided by the District for:

8.3.9.6.3.1 Variance (Baseline vs. forecast);

8.3.9.6.3.2 Progress Curves (Baseline vs. Earned/Forecast);

8.3.9.6.3.3 Float (sorted low to high); and

8.3.9.6.3.4 Resource histogram.

The Progress Schedule will be the basis for the Short-Term Schedule.

8.3.10 Design/Builder Short-Term Schedule. The Short-Term Schedule shall address activities over an eight-week period. This schedule shall be

maintained on a weekly basis and used as a means of compensating for negative effects of as many variables as possible. It shall be directly derived and electronically tied to the Baseline Schedule to enable rapid analysis of impacts of short-term schedule changes on the overall Project time line.

8.3.10.1 The Short-Term Schedule is a dynamic schedule whose activities can vary in both duration and precedence, but only between two sequential milestones as described in the accepted Baseline Schedule. Upon the District's acceptance of the Baseline Schedule, the Design/Builder shall begin providing an updated Short-Term Schedule for all participants at each weekly progress meeting or on a weekly basis if the District decides weekly meetings are not required. The interval format shall be a seven-week projection that shall include one (1) week prior, the week submitted, and six (6) weeks thereafter.

8.3.11 Schedule Revisions. The implementation of revised schedule logic and/or activity duration estimates for updating a schedule whether furnished by the Design/Builder or the District do not constitute an extension of Contract Time, relaxation of Project Milestones or basis for a change to the Contract Price. Such revisions are for the purpose of maintaining the accuracy of the schedule's representation of the work to be accomplished and to present best duration estimates for work yet to be performed.

8.3.12 Graphical Information. The Design/Builder shall prepare professional-quality graphical presentations of such scheduling and/or sequencing information as may be required to communicate its work plans or to effectively implement its coordination obligations under the contract.

8.4 Float time

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. All float time contained in the Work shall be shared between the District and Design/Builder, but its use shall be determined by the District. Under no circumstances shall Design/Builder be entitled to maintain a claim against the District for Design/Builder's failure to achieve Completion on a date earlier than that set forth on said Project Milestone Schedule as the same may be adjusted by approved Change Orders.

8.5 Computation of Time / Adverse Weather

8.5.1 The Design/Builder will only be allowed a time extension for Adverse Weather conditions if requested by Design/Builder in compliance with the time extension request procedures and only if all of the following conditions are met:

8.5.1.1 The weather conditions constitute Adverse Weather, as defined herein.

8.5.1.2 Design/Builder can verify that the Adverse Weather caused delays in excess of five (5) hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather.

8.5.1.3 The Design/Builder's crew is dismissed as a result of the Adverse Weather;

8.5.1.4 Said delay adversely affects the critical path in the Baseline Schedule; and

8.5.1.5 Exceeds twelve (12) days of delay per year.

8.5.2 If the aforementioned conditions are met, a non-compensable day-for-day extension will only be allowed for those days in excess of those indicated herein.

8.5.3 The Design/Builder shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Baseline Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the District.

8.5.4 The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

9. EXTENSIONS OF TIME – LIQUIDATED DAMAGES

9.1 Liquidated Damages

Design/Builder and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Design/Builder shall pay to District as fixed and liquidated damages the sum of [Amount in Words] Dollars (\$[Amount in Numbers]) achieving Substantial Completion and a total of Two Thousand Dollars per day for a delay in achieving Final Completion for the Project per day as liquidated damages for each and every day's delay beyond the Contract Time. It is hereby understood and agreed that this amount is not a penalty. Design/Builder and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

9.2 Excusable Delay

9.2.1 Design/Builder shall not be charged for liquidated damages because of any delays in completion of Work which are not the fault of Design/Builder or its Subcontractors, including acts of God as defined in Public Contract Code section 7105, acts of enemy, epidemics, and quarantine restrictions. Design/Builder shall, within five (5) calendar days of beginning of any delay, notify District in writing of causes of delay including documentation and facts explaining the delay and the direct correlation between the cause and effect. District shall review the facts and extent of any delay and shall grant extension(s) of time for completing Work when, in its judgment, the findings of fact justify an extension. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected. An extension of time may only be granted if

Design/Builder has timely submitted the Baseline Schedule as required herein.

9.2.2 Design/Builder shall notify the District pursuant to the claims provisions in this Contract of any anticipated delay and its cause. Following submission of a claim, the District may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work might be delayed thereby.

9.2.3 In the event the Design/Builder requests an extension of Contract Time for unavoidable delay, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. If the Design/Builder fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Baseline Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. Any claim for delay must include the following information as support, without limitation:

9.2.3.1 The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

9.2.3.2 Specific logical ties to the Baseline Schedule for the proposed changes and/or delay showing the activity/activities in the Baseline Schedule that are affected by the change and/or delay. In particular, Design/Builder must show an actual impact to the schedule, after making a good faith effort to mitigate the delay by rescheduling the work, by providing an analysis of the schedule ("Schedule Analysis"). Such Schedule Analysis shall describe in detail the cause and effect of the delay and the impact on the critical dates in the Project schedule. (This information must be provided for any portion of any delay of seven (7) days or more.)

9.2.3.3 A recovery schedule must be submitted within twenty (20) calendar days of written notification to the District of causes of delay.

9.3 No Additional Compensation for Delays within Design/Builder's Control

9.3.1 Design/Builder is aware that governmental agencies and utilities, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Design/Builder-prepared drawings or approve a proposed installation. Accordingly, Design/Builder has included in the Contract Price, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies, including without limitation delays due to California Environmental Quality Act ("CEQA") compliance. Thus, Design/Builder is not

entitled to make a claim for damages for delays arising from the review of Design/Builder's drawings.

9.3.1.1 Design/Builder shall only be entitled to compensation for delay when all of the following conditions are met:

9.3.1.1.1 The District is responsible for the delay.

9.3.1.1.2 The delay is unreasonable under the circumstances involved.

9.3.1.1.3 The delay could not have been avoided or mitigated by Design/Builder's reasonable diligence; and

9.3.1.1.4 Design/Builder timely complies with the claims procedure of the Contract Documents.

10. CHANGES IN THE WORK

10.1 General

10.1.1 The District may order changes, including but not limited to, revisions to the Construction Documents, performance of extra work, and the elimination of work. Orders for such changes will be in writing. Changes shall not affect the obligations of the sureties on the contract bonds nor require their consent. The Design/Builder shall notify the District for their evaluation whenever it appears a change is necessary. Contract Time and Contract Price will be adjusted by written Change Order for changes materially increasing or decreasing the time for performance or cost.

10.1.2 The Design/Builder, when ordered by the District, shall proceed with changes before agreement is reached on adjustment in compensation or time for performance, and shall furnish to the District records as specified in this Contract.

10.1.3 If the Design/Builder fails to provide such records, the District's records will be used for the purpose of adjustment in Contract Time and Contract Price.

10.2 Change Orders

10.2.1 Methods used in determining the value of a Change Order shall be based on one of the following methods:

10.2.1.1 By mutual acceptance of a lump sum increase or decrease in costs. Upon the District's written request, the Design/Builder shall furnish a detailed estimate of increase or decrease in costs, together with cost breakdowns of labor, materials and equipment and other support data within the time specified in such request. Cost breakdowns shall include, but are not limited to: hourly labor rates and hours; materials quantities and unit costs; and equipment hourly rates and hours, as an example. The Design/Builder shall be responsible for

any additional costs caused by the Design/Builder's failure to provide the estimate within the time specified.

10.2.1.2 By the District, on the basis of the District's estimate of increase or decrease in the costs.

10.2.1.3 By the District, whether or not negotiations are initiated as provided in this Contract.

10.2.1.4 By actual and necessary costs, as determined by the District, on the basis of supporting documents submitted by Design/Builder. Beginning with the first day and at the end of each day, the Design/Builder shall furnish to the District detailed hourly records for labor, construction equipment, and services; and itemized records of materials and equipment used that day in performance of the changes. Provide hourly rates for all include design professionals, contractor management staff both on site and office and other consultants performing services on this project. Such records shall be in a format approved by the District. Such records shall be signed by the Design/Builder and verified by the District.

10.2.1.5 By a manner agreed upon by the District and the Design/Builder.

10.2.2 Allowable Costs. If an increase or decrease cannot be agreed to, the method for determining the value of the Change Order shall be computed in the following manner:

10.2.2.1 Mark-Ups for Added Work.

10.2.2.1.1 Professional Services: Compensation for professional architectural/engineering services shall be chargeable not to exceed the rates agreed to between the District and the Design/Builder.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

10.2.2.1.2 For work by Design/Builder. Design/Builder may add as mark-up to totals of authorized allowable costs, an amount not to exceed the following percentages:

	<u>DESIGN/BUILDER PERFORMED WORK</u>	
(a)	Material (attach supplier's invoice or itemized quantity and unit cost plus sales tax)	
(b)	Add Labor (attach itemized hours and rates, fully encumbered)	
(c)	Add Equipment (attach suppliers' invoice)	
(d)	<u>Subtotal</u>	
(e)	Add Design/Builder's Overhead and Profit , not to exceed _____ percent (___%) of Item (d) .	
(f)	<u>Subtotal</u>	
(g)	Add Bond and Insurance , not to exceed _____ percent (___%) of Item (f)	
(h)	<u>TOTAL</u>	
(i)	Time (zero unless indicated; "TBD" not permitted)	__ Calendar Days

[REMAINDER OF PAGE INTENTIONALLY BLANK]

10.2.2.1.3 For work by Subcontractors. Actual cost to the Design/Builder for Work performed by the Subcontractor. The Subcontractor will compute costs as follows, except that the aggregate mark-ups made as all subcontractor tiers must not exceed the following percentages:

	<u>SUBCONTRACTOR PERFORMED WORK</u>	
(a)	<u>Material</u> (attach supplier's invoice or itemized quantity and unit cost plus sales tax)	
(b)	<u>Add Labor</u> (attach itemized hours and rates, fully encumbered)	
(c)	<u>Add Equipment</u> (attach suppliers' invoice)	
(d)	<u>Subtotal</u>	
(e)	Add Design/Builder's Overhead and Profit , not to exceed _____ percent (___%) of Item (d) .	
(f)	<u>Subtotal</u>	
(g)	<u>Add Bond and Insurance</u> , not to exceed _____ percent (___%) of Item (f)	
(h)	<u>TOTAL</u>	
(i)	<u>Time</u> (zero unless indicated; "TBD" not permitted)	__ Calendar Days

10.2.2.1.4 For deleted work: All deductive Change Order(s) must be prepared pursuant to the provisions herein. Where a portion of the Work is deleted from the Contract, the reasonable value of the deleted work less the value of any new work performed shall be considered the appropriate deduction. The value submitted on the Schedule of Values shall be used to calculate the credit amount unless the bid documentation is being held in escrow as part of the Contract Documents. If Design/Builder offers a proposed amount for a deductive Change Order(s) for work performed directly by the Design/Builder, Design/Builder shall include a minimum of _____ percent (___%) total profit and overhead to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall include a minimum of ten percent (10%) profit and overhead to be deducted with the amount of its deducted work and Design/Builder shall include a minimum of _____ percent (___%). Any deviation from this provision shall not be allowed.

10.2.2.1.5 For Change Orders that involve both added and deleted work, the Contract Price will be adjusted based on the

following computation: Costs before mark-ups of added and deleted work must each be separately estimated. If a difference between costs results in an increase to the Contract Price, a mark-up for Added Work will be applied to the difference. If a difference in costs results in a decrease, then the mark-up for the deleted Work will be applied to the difference.

10.2.3 Direct Costs:

10.2.3.1 Labor

Design/Builder shall be compensated for the costs of labor actually and directly utilized in the performance of the Work. Such labor costs shall be limited to field labor for which there is a prevailing wage rate classification the actual cost, not to exceed prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Work, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws. Wage rates for labor shall not exceed the prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Work. Labor costs shall exclude costs incurred by the Design/Builder in preparing estimate(s) of the costs of the change in the Work, in the maintenance of records relating to the costs of the change in the Work, coordination and assembly of materials and information relating to the change in the Work or performance thereof, or the supervision and other overhead and general conditions costs associated with the change in the Work or performance thereof, including but not limited to the cost for the job superintendent.

10.2.3.2 Material

The District shall pay only the actual cost to the Design/Builder for the materials directly required for the performance of the changed work. Such cost of materials may include the cost of transportation and no delivery charges will be allowed unless the delivery is specifically for the changed work. If a trade discount by an actual supplier is available to the Design/Builder, it shall be credited to the District. If the materials are obtained from a supplier or source owned wholly by or in part by the Design/Builder, payment thereof will not exceed the current wholesale price for the materials. The term "trade discount" includes the concept of cash discounting.

If in the opinion of the District, the cost of the materials is excessive or if the Design/Builder fails to furnish satisfactory evidence of a cost to him other from the actual supplier, then, in either case, the cost of the materials shall be deemed to be the lowest current wholesale price at which similar materials are available in the quantities required. The District reserves the right to furnish such materials, as it deems advisable and the Design/Builder shall have no claims for cost or profits on materials furnished by the District.

10.2.3.3 Equipment

The District shall pay only the actual cost to the Design/Builder for the use of equipment directly required in the performance of the changed work. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half hour. No payment will be made for time while equipment is inoperative due to breakdown or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to the work for rental of such equipment and to return it to the source.

No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project in any other way than upon the changed work. Individual pieces of equipment having a replacement value of \$1,000 or less shall be considered to be small tools or small equipment and no payment will be made therefore.

The rental rate for equipment will not exceed that as recommended by the lower of the rental rates established by distributors or equipment rental agencies or as contained in the Association of Equipment Distributors (AED) book in the locality for performance of the changes. For equipment owned, furnished, or rented by the Design/Builder no cost thereof shall be recognized in excess of the rental rates established by distributors or equipment rental agencies and/or the AED or any tier book in the locality for performance of the changes. The amount to be paid to the Design/Builder for the use of equipment as set forth above shall constitute full compensation to the Design/Builder for the cost of fuel, power, oil, lubricants, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators) and any and all costs to the Design/Builder incidental to the use of the equipment.

10.2.3.4 Overhead and Profit.

The phrase "Overhead and Profit" shall include field and office supervisors and assistants, watchperson, use of small tools, consumable, insurance other than construction bonds and insurance required herein, general conditions costs, and home office expenses.

10.3 Acceptance of Change Orders

The Design/Builder's written acceptance of a Change Order shall constitute final and binding agreement to the provisions of it and a waiver of all claims in connection with it, whether direct, indirect, or consequential in nature. The District's form shall control, and no annotations or handwritten notes by Design/Builder shall be effective upon its execution.

A Change Order will become effective when approved by the Board, notwithstanding that Design/Builder has not signed it, provided that District

indicates it as a "Unilateral Change Order". Any dispute as to the adjustment in the Contract Price or Contract Time, if any, of the Unilateral Change Order shall be resolved pursuant to the Payment and Claims and Disputes provisions herein.

10.4 Effect on Sureties

All alterations, extensions of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing consent of surety(s).

10.5 Covering and Uncovering of Work

10.5.1 When inspections are required by the Contract Documents the Design/Builder shall notify the District two (2) working days prior to covering any work.

10.5.2 If a portion of the Work is covered prior to the District's review, it shall, if requested in writing by the District, be uncovered for the District's observation and replaced at the Design/Builder's expense without change in the Contract Time.

10.6 Correction of Work

10.6.1 The Design/Builder shall promptly correct work rejected by the District or failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed, or completed. The Design/Builder shall bear the costs of correcting such rejected work, including additional testing and inspections required and compensation for the District's services and expenses made necessary thereby.

10.6.2 Notwithstanding Design/Builder's Guarantee, in the event of an emergency constituting an immediate hazard to the 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 was caused by work of the Design/Builder not being in accordance with requirements of the Contract Documents.

10.6.3 The Design/Builder shall remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents, and are neither corrected by the Design/Builder nor accepted by the District.

10.6.4 If the Design/Builder fails to correct nonconforming work, the District may correct the nonconforming work in accordance with District Remedies. If the Design/Builder does not proceed with correction of such nonconforming work, within such time fixed by written notice from the District, the District may remove and store all salvageable materials articles and/or equipment at the Design/Builder's expense.

10.6.5 If the Design/Builder does not pay all costs of such removal and storage within fourteen (14) days after written notice, the District may, upon

fourteen (14) additional days written notice, sell such materials articles and/or equipment at an auction or private sale, and shall account for the proceeds, after deducting costs and damages that would have been borne by the Design/Builder, including compensation for the District's services and expenses made necessary by it. If the proceeds of a sale do not cover all costs that the Design/Builder would have borne, the Contract Price shall be reduced by the deficiency. If payments then or thereafter due the Design/Builder are not sufficient to cover such amount, the Design/Builder shall pay the difference to the District.

10.6.6 The Design/Builder shall bear the cost of correcting destroyed or damaged work executed by the District or separate contractors, whether fully completed or partially completed, which is caused by the Design/Builder's correction or removal of Work that is not in accordance with requirements of the Contract Documents.

10.6.7 Nothing contained in this paragraph, shall be construed to establish a period of limitation with respect to other obligations that the Design/Builder might have in the Contract Documents. Establishment of the time period of two (2) year, Guarantee, relates only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with requirements of the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

10.7 Acceptance of Nonconforming Work

If the District prefers to accept any or all of the Work that is not in accordance with requirements of the Contract Documents, the District may do so instead of requiring its correction and/or removal, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not Final Payment to the Design/Builder has been made.

11. TERMINATION AND SUSPENSION

11.1 District's Request for Assurances

If District at any time reasonably believes Design/Builder is or may be in default under this Contract, District may in its sole discretion notify Design/Builder of this fact and request written assurances from Design/Builder of performance of Work and a written plan from Design/Builder to remedy any potential default under the terms this Contract that the District may advise Design/Builder of in writing. Design/Builder shall, within ten (10) calendar days of District's request, deliver a written cure plan that meets the District's requirements in its request for assurances. Design/Builder's failure to provide such written assurances of performance and the required written plan, within ten (10) calendar days of request, will constitute a material breach of this Contract sufficient to justify termination for cause.

11.2 District's Right to Terminate Design/Builder for Cause

11.2.1 Grounds for Termination: The District, in its sole discretion, may terminate the Contract and/or terminate the Design/Builder's right to perform the work of the Contract based upon any of the following:

11.2.1.1 Design/Builder refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or

11.2.1.2 Design/Builder fails to complete said Work within the time specified or any extension thereof, or

11.2.1.3 Design/Builder persistently fails or refuses to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or

11.2.1.4 Design/Builder persistently refuses, or repeatedly fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or

11.2.1.5 Design/Builder fails to make prompt payment to Subcontractors, or for material, or for labor; or

11.2.1.6 Design/Builder persistently disregards laws, or ordinances, or instructions of District; or

11.2.1.7 Design/Builder fails to supply labor, including that of Subcontractors, that is sufficient to prosecute the Work or that can work in harmony with all other elements of labor employed or to be employed on the Work; or

11.2.1.8 Design/Builder or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract, including but not limited to a lapse in licensing or registration.

11.2.2 Notification of Termination

11.2.2.1 Upon the occurrence at District's sole determination of any of the above conditions, District may, without prejudice to any other right or remedy, serve written notice upon Design/Builder and its Surety of District's termination of this Contract and/or the Design/Builder's right to perform the work of the Contract. This notice will contain the reasons for termination. Unless, within three (3) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to District for the correction of the condition(s) and/or violation(s) be made, this Contract and/or the Design/Builder's right to perform the Work of the Contract shall cease and terminate. Upon termination, Design/Builder shall not be entitled to receive any further payment until the entire Work is finished.

11.2.2.2 Upon termination, District may immediately serve written notice of tender upon Surety whereby Surety shall have the right to take over and perform this Contract only if Surety:

11.2.2.2.1 Within three (3) days after service upon it of the notice of tender, gives District written notice of Surety's intention to take over and perform this Contract; and

11.2.2.2.2 Commences performance of this Contract within three (3) days from date of serving of its notice to District.

11.2.2.3 Surety shall not utilize Design/Builder in completing the Project if the District notifies Surety of the District's objection to Design/Builder's further participation in the completion of the Project. Surety expressly agrees that any contractor which Surety proposes to fulfill Surety's obligations is subject to District's approval. District's approval shall not be unreasonably withheld, conditioned or delayed.

11.2.2.4 If Surety fails to notify District or begin performance as indicated herein, District may take over the Work and execute the Work to completion by any method it may deem advisable at the expense of Design/Builder and/or its Surety. Design/Builder and/or its Surety shall be liable to District for any excess cost or other damages the District incurs thereby. Time is of the essence in this Contract. If the District takes over the Work as herein provided, District may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to Design/Builder as may be on the Site of the Work, in bonded storage, or previously paid for.

11.3 Termination of Design/Builder for Convenience

11.3.1 District in its sole discretion may terminate the Contract and/or terminate the Design/Builder's right to perform the work of the Contract in whole or in part upon three (3) days' written notice to the Design/Builder.

11.3.2 Upon notice, Design/Builder shall:

11.3.2.1 Cease operations as directed by the District in the notice;

11.3.2.2 Take necessary actions for the protection and preservation of the Work as soon as possible; and

11.3.2.3 Terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

11.3.3 Within 30 days of the notice, Design/Builder submit to the District a payment application for the actual cost for labor, materials, and services performed, including all Design/Builder's and Subcontractor(s)' mobilization and/or demobilization costs, that is unpaid. Design/Builder shall have no claims against the District except for the actual cost for labor, materials, and services performed that adequately documented through timesheets,

invoices, receipts, or otherwise. District shall pay all undisputed invoice(s) for work performed until the notice of termination.

11.3.4 Under a termination for convenience, the District retains the right to all the options available to the District if there is a termination for cause.

11.4 Effect of Termination

11.4.1 Design/Builder shall, only if ordered to do so by the District, immediately remove from the Site all or any materials and personal property belonging to Design/Builder that have not been incorporated in the construction of the Work, or which are not in place in the Work. The District retains the right, but not the obligation, to keep and use any materials and personal property belonging to Design/Builder that have not been incorporated in the construction of the Work, or which are not in place in the Work. The Design/Builder and its Surety shall be liable upon the Performance Bond for all damages caused to the District by reason of the Design/Builder's failure to complete the Contract.

11.4.2 In the event that the District shall perform any portion of, or the whole of the Work, the District shall not be liable nor account to the Design/Builder in any way for the time within which, or the manner in which, the Work is performed by the District or for any changes the District may make in the Work or for the money expended by the District in satisfying claims and/or suits and/or other obligations in connection with the Work.

11.4.3 In the event termination for cause is determined to have not been for cause, the termination shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause.

11.4.4 In the event that the Contract is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Design/Builder or any impact or impairment of Design/Builder's bonding capacity.

11.4.5 If the expense to the District to finish the Work exceeds the unpaid Contract Price, Design/Builder and Surety shall pay difference to District within twenty-one (21) days of District's request.

11.4.6 The District shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Design/Builder under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the District, no Subcontractor shall have any claim against the District or third party for Work performed by Subcontractor or other matters arising prior to termination of the Contract. The District or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the District so elect, the Design/Builder shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the District may require, for the purpose of fully vesting in the District the rights and benefits of its

Subcontractor under Subcontracts or other obligations or commitments. All payments due the Design/Builder hereunder shall be subject to a right of offset by the District for expenses and damages suffered by the District as a result of any default, acts, or omissions of the Design/Builder. Design/Builder must include this assignment provision in all of its contracts with its Subcontractors.

11.4.7 The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to District.

11.5 Emergency Termination of Public Contracts Act of 1949

11.5.1 This Contract is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

11.5.1.1 Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

11.5.1.2 Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

11.5.2 Compensation to the Design/Builder shall be determined at the sole discretion of District on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price shall control. The District, at its sole discretion, may adopt the Contract Price as the reasonable value of the work done or any portion thereof.

11.6 Suspension of Work

11.6.1 District in its sole discretion may suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine upon three (3) days written notice to the Design/Builder.

11.6.1.1 An adjustment may be made for changes in the cost of performance of the Work caused by any such suspension, delay or interruption. No adjustment shall be made to the extent:

11.6.1.1.1 That performance is, was or would have been so suspended, delayed or interrupted by another cause for which Design/Builder is responsible; or

11.6.1.1.2 That an equitable adjustment is made or denied under another provision of the Contract; or

11.6.1.1.3 That the suspension of Work was the direct or indirect result of Design/Builder's failure to perform any of its obligations hereunder.

Any adjustments in cost of performance may have a fixed or percentage fee as provided in the section on Format for Proposed Change Order herein. This amount shall be full compensation for all Design/Builder's and its Subcontractor(s)' changes in the cost of performance of the Contract caused by any such suspension, delay or interruption.

12. DISPUTES AND CLAIMS

12.1 Duty to Perform during Claim Process

Design/Builder and its subcontractors shall continue to perform its Work under the Contract including the disputed work, and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement by the District.

12.2 Definition of Claim

12.2.1 Pursuant to Public Contract Code section 9204, the term "Claim" means a separate demand by the Design/Builder sent by registered mail or certified mail with return receipt requested, for one or more of the following:

12.2.1.1 A time extension, including without limitation, for relief of damages or penalties for delay assessed by the District under the Contract;

12.2.1.2 Payment by the District of money or damages arising from work done by, or on behalf of, the Design/Builder pursuant to the Contract and payment of which is not otherwise expressly provided for or to which Design/Builder is not otherwise entitled to; or

12.2.1.3 An amount of payment disputed by the District.

12.3 Claims Presentation

12.3.1 Form and Contents of Claim

12.3.1.1 If Design/Builder intends to apply for an increase in the Contract Price or Contract Time for any reason including, without limitation, the acts of District or its agents, Design/Builder shall, within thirty (30) days after the event giving rise to the Claim, give notice of

the Claim in writing specifically identifying Design/Builder is invoking this Article 13 Claims Presentation.

12.3.1.2 The Claim shall include an itemized statement of the details and amounts of its Claim for any increase in the Contract Price of Contract Time as provided below, including a Time Impact Analysis and any and all other documentation substantiating Design/Builder's claimed damages:

12.3.1.2.1 The issues, events, conditions, circumstances and/or causes giving rise to the dispute, and shall show, in detail, the cause and effect of same;

12.3.1.2.2 Citation to provisions in the Contract Documents, statute sections, and/or case law entitling Design/Builder to an increase in the Contract Price or Contract Time;

12.3.1.2.3 The pertinent dates and/or durations and actual and/or anticipated effects on the Contract Price, Contract Schedule milestones and/or Contract Time adjustments;

12.3.1.2.4 The Time Impact Analysis of all time delays that shows actual time impact on the critical path; and

12.3.1.2.5 The line-item costs for labor, material, and/or equipment, if applicable, for all cost impacts priced like a change order and must be updated monthly as to cost and entitlement if a continuing claim.

12.3.1.3 The Claim shall include the following certification by the Design/Builder:

12.3.1.3.1 The undersigned Design/Builder certifies under penalty of perjury that the attached dispute is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the adjustment for which Design/Builder believes the District is liable; and that I am duly authorized to certify the dispute on behalf of the Design/Builder.

12.3.1.3.2 Furthermore, Design/Builder understands that the value of the attached dispute expressly includes any and all of the Design/Builder's costs and expenses, direct and indirect, resulting from the Work performed on the Project, additional time required on the Project and/or resulting from delay to the Project including, without limitation, cumulative impacts. Design/Builder may not separately recover for overhead or other indirect costs. Any costs, expenses, damages, or time extensions not included are deemed waived.

12.3.2 Design/Builder shall bear all costs incurred in the preparation and submission of a claim.

12.3.3 Failure to timely submit a claim and the requisite supporting documentation shall constitute a waiver of Design/Builder's claim(s) against the District and Design/Builder's claims for compensation or an extension of time shall be forfeited and invalidated.

12.4 Claim Resolution pursuant to Public Contract Code section 9204

Design/Builder may request to waive the claims procedure under Public Contract Code section 9204 and proceed directly to the commencement of a civil action or binding arbitration. If Design/Builder chooses to proceed, Design/Builder shall comply with the following steps:

12.4.1 STEP 1:

12.4.1.1 Upon receipt of a Claim by registered or certified mail, return receipt requested, including the documents necessary to substantiate it, the District shall conduct a reasonable review of the Claim and, within a period **not to exceed 45 days**, shall provide the Design/Builder a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and Design/Builder may, **by mutual agreement, extend the time period** to provide a written statement. If the District needs approval from its governing body to provide the Design/Builder a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of Claim sent by registered mail or certified mail, return receipt requested, the District shall have **up to three (3) days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension**, expires to provide Design/Builder a written statement identifying the disputed portion and the undisputed portion.

12.4.1.1.1 Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement. Amounts not paid in a timely manner as required by this section, section 25.4, shall bear interest at seven percent (7%) per annum.

12.4.1.2 Upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. In this instance, District and Design/Builder must comply with the sections below regarding Public Contract Code section 20104 et seq. and Government Code Claim Act Claims.

12.4.1.3 If the District fails to issue a written statement, or to otherwise meet the time requirements of this section, this shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the District's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of Design/Builder.

12.4.2 STEP 2:

12.4.2.1 If Design/Builder disputes the District's written response, or if the District fails to respond to a Claim within the time prescribed, Design/Builder may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within 30 days for settlement of the dispute. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the District shall provide the Design/Builder a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed.

12.4.2.1.1 Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement. Amounts not paid in a timely manner as required by this section, section 25.4, shall bear interest at seven percent (7%) per annum.

12.4.3 STEP 3:

12.4.3.1 Any disputed portion of the Claim, as identified by Design/Builder in writing, shall be submitted to nonbinding mediation, with the District and Design/Builder sharing the associated costs equally. The District and Design/Builder shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. 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. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside this section.

12.4.3.1.1 For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

12.4.3.2 Unless otherwise agreed to by the District and Design/Builder in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code section 20104.4 to mediate after litigation has been commenced.

12.4.4 STEP 4:

12.4.4.1 If mediation under this section does not resolve the parties' dispute, the District may, but does not require arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program.

12.5 Subcontractor Pass-Through Claims

12.5.1 If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a District because privity of contract does not exist, the contractor may present to the District a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that Design/Builder present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim.

12.5.2 Within 45 days of receipt of this written request from a subcontractor, Design/Builder shall notify the subcontractor in writing as to whether the Design/Builder presented the Claim to the District and, if Design/Builder did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.

12.5.3 The Design/Builder shall bind all its Subcontractors to the provisions of this section and will hold the District harmless against Claims by Subcontractors.

12.6 Government Code Claim Act Claim

12.6.1 If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable Claim Resolution requirements the Design/Builder shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Design/Builder's right to bring a civil action against the District.

12.6.2 Design/Builder shall bear all costs incurred in the preparation, submission and administration of a Claim. Any claims presented in accordance with the Government Code must affirmatively indicate Design/Builder's prior compliance with the claims procedure herein of the claims asserted.

12.6.3 For purposes of those provisions, the running of the time within which a claim pursuant to Public Contract Code section 20104.2 only must be presented to the District shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

12.7 Claim Resolution pursuant to Public Contract Code section 20104 et seq.

12.7.1 In the event of a disagreement between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve all claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between Design/Builder and District by those procedures set forth in Public Contract Code section 20104, et seq., to the extent applicable.

12.7.1.1 Design/Builder shall file with the District any written Claim, including the documents necessary to substantiate it, upon the application for final payment.

12.7.1.2 For claims of less than fifty thousand dollars (\$50,000), the District shall respond in writing within forty-five (45) days of receipt of the Claim or may request in writing within thirty (30) days of receipt of the Claim any additional documentation supporting the Claim or relating to defenses or claims the District may have against the Design/Builder.

12.7.1.2.1 If additional information is required, it shall be requested and provided by mutual agreement of the parties.

12.7.1.2.2 District's written response to the documented Claim shall be submitted to the Design/Builder within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the Design/Builder to produce the additional information, whichever is greater.

12.7.1.3 For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the District shall respond in writing to all written Claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the Claim any additional documentation supporting the Claim or relating to defenses or claims the District may have against the Design/Builder.

12.7.1.3.1 If additional information is required, it shall be requested and provided upon mutual agreement of the District and the Design/Builder.

12.7.1.3.2 The District's written response to the Claim, as further documented, shall be submitted to the Design/Builder within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the Design/Builder to produce the additional information or requested documentation, whichever is greater.

12.7.1.4 If Design/Builder disputes the District's written response, or the District fails to respond within the time prescribed, Design/Builder may so notify the District, in writing, either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the

District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

12.7.1.5 Following the meet and confer conference, if the Claim or any portion of it remains in dispute, the Design/Builder may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions the running of the time within which a claim must be filed shall be tolled from the time the Design/Builder submits its written Claim until the time the Claim is denied, including any period of time utilized by the meet and confer process.

12.7.1.6 For any civil action filed to resolve claims filed pursuant to this section, within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

12.7.1.7 If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of the Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986, (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

12.7.1.8 The District shall not fail to pay money as to any portion of a Claim which is undisputed except as otherwise provided in the Contract Documents. In any suit filed pursuant to this section, the District shall pay interest due at the legal rate on any arbitration award or judgment. Interest shall begin to accrue on the date the suit is filed in a court of law.

12.7.2 Design/Builder shall bind its Subcontractors to the provisions of this Section and will hold the District harmless against disputes by Subcontractors.

12.8 Claim Procedure Compliance

12.8.1 Failure to submit and administer claims as required in Article 13 shall waive Design/Builder's right to claim on any specific issues not included in a

timely submitted claim. Claim(s) not raised in a timely protest and timely claim submitted under this Article 13 may not be asserted in any subsequent litigation, Government Code Claim, or legal action.

12.8.2 District shall not be deemed to waive any provision under this Article 13, if at Owner's sole discretion, a claim is administered in a manner not in accord with this Article 13. Waivers or modifications of this Article 13 may only be made by a signed change order approved as to form by legal counsel for both District and Design/Builder; oral or implied modifications shall be ineffective.

12.9 Claim Resolution Non-Applicability

12.9.1 The procedures for dispute and claim resolutions set forth in this Article shall not apply to the following:

12.9.1.1 Personal injury, wrongful death or property damage claims;

12.9.1.2 Latent defect or breach of warranty or guarantee to repair;

12.9.1.3 Stop payment notices;

12.9.1.4 District's rights set forth in the Article on Suspension and Termination;

12.9.1.5 Disputes arising out of labor compliance enforcement by the Department of Industrial Relations; or

12.9.1.6 District rights and obligations as a public entity set forth in applicable statutes; provided, however, that penalties imposed against a public entity by statutes, including, but not limited to, Public Contract Code sections 20104.50 and 7107, shall be subject to the Claim Resolution requirements provided in this Article.

12.10 Attorney's Fees

Should litigation be necessary to enforce any terms or provisions of this Agreement, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorney's fees.

13. PROTECTION OF PERSONS AND PROPERTY

13.1 Safety of Persons and Property

13.1.1 The Design/Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. The District shall have no responsibility for initiating, maintaining and supervising safety of persons and property.

13.1.2 The Design/Builder shall furnish to the District a copy of the Design/Builder's safety plan, specifically adapted for the Project, within the time frame indicated in the Contract Documents and specifically adapted for

the Project. However, implementation and maintenance of the safety plan shall be the sole responsibility of the Design/Builder.

13.1.3 The Design/Builder shall take precautions for safety and provide protection to prevent damage, injury or loss to:

13.1.3.1 Workers working under the Contract and other persons who may be affected by it;

13.1.3.2 The Work and materials and equipment to be incorporated in it, whether in storage on or off the Project site, under care, custody or control of the Design/Builder or the Design/Builder's subcontractors or sub-subcontractors; and

13.1.3.3 Other property at the Project site, or adjacent to it, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement during the course of construction.

13.1.4 The Design/Builder shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property, or their protection from damage, injury or loss.

13.1.5 The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Contract Documents, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the District, other owners (other than the District) and users of adjacent sites and utilities.

13.1.6 The Design/Builder shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities regarding the storage and/or use of explosives or other hazardous materials or equipment necessary for execution of the Work. The Design/Builder shall employ properly qualified personnel for supervision of same.

13.1.7 The Design/Builder shall remedy damage and loss to property caused in whole or in part by the Design/Builder, a subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design/Builder is responsible. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's indemnity and defense obligations.

13.1.8 When conditions of the Work, in the judgment of the District, present unreasonable risk of injury or death to persons or property damage, the District, may direct the Design/Builder, at the Design/Builder's sole expense, to close down the Work and not commence work again until all dangerous conditions are eliminated.

13.1.9 The Design/Builder, at the Design/Builder's own cost, shall rebuild, repair, restore and make good any and all damages to any portion of the Work affected by such causes before its acceptance.

13.1.10 Design/Builder shall take all precautions to protect the Work, and all equipment, materials, and supplies related to the Work protected from trespassers, vandals, and protestors, including but not limited to hiring security personnel to guard and patrol the Project site throughout the duration of the Project's schedule until Completion is accomplished. Design/Builder shall bear the costs of such security.

13.2 Emergencies

In an emergency affecting safety of persons or property, the Design/Builder shall act, at the Design/Builder's sole discretion, to prevent any threatened damage, injury or loss. Additional compensation or extension of Contract Time claimed by the Design/Builder because of an emergency will be reviewed as provided in Article 9, Changes in the Work. The Design/Builder shall maintain emergency vehicle access to the site at all times during the course of the project up to and including Final Acceptance of the work.

14. INSURANCE, BONDS, AND INDEMNIFICATION

14.1 Insurance

The Design/Builder shall comply with the insurance requirements as indicated below.

14.1.1 Professional Liability Insurance

Design/Builder shall procure and maintain Professional Liability Insurance on a Claims Made basis at the required limits subject to no more than Twenty-Five Thousand Dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus two (2) years thereafter.

14.1.2 Commercial General Liability and Automobile Liability Insurance

14.1.2.1 Design/Builder shall procure and maintain, during the life of the Project, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Design/Builder, District, its Board Members, employees, agents, Construction Manager(s), Project Manager(s), Project Inspector(s), and Criteria Architect(s) from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from, or in connections with, operations under this Contract. This coverage shall be provided in a form at least as broad as Insurance Services (ISO) Form CG 00 01 11 88. Design/Builder shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability coverage, and Automobile Liability Insurance coverage including owned, non-owned, and hired automobiles, are included within the above policies and at the required limits, or Design/Builder shall procure and maintain these coverages separately.

14.1.2.2 Design/Builder's deductible or self-insured retention for its Commercial General Liability Insurance policy shall not exceed five thousand dollars (\$5,000) for deductible or twenty-five thousand

dollars (\$25,000) for self-insured retention, respectively, unless approved in writing by District.

14.1.2.3 All such policies shall be written on an occurrence form.

14.1.3 Excess Liability Insurance

14.1.3.1 If Design/Builder's underlying policy limits are less than required, subject to the District's sole discretion, Design/Builder may procure and maintain, during the life of the Project, an Excess Liability Insurance Policy to meet the policy limit requirements of the required policies in order to satisfy, in the aggregate with its underlying policy, the insurance requirements herein.

14.1.3.2 There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Excess Liability Insurance Policy. Any Excess Liability Insurance Policy shall protect Design/Builder, District, its Board Members, employees, agents, Construction Manager(s), Project Manager(s), Project Inspector(s), and Criteria Architect(s) in the amounts and in compliance with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

14.1.3.3 The District, in its sole discretion, may accept the Excess Liability Insurance Policy that brings Design/Builder's primary limits to the minimum requirements herein.

14.1.4 Subcontractor

14.1.4.1 Design/Builder shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Excess Liability Insurance (if Subcontractor elects to satisfy, in part, the insurance required herein by procuring and maintaining an Excess Liability Insurance Policy) with minimum limits at least equal to the amount required of the Design/Builder except where smaller minimum limits are permitted as set forth below.

14.1.5 Workers' Compensation and Employers' Liability Insurance

14.1.5.1 In accordance with provisions of section 3700 of the California Labor Code, the Design/Builder and every Subcontractor shall be required to secure the payment of compensation to its employees.

14.1.5.2 Design/Builder shall procure and maintain, during the life of the Project, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under the Project, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Design/Builder shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance

for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Design/Builder's insurance. If any class of employee or employees engaged in Work on the Project, on or at the Site of the Project, is not protected under the Workers' Compensation Insurance, Design/Builder shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

14.1.6 Builder's Risk Insurance: Builder's Risk "All Risk" Insurance

14.1.6.1 Design/Builder shall procure and maintain, during the life of this Contract, Builder's Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, theft, sonic disturbance, earthquake, flood, collapse, wind, rain, dust, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Criteria Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

14.1.7 Pollution Liability Insurance

14.1.7.1 Design/Builder shall procure and maintain Pollution Liability Insurance that shall protect Design/Builder, District, Construction Manager(s), Project Inspector(s), and Criteria Architect(s) from all claims for bodily injury, property damage, including natural resource damage, cleanup costs, removal, storage, disposal, and/or use of the pollutant arising from operations under this Contract, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. Coverage shall apply to sudden and/or gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos. This coverage shall be provided in a form at least as broad as Insurance Services Offices, Inc. (ISO) Form CG 2415, or Design/Builder shall procure and maintain these coverages separately.

14.1.7.2 Design/Builder warrants that any retroactive date applicable to coverage under the policy shall predate the Effective Date of this Contract and that continuous coverage will be maintained or an extended reporting or discovery period will be exercised for a period of

three (3) years, beginning from the time that the Work under the Contract is completed.

14.1.7.3 If Design/Builder is responsible for removing any pollutants from a site, then Design/Builder shall ensure that Any Auto, including owned, non-owned, and hired, are included within the above policies and at the required limits, to cover its automobile exposure for transporting the pollutants from the site to an approved disposal site. This coverage shall include the Motor Carrier Act Endorsement, MCS 90.

14.1.8 Proof of Insurance and Other Requirements: Endorsements and Certificates

14.1.8.1 Design/Builder shall not commence Work nor shall it allow any Subcontractor to commence Work on the Project, until Design/Builder and its Subcontractor(s) have procured all required insurance and Design/Builder has delivered in duplicate to the District complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained, and the District has approved these documents.

14.1.8.2 Endorsements, certificates, and insurance policies shall include the following:

14.1.8.2.1 A clause stating the following, or other language acceptable to the District:

“This policy shall not be canceled until written notice to District, Criteria Architect, and Construction Manager stating date of the cancellation by the insurance carrier. Date of cancellation may not be less than thirty (30) days after date of mailing notice.”

14.1.8.2.2 Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

14.1.8.3 All endorsements, certificates and insurance policies shall state that District, its Board Members, employees and agents, Construction Manager(s), Project Manager(s), Inspector(s) and Criteria Architect(s) are named additional insureds under all policies except Workers’ Compensation Insurance and Employers’ Liability Insurance.

14.1.8.4 All endorsements shall waive any right to subrogation against any of the named additional insureds.

14.1.8.5 Design/Builder’s and Subcontractors’ insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its trustees, employees and/or

agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s).

14.1.8.6 Design/Builder's insurance limit shall apply separately to each insured against whom a claim is made or suit is brought.

14.1.8.7 No policy shall be amended, canceled, or modified, and the coverage amounts shall not be reduced, until Design/Builder or Design/Builder's broker has provided written notice to District, Criteria Architect, and Construction Manager stating date of the amendment, modification, cancellation or reduction, and a description of the change. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice.

14.1.8.8 Insurance written on a "claims made" basis shall be retroactive to a date that coincides with or precedes Design/Builder's commencement of Work, including subsequent policies purchased as renewals or replacements. Said policy is to be renewed by the Design/Builder and all Subcontractors for a period of five (5) years following completion of the Work or termination of this Contract. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this Contract, and will cover the Design/Builder and all Subcontractors for all claims made.

14.1.8.9 All policies shall be written on an occurrence form.

14.1.8.10 All of Design/Builder's insurance shall be with insurance companies with an A.M. Best rating of no less than A: XI.

14.1.8.11 The insurance requirements set forth herein shall in no way limit the Design/Builder's liability arising out of or relating to the performance of the Work or related activities.

14.1.8.12 Failure of Design/Builder and/or its Subcontractor(s) to comply with the insurance requirements herein shall be deemed a material breach of the Contract and constitute a Default by the Design/Builder pursuant to this Contract.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

14.1.9 Insurance Policy Limits

The limits of insurance shall not be less than the amounts set forth below. If Design/Builder normally carries insurance in an amount greater than the minimum amounts required by District, that greater amount shall become the minimum required amount of insurance for purposes of the Contract. Therefore, Design/Builder hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Contract.

Professional Liability		\$2,000,000
Commercial General Liability	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	\$2,000,000 per occurrence; \$4,000,000 aggregate
Automobile Liability – Any Auto	Combined Single Limit	\$1,000,000
Workers’ Compensation		Statutory limits under State law
Employer’s Liability		\$1,000,000
Builder’s Risk		Replacement Cost
Pollution Liability		\$1,000,000 per claim; \$2,000,000 aggregate

The limits of insurance for those subcontractors whose scope of work does not exceed hundred thousand Dollars shall not be less than the following amounts:

Commercial General Liability	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	\$1,000,000 per occurrence; \$2,000,000 aggregate
Automobile Liability – Any Auto	Combined Single Limit	\$1,000,000
Workers’ Compensation		Statutory limits under State law
Employer’s Liability		\$1,000,000

Notwithstanding anything in this Contract to the contrary, the above insurance requirements may be modified as appropriate for subcontractors, with District's prior written approval.

14.2 Indemnification

14.2.1 To the fullest extent permitted by California law, Design/Builder shall indemnify, keep and hold harmless the District and its respective Board

Members, officers, representatives, employees, consultants, the Criteria Architect, and Construction Manager in both individual and official capacities and their respective consultants ("Indemnitees"), from any and all claims, injury, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including, without limitation, any suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or injury to or destruction of tangible property (including damage to the Work itself), and including but not limited to attorney's fees and costs, ("Claim") as follows:

14.2.1.1 For design professional services: Any Claim caused by, arising out of, resulting from, or incidental to the negligence, recklessness, or willful misconduct of the Design/Builder, its officers, employees, subcontractors, consultants, or agents, in connection with any design professional services under or related to this Contract.

14.2.1.2 For all other Work: Any Claim caused by, arising out of, resulting from, or incidental to performance of the Work under this Contract, other than design professional services, by the Design/Builder or its Subcontractors, vendors and/or suppliers, except to the extent caused wholly by the active negligence or willful misconduct of the Indemnitees, as found by a court or arbitrator of competent jurisdiction, in which case the Design/Builder's indemnification and hold harmless obligation shall be reduced by the proportion of the Indemnitees' liability.

14.2.2 This indemnification and hold harmless obligation includes, but is not limited to, any failure or alleged failure by Design/Builder to comply with any law and/or provision of the Contract Documents, including, without limitation, any stop payment notice actions or liens, including Civil Wage and Penalty Assessments and/or Orders by the California Department of Industrial Relations.

14.2.3 To the furthest extent permitted by California law, Design/Builder shall also defend, at its own expense, Indemnitees against any and all Claims(s) caused by, arising out of, resulting from, or incidental to, the performance of the Work, including design professional services, under this Contract by Design/Builder, its Subcontractors, vendors, or suppliers, except to the extent caused by the sole negligence, active negligence, or willful misconduct of the Indemnitees, as found by a court or arbitrator of competent jurisdiction, in which case, without impacting Design/Builder's obligation to provide an immediate and ongoing defense of Indemnitees, the Design/Builder's defense obligation shall be retroactively reduced by the proportion of the Indemnitees' liability. The District shall have the right to accept or reject any legal representation that Design/Builder proposes to defend the Indemnitees. If any of the Indemnitees provide their own defense due to failure to timely respond to tender of defense, rejection of tender of defense, or conflict of interest of proposed counsel, Design/Builder shall reimburse such Indemnitee(s) for any expenditures, including reasonable attorney's fees and costs. This defense obligation includes, but is not limited to, any failure or alleged failure by Design/Builder to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations

under the Contract Documents in strict accordance with their terms, and without limitation, any failure or alleged failure of Design/Builder's obligations regarding any stop payment notice actions or liens, including Civil Wage and Penalty Assessments and/or Orders by the California Department of Industrial Relations. This agreement and obligation of the Design/Builder shall not be construed to negate, abridge, or otherwise reduce any right or obligation of defense that would otherwise exist as to any Indemnity or other person described herein.

14.2.4 The Design/Builder shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if the Design/Builder's agreement to indemnify and hold harmless the Indemnitees or its agreement to defend Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances shall not otherwise affect the validity or enforceability of the Design/Builder's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of the Design/Builder, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, the Design/Builder shall be and remain fully liable on its agreements and obligations herein to the fullest extent permitted by law.

14.2.5 In any and all claims against any of the Indemnitees by any employee of the Design/Builder, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Design/Builder's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Design/Builder or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

14.2.6 The District may retain so much of the moneys due to the Design/Builder as shall be considered necessary, until disposition of any such suit, claims or actions for damages or until the District, Criteria Architect and Construction Manager have received written agreement from the Design/Builder that Design/Builder will unconditionally defend the District and its respective Board Members, officers, representatives, employees, consultants, the Criteria Architect and Construction Manager and their subconsultants and pay any damages due by reason of settlement or judgment.

14.2.7 The indemnification and defense obligations hereunder shall survive the completion of Work, including the warranty/guarantee period, and/or the termination of the Contract.

14.2.8 Pursuant to Public Contract Code section 9201, the District shall provide timely notification to Design/Builder of the receipt of any third-party

Claim relating to the Contract. The District shall be entitled to recover its reasonable costs incurred in providing said notification.

14.3 No Personal Liability

No officer, elective and appointive official, employee, or consultant of the District will be personally responsible for liabilities arising under this Contract.

14.4 Performance Bond and Payment Bonds

14.4.1 The Design/Builder shall furnish to the District, prior to the execution of any contract: (1) a bond in an amount at least equal to one hundred percent (100%) of the Stipulated as security for faithful performance of the Contract Documents; and (2) a bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with this Contract. All bonds related to this Project shall be in the forms set forth in these Contract Documents and shall comply with all requirements of the Contract Documents, including, without limitation, the bond forms. The bonds shall be issued by a California admitted surety with a rating classification of "A XIII" or better according to Best's Rating Service. Cost of bonds shall be included in the Contract Price.

14.4.2 The District acknowledges that any faithful performance and payments bonds provided by the Design/Builder shall not apply to errors or omissions in the furnishing of professional services in connection with architecture or engineering services provided by the Design/Builder or its consultants. The District waives and releases all claims against such sureties arising out of or relating to such professional errors and omissions; such release, however, does not apply to a failure to provide professional services where required under the Contract Documents and the performance bonds shall include the costs of such services. Professional Liability insurance shall be primary insurance in settling claims related to Errors and Omissions.

15. SEPARATE CONTRACTS

15.1 District's Right to Perform Construction and to Award Separate Contracts

15.1.1 The District reserves the right to perform work or operations related to the Project with the District's own work force, and to award separate contracts in connection with other portions of work or other construction or operations on the Project site.

15.1.2 When separate contracts are awarded for different portions of work or for other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate agreement.

15.1.3 The District will provide for coordination of the activities of the District's own work force and of each separate Contractor with the Work of the Design/Builder, who shall cooperate with them. The Design/Builder shall participate with other separate Contractors and the District in reviewing and

revising their Baseline Schedules when directed by the District. The resulting Baseline Schedules shall then constitute the schedules to be used by the Design/Builder, separate Contractors and the District.

15.1.4 The District reserves the right to perform other work in connection with the Project or adjacent to the Project site by separate contract or otherwise. The Design/Builder shall at all times conduct the Work so as to impose no hardship on the District or others engaged in separate work on the Project site, nor to cause any unreasonable delay or hindrance to the separate work.

15.2 Mutual Responsibility

15.2.1 The Design/Builder shall afford the District and other Contractors the opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractors construction and operations with theirs as required by the Contract Documents.

15.2.2 If part of the Design/Builder's work relies on proper execution or results upon construction or operations by the District or separate Contractors, the Design/Builder shall, prior to proceeding with that portion of the work, report to the District apparent discrepancies or defects in other construction that would render it unsuitable for proper execution and results. Failure of the Design/Builder to report any discrepancies or defects shall constitute an acknowledgment that the District's or separate Contractors' complete or partially completed construction is fit and proper to receive the Design/Builder's work.

15.2.3 The Design/Builder shall promptly remedy damage wrongfully caused by the Design/Builder to any completed or partially completed construction or to any property of the District or separate Contractors.

16. MISCELLANEOUS

16.1 Governing Law

This Contract shall be governed by the laws of the State of California. The venue for any action or proceeding, in law or equity, which may be brought in connection with this Contract is the county in which the District administration office is located.

16.2 Successors

The District and the Design/Builder respectively bind themselves, their partners, shareholders, successors, assigns and legal representatives to the other party and to shareholders, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party shall assign the Contract as a whole without the written consent of the other party. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all of its obligations under the Contract and the Contract Documents.

16.3 Notice

Written notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally, by electronic mail including delivery receipt, by facsimile, by registered or certified first class U.S. mail, return receipt requested with postage pre-paid, or by commercial courier. Written notice shall be deemed to have been duly served on the date of delivery if delivered in person, by electronic mail, or by facsimile, on the first working day after deposit if delivery by overnight courier, or two (2) working days after deposit of delivery by placing in the U.S. mail as provided herein. All notices shall be addressed to the appropriate authorized representative, as follows:

<u>District:</u> Dr. Leigh Sata Peralta Community College District Department of General Services 333 East 8th Street Oakland, CA 94606 Fax: (510) 466-7315 Email: lsata@peralta.edu	<u>Design/Builder:</u> [NAME] [ADDRESS] [FAX] [EMAIL]
With a mandatory copy to: Deidree Y.M.K. Sakai, Esq. DANNIS WOLIVER KELLEY Email: dsakai@DWKesq.com	With a mandatory copy to: [NAME] [ADDRESS] [FAX] [EMAIL]

16.4 Modifications

No modifications or Change Orders shall be valid unless in writing and signed by the District and the Design/Builder or their respective permitted successors and assigns.

16.5 No Oral Agreements

No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of Contract Documents, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract Documents.

16.6 Meaning of Words

Any and all headings used in this Contract are for convenience only and do not modify, define or limit the provisions of it. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms of this Contract. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and

obligations of such person or entity in accordance with the terms of this Contract. Where reference is made in this Contract or to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents. No provision of this Contract shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Contract shall be construed as if jointly prepared by the parties.

16.7 Severability

If any provision of this Contract is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering any other provision contained herein to be inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Contract shall not affect the remaining portions of this Contract, or any part of it, and the remaining portions shall otherwise remain in full force and effect.

16.8 Whole Agreement

This Contract and any and all exhibits and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Contract that are not expressly addressed in this Contract.

16.9 Record Retention and Audits

16.9.1 Design/Builder agrees that the District, or its designated representative, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Contract. The Design/Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be reasonably satisfactory to the District and shall be in accordance with generally accepted accounting standards.

16.9.2 Design/Builder shall retain all records, books, correspondence, instructions, drawings, receipts, subcontracts, vouchers, memoranda and other data relating to this Contract for a period of five (5) years after Final Payment under this Contract, or for such longer period as may be required by law. Design/Builder agrees to allow the District to audit this Contract, including all financial and performance records, and to allow access to all records to District's auditor(s) during normal business hours and to allow interviews of any employees who might reasonably have information related to such records, and not withhold relevant information. Further, Design/Builder agrees to include a similar right of the District to audit records and interview staff in any subcontract related to performance of this Contract.

16.10 Deliverables

The Design/Builder is responsible for delivery to the District certain drawings, schedules, reports, samples and other documents as described in the Contract Documents.

16.11 Waiver

The failure of District in any one or more instances to insist upon strict performance of any of the terms of the Contract Documents or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the District, Criteria Architect, or Construction Manager shall constitute a waiver of any right or duty afforded the District under the Contract Documents, nor shall any action or failure to act constitute an approval of or acquiescence on any breach thereunder, except as may be specifically agreed in writing.

16.12 Computer Software

Design/Builder certifies that it has appropriate systems and controls in place to ensure that District funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

[SIGNATURES ON FOLLOWING PAGE]

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

ACCEPTED AND AGREED:

Dated: _____, 2020

Dated: _____, 2020

Peralta Community College District

[Design/Builder]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Information regarding Design/Build Entity:

Design Professional License No.: _____

Contractor License No.: _____

DIR Registration No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:

- ____ Individual
- ____ Sole Proprietorship
- ____ Partnership
- ____ Limited Partnership
- ____ Corporation, State: _____
- ____ Limited Liability Company
- ____ Other: _____

Employer Identification and/or
Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of \$600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Contractor to furnish the information requested in this section.

EXHIBIT A – CRITERIA DOCUMENTS

1. Criteria Documents

- a. Criteria Specification set Division 02-33
- b. Criteria Drawing set
- c. Narrative (Criteria Report 08-10-2020)

Criteria Documents posted to the District Vendor Registry website at:

<https://vrapp.vendorregistry.com/Bids/View/BidsList?BuyerId=4d041f6c-7568-4c8a-8878-c82684292a3c>

EXHIBIT B – PROJECT MILESTONE SCHEDULE

The Project Milestone Schedule below identifies the major events for the Project. The Design/Builder confirms that the Contract Time and Milestones allow a reasonable period of time for completing the work under the Project.

Completion of 100% Construction Documents	155 days following NTP
Start of Construction on site	255 calendar days following NTP
Substantial Completion	480 days following NTP
Final Completion	40 days following Substantial Completion

EXHIBIT C – PROJECT LABOR AGREEMENT

[See Peralta Community College District's "Construction Project Labor Agreement" attached here in from next page.]

**PERALTA COMMUNITY
COLLEGE DISTRICT**

**CONSTRUCTION
PROJECT LABOR AGREEMENT**

JULY 21, 2009

**PROJECT LABOR AGREEMENT
TABLE OF CONTENTS**

	Preamble.....	2
	Recitals	2
ARTICLE 1	Definitions	3
ARTICLE 2	Purpose.....	5
ARTICLE 3	Scope of Agreement.....	5
ARTICLE 4	Effect of Agreement.....	8
ARTICLE 5	Subcontracts	9
ARTICLE 6	Work Stoppages, Strikes, Sympathy Strikes and Lockouts.....	10
ARTICLE 7	Prejob Meeting	13
ARTICLE 8	Nondiscrimination.....	13
ARTICLE 9	Union Recognition.....	14
ARTICLE 10	Referral	14
ARTICLE 11	Wages and Benefits	15
ARTICLE 12	Grievance Arbitration Procedure	17
ARTICLE 13	Safety & Health	18
ARTICLE 14	Compliance	18
ARTICLE 15	Jurisdictional Disputes	19
ARTICLE 16	Local Hiring Program	21
ARTICLE 17	Management Rights	24
ARTICLE 18	Savings Clause	25
ARTICLE 19	Miscellaneous Provisions	25
ARTICLE 20	Term	26
	Signature Page	26
Attachment A	Letter of Assent	30
Attachment B	Letter of Understanding Addressing Local Business Utilization	31
Attachment C	Side Letter Agreement and Signature Pages	32
Attachment D	Letter of Understandings Addressing Term of Agreement	36
Attachment E	Letter of Understanding Addressing Helmets to Hard Hats.....	37

PERALTA COMMUNITY COLLEGE DISTRICT

**CONSTRUCTION
PROJECT LABOR AGREEMENT**

PREAMBLE

This Project Labor Agreement ("Agreement") is entered into this 21st day of July, 2009 by and between the Peralta Community College District (hereinafter, the "District" and the Building and Construction Trades Council of Alameda County, AFL-CIO (, the "Council") and the Unions signatory to this Agreement, collectively referred to as the "Unions" or "Signatory Unions". with respect to the new construction work within the scope of this Agreement as hereinafter defined.

It is understood by the parties to this Agreement that when this Agreement is executed by the Chancellor after authorization by the District's Governing Board, it will become the policy of the District that the construction work covered by this Agreement shall be contracted exclusively to Contractors who agree to be bound by the terms of this Agreement through execution of it or the Letter of Assent (Attachment A), No practice, understanding or agreement between Contractor(s) and a Union party which is not provided for in this Agreement will be binding on any other party on Projects covered by this Agreement unless endorsed in writing by the District PLA Program Manager.

This Agreement is not intended to replace, interfere, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Program, insofar as a legally binding agreement exists between the Contractor/Employer(s) and the affected Union(s) except to the extent that the provisions of this Agreement are inconsistent with said collective bargaining agreements, in which event, the provisions of this Agreement shall prevail.

The District, through its District PLA Program Manager, on staff or under contract, shall administer this Agreement and shall monitor compliance with it by all Contractors. For purposes of this Agreement, each Contractor recognizes and appoints the District PLA Program Manager as its agent, with full, independent authority to implement and administer this Agreement, and, when and if appropriate or necessary, negotiate amendments to this Agreement. Together with the Union parties, the District shall be considered a "negotiating party" of this Agreement. None of the terms of this Agreement, including specifically this agency designation and the Recitals set out below, shall be interpreted to cause or have the effect of creating a joint or single employer relationship between the District and any Contractor or between Contractors on this Project

RECITALS

WHEREAS, the Peralta Community College District ("District") is considering the development and construction of various project(s) throughout the District in connection with its PLA covered Projects; and

WHEREAS, it is essential that the construction work required in connection with the PLA covered Projects be done in an efficient and economical manner so as to secure optimum

productivity and to eliminate delays in the construction operations, thus ensuring timely completion in the work undertaken by the contractors; and

WHEREAS, the District desires to enter into a project labor agreement ("Project Labor Agreement") with appropriate building and construction trade councils and related unions to be implemented and enforced on certain projects covered by the PLA; and

WHEREAS, it is the District's intent to negotiate and enter into a Project Labor Agreement with the appropriate building and construction trades council and related unions to ensure all contractors performing work on the project(s) comply with all requirements under the California Labor Code applicable to the project(s), including, but not limited to, prevailing wages and apprenticeship; and

WHEREAS, it is the intent and purpose of the Project Labor Agreement to provide, establish and put into practice effective methods for the settlement of labor disputes which may arise on the project(s) covered without strike, lockout, work stoppage, or slowdown, to the end that the project(s) shall be assured continuity of operation; and

WHEREAS, the District desires to authorize its Chancellor or his designee to negotiate and execute a Project Labor Agreement with the appropriate building and construction trades council and related unions to take any and all action necessary to further the District's interests in negotiating the Project Labor Agreement; and

WHEREAS, The parties agree that one of the primary purposes of this Agreement is to avoid the tensions that might arise on the Project if union and nonunion workers of different employers were to work side by side on the Project thereby leading to labor disputes that could delay completion of the Project, and

WHEREAS, the District reserves the right to control the site at which the Project will be constructed, and the right to coordinate project construction work and scheduling, including, where appropriate, setting uniform start times, and approving the necessity for and the times of shift work.

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

**ARTICLE 1
DEFINITIONS**

- 1.1 "Agreement" means this Project Labor Agreement.
- 1.2 "District" means the Peralta Community College District and the administrative staff under its Chancellor.
- 1.3 "Contractor(s)" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and has entered into a contract with the District or any of its Contractors or subcontractors of any tier, with respect to the construction of any part of the PLA Program under contract terms and conditions approved by the District and which incorporate this Agreement.

- 1.4 "Construction Contract" means the public works or improvement contracts which have been approved and signed by the District and which are part of the PLA Program.
- 1.5 "PLA Program " means the PLA-eligible Project(s) that are all Covered Work which are all those construction contracts funded in whole or in part by bond funding, State grants, tax increment funding and all other funding that is allocated for construction and may be more generally known as public funding and identified by the District as part of the PLA Program and the construction of which was awarded to a contractor during the term of this Agreement.
- 1.6 "Project" is an individual construction Project that is a part of the PLA Program and designated to be covered by this Agreement.
- 1.7 "Union(s)" means the Building and Construction Trades Council of Alameda County, AFL-CIO ("Council") and any other labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement ("Signatory Unions").
- 1.8 "Master Agreement" means the Master Collective Bargaining Agreement of each craft Union signatory hereto covering the corresponding work between a bona fide contractor group or representative and the signatory Unions having jurisdiction over the work on the Project and that are identified and agreed to by the District PLA Program Manager and the Unions.
- 1.9 "District PLA Program Manager" means the person(s) and/or business entity designated by the District to oversee all phases of construction on the PLA Program and is:
-
- 1.10 "District Project Manager(s)" means the person(s) selected by the District on one or more campuses to oversee and/or inspect construction activity, as agents of the District. They will not be engaged in construction work, and their relationship to this Agreement, if any, will be through the District.

The initial term of this Agreement shall be for five (5) years, commencing with the acceptance of this agreement by both parties. At the end of this initial period, this Agreement will be reviewed and considered for extension or renewal with modifications if appropriate. The term of this Agreement will be automatically extended for additional successive five (5) year terms unless the District, prior to the expiration of any such term and, after meeting with the Council and the Unions, finds in a public hearing that the work performed has been unsatisfactory, and gives the Council and Unions notice that it will not renew this Agreement.

- 1.11 This Agreement shall remain in effect for any Construction Contract awarded under this Agreement but not completed by the end of the term for the duration of that Contract.
- 1.12 "Local area resident" means Alameda County residents of Alameda, Albany, Berkeley, Emeryville, Piedmont and especially the City of Oakland.

ARTICLE 2 PURPOSE

- 2.1 The purpose of this Agreement is to promote efficiency of construction operations and provide for peaceful, efficient, and binding procedures for settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the PLA covered Projects. The PLA Program is intended to increase the educational opportunities and raise student achievement through the improvement of academic learning and health and safety conditions on the campuses of the District by the development of campus facilities for students, faculty and staff.
- 2.2 Further, the purpose of this Agreement is to ensure that all Contractors performing work on all PLA-covered Projects will comply with all requirements under the California Labor Code and utilize resources available in the local area, including those provided by minority and women-owned enterprises.
- 2.3 In so doing, the parties to this Agreement establish the foundation to promote the public interest, to provide a safe work place, to ensure high quality construction, to ensure uninterrupted construction, and to secure optimum productivity, on-schedule performance and the satisfaction of the Peralta Community College District.

ARTICLE 3 SCOPE OF AGREEMENT

- 3.1 **Covered Work:** This Agreement covers, without limitation, all on-site construction, demolition, alteration, painting or repair of buildings, structures and other works and related activities for a Project that is within the craft jurisdiction of one of the Unions and that is directly or indirectly part of the Project, including, without limitation, pipelines (including those in linear corridors built to serve the Project), site preparation, survey work, soils and material inspection and testing, demolition of existing structures, and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. On-site work includes work done or necessary for a Project or in temporary yards or areas adjacent to and dedicated to the Project, and at any on-site batch plant constructed solely to supply materials to the Project, when those sites are dedicated exclusively to the project. The furnishing of supplies, equipment or materials which are stockpiled for later use shall in no case be considered subcontracting, however, this Agreement shall cover and the appropriate Prevailing Wage Rate shall be paid to those workers delivering ready-mix concrete, asphalt, aggregate, sand or other fill materials that will be directly incorporated into the construction process as well as the off-hauling of debris and excess fill and/or mud shall be covered by the terms and conditions of this Agreement. Employers (including brokers), of drivers hauling such materials shall provide certified payroll records to the awarding body within ten (10) days of written request or as required by the bid specifications.
- 3.2 **Project Description:** The Agreement shall govern the award of all Construction Contracts and applies to all Covered Work which are all those construction contracts funded in whole or in part by bond funding, State grants, tax increment funding and all other funding that is allocated for construction and may be more generally known as

public funding and identified by the District as part of the PLA Program. "Exhibit A", attached to this Agreement and incorporated herein by reference, is a list of covered Projects of the current Construction Contracts covered by this Agreement and such list shall be supplemented from time to time, when necessary during the term of this Agreement. The District has the absolute right to combine, consolidate, add, or cancel Project(s) or portions of Project(s) identified as part of the PLA Program. Should the District remove any Project listed in "Exhibit A" from the Program and thereafter authorize that construction work be commenced on the Project, the Project shall be performed under the terms of this Agreement. Once a construction Project is completed, it is no longer covered by this Agreement. For the purposes of this Agreement, a Project shall be considered completed upon the filing by the District of a Notice of Completion to the Contractor.

Further, the District may prohibit some or all work on certain days or during certain hours of the day to accommodate the ongoing operations of the District's education facilities and/or to mitigate the effect of the ongoing Project work on the businesses and residents in the neighborhood of the Project site; and/or require such other operational or schedule changes that it may deem necessary, in its sole judgment, to effectively maintain its primary mission and to remain a good neighbor to those in the area of its campuses. Such schedule changes shall be in accordance with the Master Agreement requirements. In order to permit the Contractor(s) and Union(s) to make appropriate scheduling plans, the District will provide the PLA Program Manager, the affected Contractor(s) and Union(s) with reasonable notice of any changes it requires pursuant to this Article.

3.3 **Most Favored Nations Clause:** No provision not contained within this Agreement shall be recognized or applied if it may be construed to apply exclusively or predominantly to work covered by this Agreement only.

3.4 **Exclusions:**

- (a) The Agreement shall be limited to construction work on the PLA Program and is not intended to, and shall not govern any construction work performed at the District at anytime prior to the effective date, or after the expiration or termination of the Agreement, except as noted in Section 1.11 above that this Agreement shall continue in effect on any Project awarded under this Agreement but not completed by the end of the term of this Agreement for the duration of that Contract.
- (b) The Parties acknowledge that the District may utilize \$500,000 of funding annually to perform maintenance work on maintenance and operations projects for the duration of this Agreement.

Contractors or subcontractors with "excluded contracts" shall not be subject to the terms of this Agreement but shall meet all State and Federal laws and regulatory requirements governing construction for the project where they are performing work. All excluded contractors will meet the Certified Payroll requirements within the 10 day period required by State Law for submittal of requested Certified Payroll information. The District shall supply the Union(s) with the

inspector's log and all other documents used for oversight of the project when such information is requested.

It is further agreed that, other than the \$500,000 per year maintenance exclusion, the following seven projects are the only projects that shall be excluded from the Agreement.

1. Laney: Smart Media, Project # 02314
2. Laney: Buildings F&G Computer Labs, Project # 02314
3. Laney: Photo Lab Gallery Lighting, Project # 02314
4. Merritt: Swing Space (A129), Project #
5. Merritt: Horticulture Department Improvements, Project # 02303-110
6. District Wide: ADA Upgrades, Project # unassigned
7. District Wide: Elevator Cabs, controls and finishes upgrades, Project # 02326

- (c) The Agreement is not intended to, and shall not affect the operation or maintenance of the District.
- (d) This Agreement shall not apply to a Contractors' executives, managerial employees, engineering employees, supervisors above the classification of general foreman, or any office and clerical employees.
- (e) This Agreement shall not apply to employees of the District.
- (f) This Agreement is not intended to, and shall not affect equipment and machinery owned or controlled and operated by the District for work not covered by this Agreement.
- (g) This Agreement excludes all off-site manufacture and handling of equipment, machinery or materials (except for aggregates, sand or other fill material which are either directly incorporated into the construction process, or directly removed from the site of construction)
- (h) Offsite maintenance of leased equipment and on-site supervision of such work is excluded from the Agreement.
- (i) The Agreement is not intended to, and shall not affect any work by employees of the District or its contractors involved in general maintenance, emergency repair, and/or cleaning work, except as specifically covered by this Agreement.
- (j) In accordance with 3.4(b) and in emergency situations, at the sole option of the District, the Agreement shall not apply to contracts awarded under the Public Contracts Code §20654 and §20655, or any emergency public works resolutions or any project using federal funds where prohibited by law.
- (k) Work covered by the Agreement within the craft jurisdiction of the Elevator Constructors will be performed under the terms of the National Agreement of the International Union of Elevator Constructors except that Articles 6, 10, 14 and 15 of the Agreement shall prevail and be applied to such work.

- (l) It is the legal obligation of the District to obtain the most competitive bids while maintaining the conditions of the Agreement. To ensure that a competitive bid is received from a range of general contractors, the Building and Construction Trades Council of Alameda County, AFL-CIO shall assist the District in soliciting interested parties in bidding on the Project(s). Additionally, the District recognizes that multiple subcontractor quotations of bids ensure the most competitive overall bid. The Building and Construction Trades Council of Alameda County, AFL-CIO shall assist the District in encouraging and soliciting local and other subcontractors in bidding to interested general contractors. The District reserves the right, without reservation, to reject all bids and re-bid the Project.

ARTICLE 4 EFFECT OF AGREEMENT

- 4.1 By executing this Agreement, the Unions and the District agree to be bound by each and all of the provisions of this Agreement. The provisions of this Agreement shall apply to all covered work, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. The District and each Signatory Union shall agree upon the local collective bargaining agreement to be designated as the applicable Master Agreement for work covered by this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Master Agreement, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Master Agreement and is not covered by this Agreement, the provisions of the Master Agreement shall prevail. Any dispute as to the applicable source between this Agreement and any Master Agreement for determining the wages, hours and working conditions of employees on this Project shall be resolved under the procedures established in Article 12. This Agreement represents the complete understanding of the parties, and no Contractor is or will be required to sign any other agreement with a signatory union as a condition of performing work within the scope of this Agreement. No practice, understanding or agreement between a Contractor and a Union party which is not specifically set forth in this Agreement will be binding on any other party unless endorsed in writing by the District or the District's PLA Program Manager.
- 4.2 This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party.
- 4.3 Each Contractor(s) shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement.
- 4.4 It is mutually agreed by the parties that any liability by a Signatory Union(s) to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a signatory Union(s) shall not affect the rights, liabilities, obligations and duties between the signatory Contractor(s) and the other Union(s) party to this Agreement.

ARTICLE 5 SUBCONTRACTS

- 5.1 The District, PLA Program Manager, and/or Contractors, as appropriate, have the absolute right to award contracts or subcontracts on this Project notwithstanding the existence or non-existence of any collective bargaining agreements between the prospective contractor and any union party, and provided that such contractor is willing, ready and able to comply with this Agreement. Such contractor shall execute a Letter of Assent, should it be awarded work covered by this Agreement.
- 5.2 Subcontractors of any tier shall become a party to this Agreement by signing the Letter of Assent (Attachment A). By signing the Letter of Assent, a subcontractor to a Contractor does not thereby establish any contractual relationship with the District, except for this Agreement, and the District shall not become party to nor become responsible for the performance of the construction subcontract between the Contractor and its subcontractor(s).
- 5.3 The District and each Contractor(s) agree that neither it nor any of its subcontractors will subcontract any work to be done on PLA covered Projects except to a person, firm, or corporation who is or becomes party to the Agreement. Any Contractor(s) working on the Project shall, as a condition to working on the Project, become signatory to and perform all work under the terms of this Agreement.
- 5.4 A subcontractor is defined as any person, firm or corporation who agrees under contract with the Contractor(s), or a subcontractor of the Contractor, to perform on the Project, any part or portion of the construction work covered by the Construction Contract, including the operating of construction equipment, performance of labor and/or installation of materials. Trucking firms are included as subcontractors when hauling materials in the execution of the Project as provided for in Article 3.1.
- 5.5 The Contractor(s) has the primary obligation for performance of all conditions of this Agreement. This obligation cannot be relieved, evaded or diminished by subcontracting. Should the Contractor(s) elect to subcontract, the Contractor(s) shall continue to have such primary obligation.
- 5.6 A Contractor(s) who provides in the subcontract that the subcontractor will pay the wages and benefits and will observe the hours and all other terms and conditions of this Agreement and who requires its subcontractor(s) to execute a Letter of Assent, shall not be liable for any delinquency by such subcontractor in the payment of any wages or fringe benefits provided herein, except as may be required by State or Federal law.
- (a) The Contractor(s) will give written notice and a copy of the Letter of Assent to the Council of any subcontract involving the performance of work covered by this Agreement within either five (5) days of entering such subcontract or before the subcontractor commences work on the Project, whichever occurs first, and shall specify the name and address of the subcontractor. Written notice at a Preconstruction Conference shall be deemed written notice under this provision for those subcontractors listed at the Prejob Meeting only.

- (b) Thereafter, if such subcontractor should become delinquent in the payment of any wages or benefits as above specified, the Trust Fund shall immediately give written notice thereof to the Contractor(s) and to the subcontractor specifying the nature and amount of such delinquency.
 - (c) The provision of this Section 5.6 shall be applied only to the extent permitted by law and, notwithstanding any other provision of the Agreement, no aspect of the subcontractors' clause, including its enforcement, may be enforced by or subject to strike or picketing.
 - (d) If the Contractor(s) selects the subcontractor(s) and is signatory to a Master Agreement that provides the higher level contractor shall remain liable for the defaults of the subcontractor, nothing in this Agreement shall interfere with the Contractor(s)' responsibilities and liabilities under the Master Agreement.
- 5.7
- (a) With regard to any employer that is independently signed to any Master Labor Agreement ("MLA"), this Project Labor Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such MLA, except as specifically set forth in subsection (b) of this section. Any such subcontracting clause in an MLA shall remain and be fully enforceable between each Union and its signatory employers, and no provision of this Project Labor Agreement shall be interpreted and/or applied in any manner that would give this Project Labor Agreement precedence over subcontracting obligations and restrictions that exist between Unions and their respective signatory employers under an MLA, except as specifically set forth in subsection (b) of this section.
 - (b) If a Union (hereafter "aggrieved union") believes that an assignment of work on this Project has been made improperly by a contractor or subcontractor, even if that assignment was as a result of another Union's successful enforcement of the subcontracting clause in its MLA, as permitted by subsection (a) of this section, the aggrieved union may submit a claim under the jurisdictional resolution process contained in Article 15 of this Project Labor Agreement, and the decision rendered as part of that process shall be enforceable to require the contractor or subcontractor that made the work assignment to assign that work prospectively to the aggrieved union. An award made to a Union under the subcontracting clause of its MLA, as permitted pursuant to subsection (a) of this section, shall be valid and fully enforceable by that Union unless it conflicts with a jurisdictional award made pursuant to this Project Labor Agreement. If the award made under the MLA conflicts with the jurisdictional award, the award of any damages under the former shall be null and void ab initio.

ARTICLE 6

WORK STOPPAGES, STRIKES, SYMPATHY STRIKES AND LOCKOUTS

- 6.1 The Unions, District and Contractor(s) agree that for the duration of this Agreement:
- (a) There shall be no strikes, sympathy strikes, work stoppages, picketing, handbilling or otherwise advising the public that a labor dispute exists, or slowdowns or disruptions of any kind, for any reason, by the Union(s) or employees employed on a Project, at the job site of the Project or at any other facility of the District because of a dispute on a Project or other projects involving

a contractor or subcontractor, of any tier, or due to any labor dispute arising at the project site or any other District site. Disputes arising between the Union(s) and Contractor(s) on other District projects are not governed by the terms of this Agreement, except that the existence of such disputes or actions taken in furtherance of such disputes may not be used to affect work on projects covered by this Agreement. A Union may withhold labor (but not picket) due to a Contractor's or subcontractor's failure to make Trust Fund contributions or failure to meet its payroll on this Project, and such withholding of labor shall not be considered a violation of this Article. In the case of non-payment of Trust Fund contributions, a Union shall give the General Contractor and the District Representative five (5) business days notice prior to withholding labor from the Contractor or Sub-contractor during which time, the General Contractor shall have the opportunity to cure the default.

- (b) As to employees employed on a Project, there shall be no lockout of any kind by a Contractor(s) covered by the Agreement.
- (c) If a Master Agreement between a contractor(s) and the Union(s) expires before the Contractor(s) completes the performance of a Construction Contract and the Union or contractor(s) gives notice of demands for a new or modified Master Agreement, the Union(s) agrees that it will not strike the Contractor(s) on said contract for work covered under the Agreement and the Union(s) and the Contractor(s) agree that the expired collective bargaining agreement shall continue in full force and effect for work covered under the Agreement until a new or modified Master Agreement is reached between the Union(s) and Contract Employer. If the new or modified Master Agreement reached between the Union(s) and contractor(s) provides that any terms of compensation of the Master Agreement shall be uniformly retroactive for all contractors bound to the Master Agreement, the Contractor(s) agrees to comply with any retroactive terms of the new or modified Master Agreement which is applicable to employees employed on a Project during the interim period within seven (7) days.

6.2 Any party to the Agreement may institute the following procedure, in lieu of or in addition to any other action at law or equity, when a breach of this Article is alleged to have occurred:

- (a) A party invoking this procedure shall notify Gerald McKay, as the permanent arbitrator, or, Thomas Angelo, as the alternate under this procedure. In the event that the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then a selection shall be made from the list of arbitrators in Article 12.2. Notice to the arbitrator shall be by the most expeditious means available, with notices by e-mail, facsimile or telephone to the party alleged to be in violation and to the Building and Construction Trades Council of Alameda County, AFL-CIO.
- (b) Upon receipt of said notice, the designated arbitrator named above or his/her alternate will designate a place for, schedule and hold a hearing within twenty-four (24) hours.

- (c) The arbitrator shall notify the parties by facsimile or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.
- (d) The sole issue at the hearing shall be whether or not a violation of this Article of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with or enforcement of the award. If the arbitrator determines there exists a violation of this Article the arbitrator shall order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance.
- (e) The award shall be final, binding and non-revisable as to the merits. Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party in the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 6.2 (d) of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order or enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.
- (f) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance are waived by the parties.
- (g) The costs of the arbitration, including the fee and expenses of the Arbitrator, shall be borne by the losing party.
- (h) The District PLA Program Manager is a party of interest in all proceedings arising under this Article and shall be sent contemporaneous copies of all notifications required by these Articles, and at its option, may participate as a full party in any proceeding initiated under these articles.
- (i) If the arbitrator determines in accordance with this article that a work stoppage has occurred, the respondent Union(s) shall, within eight (8) hours of receipt of the award, direct all the employees they represent on the Project to immediately return to work. If the craft(s) involved does not return to work by the beginning of the next regularly scheduled shift following such eight (8) hour period after receipt of the arbitrator's award, and the respondent Union(s) have not complied with their obligation to immediately instruct, order, and use their best efforts to cause a cessation of the violation and return of the employees they represent to

work, the respondent Union(s) shall each pay a sum as liquidated damages to the District, and each shall pay an additional sum per shift for each shift thereafter on which the craft(s) has not returned to work.

Similarly, if the arbitrator determines in accordance with this article that a lock-out has occurred, the respondent Contractor(s) shall, within eight (8) hours of receipt of the award, return all of the affected employees to work on the Project, or otherwise correct the violation as found by the arbitrator. If the respondent Contractor(s) do not take such action by the beginning of the next regularly scheduled shift following the eight (8) hour period, each respondent Contractor(s) shall pay a sum as liquidated damages to the affected Union(s) (to be apportioned among the affected employees and the benefit funds to which contributions are made on their behalf, as appropriate and designated by the Arbitrator) and each shall pay an additional sum per shift for each shift thereafter in which compliance by the respondent Contractor(s) has not been completed.

The Arbitrator shall retain jurisdiction to determine compliance with this article and to establish the appropriate sum of liquidated damages, which shall not be less than one thousand dollars (\$1,000.00) nor more than fifteen thousand dollars (\$15,000.00) for each shift.

ARTICLE 7 PRE-JOB MEETING

- 7.1 A pre-job meeting shall be held at the Building Trades offices prior to the commencement of each Construction Contract to establish the scope of work in each Contractor's Construction Contract. It shall be the responsibility of the Prime Contractor(s) to set such meeting. The District will notify the Union(s) of award of all covered projects prior to commencement of work. Such pre-job meeting shall be attended by a representative each from the participating Contractor(s) and Union(s) and the District PLA Program Manager. When a Construction Contract has been let to a Contractor, a pre-job meeting shall be required unless waived by agreement of the Council, the Contractor and the District.
- 7.2 All work assignments shall be disclosed by each Contractor at the pre-job meeting. The Contractor(s) shall notify the District PLA Program Manager at least two weeks before starting work under the Agreement, and the District PLA Program Manager shall coordinate the scheduling of the pre-job meeting with the Council, the Contractor(s) and the affected Union(s).

ARTICLE 8 NONDISCRIMINATION

- 8.1 The Union(s) and Contractor(s) shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, national origin, age, religion, disability as identified in the Americans with Disabilities Act, union or non-union membership or any other basis recognized by law.

**ARTICLE 9
UNION RECOGNITION**

- 9.1 The Contractor(s) recognize the Union(s) as the sole bargaining representative of all craft employees working within the scope of the Agreement. The Parties acknowledge that the collective bargaining relationship so established is a "pre-hire" relationship permitted by Section 8(f) of the National Labor Relations Act, except that this provision does not change any pre-existing Section 9(a) collective bargaining relationship that exists between any Contractor and Union parties to this Agreement.
- 9.2 No employee covered by the Agreement can be required to join any Union as a condition of being first employed on the Project; provided, however, that an employee who is a member of the referring Union at the time of the referral shall maintain that membership while employed on a Project subject to this Agreement. All employees shall, however, on or before the 8th day of consecutive or cumulative employment on the Project pay the uniform initiation fees and dues of the applicable craft Union and shall comply with the Union Recognition provision for the period during which they are performing Project construction work on the property of the District. The Contractor(s) agree to deduct initiation fees, Union dues or representation fees from the pay of any employee who executes a voluntary authorization for such deductions and to remit the dues and fees to the applicable Union or Council.

**ARTICLE 10
REFERRAL**

- 10.1 The selection of craft foremen and general foremen shall be entirely the responsibility of the Contractor(s), it being understood that in the selection of such foremen, the Contractor(s) will give first consideration to the qualified individuals available in the local area. Foremen and general foremen shall take orders from the designated Contractor(s) representatives.

The Unions shall be the first source of referral of employees to the Project and the contractor(s) agree to be bound by the lawful hiring hall rules and procedures of the respective Union(s). Contractors agree to be bound by the hiring practices of the respective Unions, including the hiring of apprentices, and to utilize their registration facilities and referral systems when workers are available, capable and willing to work on PLA covered projects.

- 10.2 The Contractor(s) shall have the unqualified right to select and hire directly all supervisors above general foreman it considers necessary and desirable, without such persons being referred by the Union(s).
- 10.3 In the event that referral facilities maintained by the Unions are unable to fill the requisition of a Contractor(s) for employees within a forty-eight (48) hour period (Saturday, Sundays and Holidays excluded) after such requisition is made by the Contractor(s), the Contractor(s) shall be free to obtain work persons from any source. Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor(s). The parties to this Agreement support the development of increased numbers of skilled construction workers from the residents of Alameda County; residents of Alameda, Albany, Berkeley, Emeryville, Piedmont and especially

the City of Oakland; to meet the needs of the PLA Program and the requirements of the industry generally. Toward that end, the Unions agree to encourage the referral and utilization, to the extent permitted by law and the hiring hall procedures, of qualified Alameda County residents as journeymen and apprentices on this PLA Program and, consistent with the State-approved Apprenticeship Standards, encourage entrance into such apprenticeship and training programs as may be offered by the Peralta Community College District or operated by the signatory Unions.

10.4 The Parties recognize the District's commitment to provide opportunities to participate on the Project to emerging small business enterprises that may not have previously had a relationship with the Unions signatory to this Agreement. To ensure that such enterprises will have an opportunity to employ their "core" employees on this Project, the parties agree that in those situations where a Contractor not a party to a current collective bargaining agreement with the signatory Union having jurisdiction over the affected work is a successful bidder, the Contractor may request by name, and the local will honor, referral of persons who have applied to the local union for Project work and who demonstrate the following qualifications:

(a) possess any license required by state or federal law for the Project work to be performed;

(b) have worked a total of at least one thousand (1000) hours in the construction craft during the prior three (3) years;

(c) were on the Contractor's active payroll for at least ninety (90) out of the one-hundred eighty (180) calendar days prior to the contract award; and

(d) have the ability to perform safely the basic functions of the applicable trade.

(e) The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired five (5) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor's work the ratio shall be maintained and when the Contractor's workforce is reduced, employees shall be reduced in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring.

ARTICLE 11 WAGES AND BENEFITS

11.1 All Contractors, agree to pay contributions to the established vacation, pension and other form of deferred compensation plan, apprenticeship, and health benefit Trust Funds established by the applicable Master Agreement(s) for each hour worked on the Project in the amounts designated in the Master Agreements of the appropriate local Unions for all of those benefits and contributions contained in the applicable prevailing wage determination. The Contractor(s) shall not be required to pay contributions to any

other trust funds that are not contained in the published prevailing wage determination to satisfy their obligation under this Article except those Contractor(s) who are signatory to the Master Agreements with the respective trades shall continue to pay all trust fund contributions as outlined in such Master Agreements.

11.2 By signing a Letter of Assent binding this Agreement, the Contractor(s) adopt and agree to be bound by the written terms of the legally established Trust Agreements, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds.

11.3 **Wages, Hours, Terms and Conditions of Employment:** The wages, hours, classifications and other terms and conditions of employment on a Project shall be governed by the Master Agreement of the respective craft Unions, copies of which shall be on file with the District, to the extent such Master Agreement is consistent with the applicable prevailing wage determination and this Agreement.

(a) At all times while working under the Agreement, the Contractor(s) is obligated to make compensation payments and benefit contributions to or on behalf of the employee in a total amount no less than required by the applicable prevailing wage.

(b) Each Contractor and subcontractor shall be required to certify in writing that it has paid all wages and benefit contributions due and owing prior to receipt of its final payment and/or retention.

(c) Contractors of whatever tier shall make regular and timely contributions required by this section in the amounts set forth in the appropriate prevailing wage determination and on the time schedule required by the Master Agreement. Delinquency in remission of contributions is a breach of this Agreement. If a Contractor or subcontractor is delinquent in any such contributions, the Union or the Trust Fund shall provide timely notification to District or the District PLA Program Manager after efforts by the Fund to resolve the delinquency have been exhausted, and provide documentary evidence of the delinquency endorsed by the Fund. Upon such notification, the District or the District PLA Program Manager will attempt to resolve the delinquency among the Contractor or subcontractor, the Union and the Fund. If the delinquency is not resolved within ten (10) working days thereafter, the Contractor, in the case of a delinquent subcontractor, shall withhold an amount to cover the delinquency from any retained funds otherwise due and owing to the subcontractor and shall not release such withholding until the subcontractor is in compliance, provided, however, that if the delinquent amount is undisputed in whole or in part between the Fund and the delinquent subcontractor, the Contractor shall issue a joint check payable to the Fund and the subcontractor in the amount of the undisputed delinquency. In the case of a delinquent prime Contractor, the District or the District PLA Program Manager shall withhold, in an appropriate amount, any funds due and owing to the Contractor. Pursuant to the announced commitment of the District, and to the extent permitted by law, the Contractor shall be subject to withholding of retained amounts which may only be released upon the Contractor's resolution of the delinquency as evidenced by a written statement endorsed by the Fund. Where there is no dispute as to the amount of the delinquency, retained amounts may be released by a joint check payable to the Contractor and the Fund in the amount of any undisputed delinquency.

ARTICLE 12
GRIEVANCE ARBITRATION PROCEDURE

12.1 Any dispute alleging violation of this Agreement, including the applicable Master Agreement, but excluding jurisdictional disputes and alleged violations of Article 6, shall be considered a grievance and resolved in accordance with the procedures set forth herein. A signatory Contractor and Union shall agree to resolve a grievance that involves solely the interpretation of the Master Agreement under the grievance and arbitration provisions of the Master Agreement. A grievance shall be considered null and void if not brought in writing and delivered to both the involved party and Program Manager within ten (10) working days after the incident that initiated the alleged grievance was discovered. The term 'working days' as used in this section shall exclude Saturdays, Sundays or holidays regardless of whether any work is actually performed on such days.

12.2 **Grievances shall be settled according to the following procedures:**

Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the Business Representative of the involved Local Union or Council, or its designee, or the representative of the employee, and the representative of the involved Contractor(s) shall confer and attempt to resolve the grievance.

Step 2: In the event that the representatives are unable to resolve the dispute within the five (5) business days after its referral to Step 1, either involved party may submit it within five (5) business days to the Grievance Committee, which shall meet within five (5) business days after such referral (or such longer time as is mutually agreed upon by all representatives on the Grievance Committee), to confer in an attempt to resolve the grievance.

The Grievance Committee shall be comprised of one (1) representative of the District; one (1) representative of the District PLA Program Manager; and two (2) representatives of the Alameda County Building and Construction Trades Council. If the dispute is not resolved within such time (five (5) business days after its referral or such longer time as mutually agreed upon), it may be referred within five (5) business days thereafter by either party to Step 3.

Step 3: Within five (5) business days after referral of a dispute to Step 3, the representatives shall choose a mutually agreed upon arbitrator for final and binding arbitration. The parties agree that an arbitrator shall be selected by the alternate striking method from the following list noted. The selection party who shall strike the first name shall be selected by the toss of a coin.

1. Barbara Kong-Brown
2. Thomas Angelo
3. William Riker

4. Gerald McKay

5. Jerri-Lou Cossack

The decision of the Arbitrator shall be binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any provisions of the Agreement. The expense of the Arbitrator shall be borne by the losing party. The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding Arbitrator.

The time limits specified in any step of the Grievance Procedure set forth in Section 12.2 may be extended by mutual agreement of the parties initiated by the written request of one party to the other, at the appropriate step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes.

In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

ARTICLE 13 SAFETY AND HEALTH

- 13.1 In accordance with the requirements of the Occupational Safety and Health Act, it shall be the exclusive responsibility of each Contractor on the job site to ensure safe working conditions for its employees and their compliance with any safety rules contained herein or established by the District, its representatives, and/or the Contractor(s). Nothing in this Agreement shall be interpreted to make the Unions liable for safety violations that may occur on the Project. It is understood that the employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor(s) and the District. An employee's failure to satisfy his/her obligation under this article will subject him/her to corrective action.
- 13.2 In order to minimize any disturbance to the student population, Contractors' employees are to restrict their presence to the Project site and not visit other areas of the campus to the extent possible of carrying out their duties.

ARTICLE 14 COMPLIANCE

- 14.1 It shall be the responsibility of the Contractor(s) and Union(s) to investigate and monitor compliance with the provisions of the Agreement contained in Article 11. Nothing in this agreement shall be construed to interfere with or supersede the usual and customary

legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Contractors on the Project.

- 14.2 The District, through the services of the District PLA Program Manager, shall monitor compliance enforcement measures to ensure the Contractor(s) compliance with the Construction Contract conditions of the Agreement.
- 14.3 The parties to this Agreement intend to ensure the best possible harmony in labor-management relations on the Project and recognize that the Administrator shall strive to encourage the Parties toward that end.

In an effort to achieve that labor-management harmony the Parties shall establish a four (4) person Joint Administrative Committee. This Committee shall be comprised of two (2) representatives selected by the Administrator and two (2) from the Unions, one of whom will be a representative from the Council. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement. The Committee will be co-chaired by the Administrator and the representative from the Council.

The Joint Administrative Committee shall meet as required to review the implementation of the Agreement and the progress of the Project and resolve problems and/or grievances by majority vote with such resolutions to be binding on all signatories of the Agreement as provided herein. Any question regarding the meaning, interpretation, or application of the provisions of this Agreement shall be first referred directly to the Joint Administrative Committee for resolution. The Joint Administrative Committee will meet upon the call of either co-chair, upon provision of sufficient notice of the issue to be discussed.

ARTICLE 15 JURISDICTIONAL DISPUTES

- 15.1 The Contractor/Employer(s) shall assign work on the basis of traditional craft jurisdictional lines.
- 15.2 There shall be no strikes, picketing, sympathy strikes, leafleting or work disruption or stoppages of any kind because of jurisdictional disputes.
- 15.3 When conflicting claims for work on the Project are submitted to a Contractor/Employer, the dispute shall be resolved pursuant to agreed upon Jurisdictional Dispute Procedures, as adopted by the National Building & Construction Trades Department, or by the Mechanical Allied Crafts (MAC), or by the Northern California Basic Crafts Alliance (NCBCA) Jurisdictional Dispute Resolution Procedures. It is understood by the parties that these Procedures might be amended from time to time. In the event a jurisdictional dispute arises between two or more Unions affiliated with the National Building & Construction Trades Department, such dispute shall be resolved by the procedure set forth in the Plan for the Settlement of Jurisdiction Disputes in the Construction Industry. In the event a jurisdictional dispute arises between two or more Unions affiliated with the MAC, such dispute shall be resolved under the MAC Procedure. In the event a jurisdictional dispute arises between two or more Unions affiliated with the NCBCA, such dispute shall be resolved under the NCBCA Procedure.

- 15.4 In the event a jurisdictional dispute arises between two or more Unions that are not stipulated to the same jurisdictional dispute resolution procedure, the dispute shall be handled in accordance with and resolved as follows:
- 15.5 In the event a jurisdictional dispute arises while the parties are attempting to negotiate an alternative resolution mechanism either party may refer the jurisdictional dispute to the General Presidents of the affected unions, and if the General Presidents cannot resolve the dispute within five (5) business days of the dispute being referred to them for resolution, the dispute shall be resolved as follows:
- 15.6 The dispute shall be submitted to arbitration before an arbitrator selected from the Panel of Permanent Arbitrators for resolution. The Panel of Permanent Arbitrators shall be composed of: David Nevins, Gerald McKay, Robert Hirsch, William Riker and Barry Winograd. The Arbitrator shall be selected by alternately striking the names of Arbitrators from the list of five (5) permanent Arbitrators. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second. Such striking shall take place within three (3) days. If a party does not respond within three (3) days, this means any Arbitrator from the list is acceptable. The remaining Arbitrator shall serve as the Arbitrator who shall hear the dispute on an expedited basis, but in no case longer than seven (7) days, and resolve the dispute. The Arbitrator shall render his decision within three (3) days of the hearing.
- 15.7 **In rendering his decision, the Arbitrator shall determine:**
1. First, whether a previous agreement of record or applicable agreement, including a disclaimer agreement, between the National and International Unions to the dispute governs;
 2. Only if the Arbitrator finds that the dispute is not covered by an appropriate or applicable agreement of record or agreement between the crafts to the dispute, he shall then consider the established trade practice in the industry and prevailing practice in the locality. Where there is a previous decision of record governing the case, the Arbitrator shall give equal weight to such decision of record, unless the prevailing practice in the locality in the past ten (10) years favors one craft. In that case, the Arbitrator shall base his decision on the prevailing practice in the locality. Except, that if the Arbitrator finds that a craft has improperly obtained the prevailing practice in the locality through raiding, the undercutting of wages or by the use of vertical agreements, the Arbitrator shall rely on the decision of record and established trade practice in the industry rather than the prevailing practice in the locality.
 3. Only if none of the above criteria is found to exist, the Arbitrator shall then consider that because efficiency, cost or continuity and good management are essential to the well being of the industry, the interests of the consumer or the past practices of the employer shall not be ignored.
 4. The Arbitrator shall comply with the Code of Professional Responsibility for Arbitrators of Labor Management Disputes jointly adopted by the National Academy of Arbitrators, the American Arbitration Association and the Federal Mediation and

Conciliation Service. The Arbitrator shall set forth the basis for his decision and shall explain his findings regarding the applicability of the above criteria. If lower-ranked criteria are relied upon, the Arbitrator shall explain why the higher-ranked criteria were not deemed applicable. The Arbitrator's decision shall only apply to the job in dispute.

5. Agreements of record are applicable only to the parties signatory to such agreements. Decisions of record are applicable to all trades.

6. The Arbitrator is not authorized to award back pay or any other damages for a misassignment of work. Nor may any party to this Plan bring an independent action for back pay or any other damages, based upon a decision of an Arbitrator.

7. Each party to the arbitration shall bear its own expense for the arbitration and agrees that the fees and expenses of the Arbitrator shall be borne by the losing party or parties.

15.8 **ENFORCEMENT**

1. Any decision or interpretation rendered by an arbitrator shall be immediately accepted and complied with by all parties subject to this Agreement. If a party fails to accept and comply with a decision or interpretation rendered by an arbitrator, any party to the dispute may seek court enforcement of the decision or ruling.

2. The Arbitrator shall have no authority to undertake any action to enforce his decision after a hearing beyond informing the affected parties of his decision. Rather, it shall be the responsibility of the prevailing party to seek appropriate enforcement of a decision. The prevailing party in any enforcement proceeding shall be entitled to recover its reasonable costs and attorney fees from the non-prevailing party. In the event the Arbitrator is made a party to, or is otherwise required to participate in any such enforcement proceedings for whatever reason, the non-prevailing party shall bear all reasonable costs, attorney fees, and any other expenses incurred by the Arbitrator in those proceedings.

15.9 If there is a strike, sympathy strike, work stoppage, slowdown, picketing or otherwise advising the public that a labor dispute exists or interference with the progress of the Project by reason of a jurisdictional dispute, the Contractor/Employer (who has complied with the Arbitrator's decision) affected by said Union conduct, shall have the right to seek full legal redress in the Courts of California, including injunctive relief and damages.

ARTICLE 16 LOCAL HIRING PROGRAM

16.1 The objective of the District in creating a Local Hiring Program is to enhance and encourage employment opportunities for local area residents to enable effective pathways into the construction industry and into Union Apprenticeship programs. To that end, as part of the Agreement, the District establishes goals for the hiring and retention of local area residents.

16.2 **Local Hiring Program Goals**

(a) Hiring Priority:

1. Fifty percent (50%) of all hours worked on covered projects, on a craft by craft basis will be worked by local area residents as defined in Article 1, Section 1.12, if such workers are available, capable and willing to work on the project and dispatched through the utilization of the normal hiring hall procedures.
2. (i) Subject to any restrictions contained in law, the Parties agree to a goal that apprentices will perform twenty percent (20%) of the total craft work hours unless an applicable Schedule A provides for a greater percentage. The Union agrees to cooperate with the Contractor in furnishing apprentices as requested and they shall be properly supervised and paid in accordance with provisions contained within the Schedule A.

(ii) The parties agree to a goal that only local area residents as defined in Article 1, Section 1.12 shall be utilized as apprentices. The Contractor shall make good faith efforts to reach this goal through the utilization of normal hiring hall and apprentice procedures and, when appropriate, the identification of potentially qualified apprentices through community-based organizations working in collaboration with the apprentice programs. The Unions are committed to working with the contractors and community-based organizations to reach these goals.

(iii) All apprentices referred to Contractors under this Agreement shall be enrolled in State of California approved Joint Apprenticeship Programs.

- 16.3 (a) Contractors may achieve up to fifty percent (50%) compliance with these local hiring goals and timelines through the employment, of local area resident journeymen, existing apprentices and newly indentured resident apprentices on non-District projects during the time period that the Contractors are working on District Projects.

16.4 **Good Faith Efforts:**

A Contractor and its subcontractors must take the following good faith steps to demonstrate that it has made every effort to reach the local hiring goals of the District. The contractor shall attend scheduled pre-job meetings held by the PLA Program Manager pertaining to work they will performed. The contractor must submit written workforce projections and projected work hours on a craft by craft basis.

- (a) Within seven calendar days after the Notice to Proceed, the Contractor shall meet with the PLA Program Manager to present its plan for reaching the local hiring goals.
- (b) The Contractor shall notify the PLA Program Manager by US mail or email, if a Union hiring hall cannot, upon request of the contractor, dispatch local area residents, as defined herein. It shall be the responsibility of the contractor to retain all evidence of such good faith efforts.

(c) The contractor shall use the "Name Call," "Rehire" or other available hiring hall procedures to reach goals.

(d) The contractor shall use local CBOs working in collaboration with the apprentice programs for recruiting local residents to apprentice programs specified in section 16.2,(c), if a union cannot provide local area residents as requested, and in conformity with the collectively bargained union hiring hall agreement.

16.5 **Consequences for Non-Compliance with Goals**

(a) The PLA Program Manager in coordination with District staff and the Local Hiring Committee shall consider allegations of non-conformance with the goals. If there is a determination that a Contractor has not complied with the goals or demonstrated good faith efforts to do so, the PLA Program Manager will refer the issue to the Local Hiring Committee for review.

(b) If the Local Hiring Committee (see 16.6) finds a Contractor to be in apparent non-compliance, it will be referred to arbitration in accordance to step 3 of the grievance arbitration procedure upon direction by the Committee.

(c) At any time during the process of compliance review, the Contractor can negotiate a settlement with the Local Hiring Committee.

16.6 **Local Hiring Committee**

(a) The Parties agree to various provisions of the Agreement to attempt to achieve the inclusion of local area residents in the employment opportunities created by the covered work. In order to implement and monitor the progress of these provisions, the District and the Unions, in recognition of their mutual commitment to and the partnership they have established, to achieve those goals, shall form a Local Hiring Committee composed of participants mutually agreed upon by both Parties.

(b) The Local Hiring Committee will serve as the central forum and deliberative body for representatives of all interested or affected parties to exchange information and ideas concerning the operation and results of the District's local hiring program and the ongoing role of this Agreement as an integral component of the local hire program. As part of these responsibilities, the Committee will assess the obstacles to success for achieving inclusion of local workers in the construction opportunities. The Committee shall make program recommendations to overcome obstacles to effective local hiring.

(c) The Local Hiring Committee will be comprised of three (3) representatives of the community one of whom will be primarily involved in preparatory training for prospective construction applicants, three (3) representatives from the Unions, three (3) Contractor representatives, one (1) representative from the PLA Program Manager and one (1) representative from the Council.

(d) The Committee shall establish its rules of procedure.

(e) Committee meeting will be chaired by the District and the Council on a rotating basis.

16.7 **Local Hiring Committee Meetings**

(a) The Committee will meet monthly at the call of the Chair.

(b) The PLA Program Manager will establish agenda topics with input from the Committee and send notices of meetings with the agenda in advance of the meetings.

(c) The Committee will receive reports and consider work progress and practices, pre-apprentice recruitment, training and referral, apprentice development and utilization, contractor compliance with local hire goals and other issues of concern to the Program.

(d) The PLA Program Manager and the contractors shall report monthly on progress for these issues and provide ongoing workforce projections for each trade.

16.8 **Monitoring and Reporting**

The PLA Program Manager will assist the District in monitoring compliance with all local hiring policies and will report to the Local Hiring Committee. This monitoring will include attending progress meetings, site visits, monitoring of progress payments, utilization and verification of performance forms. Forms specific to this monitoring process will be developed. Monthly reports will be submitted to the District.

ARTICLE 17 MANAGEMENT RIGHTS

17.1 The Contractor retains the full and exclusive authority for the management of its operations and shall be responsible for the management and prosecution of the work consistent with the provisions of this Agreement. Except as expressly limited by other provisions of this Agreement and the attached applicable Master Agreement(s), the Contractor retains the right to direct the workforce, including the hiring, promotion, transfer within a contract, layoff, discipline or discharge for just cause of its employees; the selection of foremen; the assignment and schedule of work; the promulgation of reasonable work rules; and, the requirement of overtime work, the determination of when it will be worked and the number and identity of employees engaged in such work. No rules, customs, or practices which limit or restrict productivity, efficiency or the individual and/or joint working efforts of employees shall be permitted or observed. The Contractor may utilize any methods or techniques of construction. The lawful manning provisions of the applicable Master Agreement shall be recognized.

17.2 There shall be no limitation or restriction by a signatory Union upon a Contractor's choice of materials or design, nor, regardless of source or location, upon the full use and utilization of equipment, machinery, packaging, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor saving devices. This Agreement covers all on-site fabrication work over which the District, Contractor(s) or subcontractor(s) possess the right of control (including work done for the Project in any temporary yard or area near the Project.) This Agreement also covers all off-site fabrication work traditionally performed by any of the Unions, that is directly or indirectly part of the Project, provided such off-site fabrication work is covered by a provision of a local Master Labor Agreement or local addenda to a national agreement of the applicable Union(s). All of the work described in this paragraph is within the scope of this Agreement and is referred to as "Covered Work."

The on-site installation, incorporation or application of all items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that

installation of manufactured items may be performed by employees employed under this Agreement who may be directed by other personnel of the manufacturer in a supervisory role. For any work performed pursuant to this provision, the Contractor shall provide copies of the written warranty requirement to the Union and the District's PLA Program Manager prior to the commencement of work.

- 17.3 The use of new technology, equipment, machinery, tools and/or laborsaving devices and methods of performing work may be initiated by the Contractor from time-to-time during the Project. The Union agrees that it will not in any way restrict the implementation of such new devices or work methods. If there is any disagreement between the Contractor and the Union concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractor, and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in Article 12 of this Agreement.

ARTICLE 18 SAVINGS CLAUSE

- 18.1 The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction such as the Department of Industrial Relations, the Division of Apprenticeship Standards, and other applicable labor related governmental agencies the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction or other labor related governmental authorities, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or work which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or work in question.
- 18.2 The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.
- 18.3 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the District from complying with all or part of its provisions and the District accordingly determines that the Agreement will not be required as part of an award to a Contractor(s), the Union(s) will no longer be bound by the provisions of Article 6.

ARTICLE 19 MISCELLANEOUS PROVISIONS

- 19.1 **Counterparts:** This Agreement may be executed in counterparts, such that original signatures may appear on separate pages, and when bound together all necessary signatures shall constitute an original. Facsimile signature pages transmitted to other parties to this Agreement shall be deemed equivalent to original signature.
- 19.2 **Warranty of Authority:** Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of

the party indicated, and each of the parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

19.3 **Ratification by Governing Board:** This Agreement shall not be binding on the District until it is approved by the Peralta Community College District Governing Board.

**ARTICLE 20
TERM**


20.1 The Agreement shall be included as a condition of the award of all Construction Contracts that are part of the PLA Program.


20.2 This Agreement shall become effective on the day the District Governing Board ratifies the Agreement and shall continue in full force and effect for a period of five (5) years, at which time this Agreement will be reviewed and considered for extension or renewal with modifications if appropriate. The term of this Agreement will be automatically extended for additional successive five (5) year terms unless the District, prior to the expiration of any such term and, after meeting with the Council and the Unions, finds in a public hearing that the work performed has been unsatisfactory, and gives the Council and Unions notice that it will not renew this Agreement. After the expiration of any term of this Agreement, the provisions of the Agreement shall continue to apply to those Projects subject to this Agreement until construction is completed. The parties may mutually agree in writing to amend, extend or terminate this Agreement at any time.

20.3 The parties agree to meet and confer annually, subsequent to approval of this Project Labor Agreement by the Peralta Community College District Governing Board, regarding the status of and experience with Projects covered by the Agreement and future projects to be covered by the Agreement.

Peralta Community College District

**Alameda County Building & Construction
Trades Council AFL-CIO (Council)**

BY: 
Elihu Harris
Chancellor

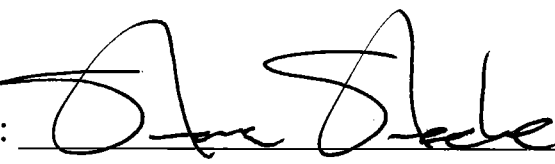
BY: 
Barry Luboviski
Secretary-Treasurer

DATE: 4/6/10

DATE: _____

Asbestos Workers, Local 16

Boilermakers, Local 549

By: 
Steve Steele

By: _____
Frank Secret

**Bricklayers & Allied Craftsmen,
Local 3**

By: Tom Spear

Tom Spear

**Northern California Regional Council
of Carpenters on behalf of, Carpenters,
Local 713, Carpenters, Local 2236,
Lathers, Local 68L, Pile Drivers, Local
34, Millwrights, Local 102**

By: Robert Alvarado

Robert Alvarado

**District Council of Plasterers and
Cement Masons of Northern
California**

By: _____

Steve Scott

Cement Masons, Local 300

By: _____

Steve Scott

Plasterers, Local 66

By: _____

Chester Murphy, Jr.

Electrical Workers, Local 595

By: Victor Uno

Victor Uno

Elevator Constructors, Local 8

By: _____

Pat McGarvey

**Laborers District Council on behalf
of, Hod Carriers, Local 166, Laborers,
Local 67, Laborers, Local 304**

By: Jose Moreno


Jose Moreno

Hod Carriers, Local 166

By:  _____

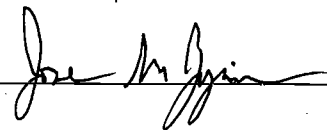
Sam Robinson

Laborers, Local 67

By:  _____

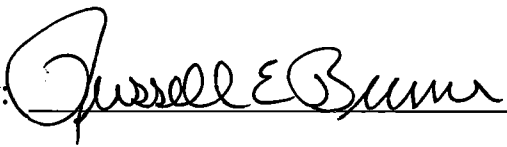
Victor Para

Laborers, Local 304

By:  _____

Jose Zapien

Operating Engineers, Local 3

By:  _____


Russ Burns

District Council Ironworkers of the State of California and Vicinity

By: _____

Joe Standley

Ironworkers, Local 378

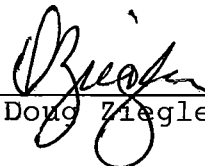
By:  _____

Emilio Rivera

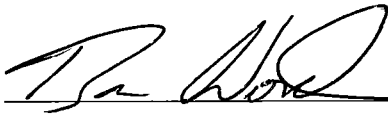
District Council 16, Painters & Allied Trades on behalf of Auto & Marine Painters, Local 1176, Carpet & Linoleum Layers, Local 12, Glaziers, Architectural Metal & Glassworkers, Local 169, Painters & Tapers, Local 3

By: _____
Doug Christopher

Roofers and Waterproofers, Local 81

By:  _____
Doug Ziegler

Sheet Metal Workers, Local 104

By: 

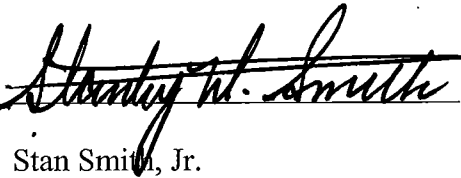
Bruce Word

Sign Display & Allied Crafts, Local 510

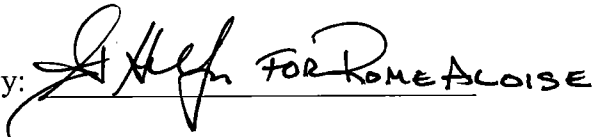
By: _____

Mike Hardeman

Sprinkler Fitters, Local 483

By: 
Stan Smith, Jr.

Teamsters, Local 853


By:  FOR ROME ALOISE
Rome Aloise

**United Association of Steamfitters,
Pipefitters, Plumbers & Gasfitters, Local
342**

By: _____

Jay Williams

**United Association of Journeyman &
Apprentices of the Pipe Fitting Industry,
Underground Utility / Landscape, Local 355**

By: 
Dennis Soares

Sheet Metal Workers, Local 104

By: _____

Bruce Word

Sign Display & Allied Crafts, Local 510

By: _____

Mike Hardeman

Sprinkler Fitters, Local 483

By: _____

Stan Smith, Jr.

Teamsters, Local 853

By: _____

Rome Aloice

**United Association of Steamfitters,
Pipefitters, Plumbers & Gasfitters, Local
342**

By: _____

Jay Williams

**United Association of Journeyman &
Apprentices of the Pipe Fitting Industry,
Underground Utility / Landscape, Local 355**

By: _____

Dennis Soares

Attachment A

**LETTER OF ASSENT
PROJECT LABOR AGREEMENT**

The undersigned, as a Contractor on the Peralta Community College Project, ("Project"), subject to the Project Labor Agreement ("Agreement"), for and in consideration of the award to it of a contract to perform work on said Project, and in further consideration of the promises made in the Agreement and all attachments a copy of which was received and is acknowledged, hereby:

- 1.) Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto only for the duration and scope of the Contractor's work on the Project.
- 2.) The Contractor agrees to be bound by the legally established trust agreements designated in local master collective bargaining agreements. The Contractor authorizes the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor.
- 3.) Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said Agreement.
- 4.) Agrees to secure from any Contractor(s) (as defined in said Agreement) which are or become a subcontractor (of any tier) to it, a duly executed Agreement to be Bound in a form identical to this document.

DATED: _____ Name of Contractor _____

(Authorized Officer & Title) _____

Contractor's State License # _____

Project Name _____

Contract Number _____

Name of Prime Contractor or Higher Level Subcontractor

TW-Final

Attachment B

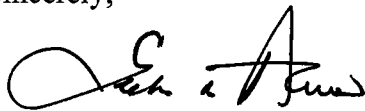
LETTER OF UNDERSTANDING ADDRESSING LOCAL BUSINESS UTILIZATION

During negotiations, the District and the Building Trades Council discussed local business participation on District projects that will be covered by the Project Labor Agreement. The District, the Building Trades Council and the Affiliates of the Council agreed that such participation will benefit the local community and insure additional opportunities for work that is not covered by the Project Labor Agreement.

It is therefore agreed that every effort will be taken to encourage all participating Contractors to use good faith efforts to obtain supplies, materials and goods from local suppliers and manufacturers. Such ancillary off site support services include fabrication of: millwork, cabinets and modular furniture, electrical components, miscellaneous ornamental iron, prefinishing of materials and also the furnishing of building materials and office supplies used during construction.


Therefore, the District, the Building Trades Council and the Unions will make every effort to encourage use of local businesses on non-covered work needed to construct the College facilities.

Sincerely,



Elihu Harris, Chancellor
on behalf of the Peralta Community College District

AGREED AND ACCEPTED on behalf of the Building and Construction Trades Council of Alameda County, AFL-CIO and the Local Unions signatory to the Peralta Community College District Construction Project Labor Agreement this 21 day of July 2009.



Barry Luboviski, Secretary-Treasurer
Building and Construction Trades Council of Alameda County, AFL-CIO

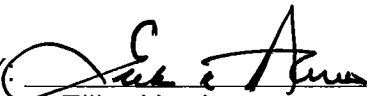
Attachment C

We, the undersigned parties agree to the two side letters, dated July 21, 2009:

“Term of Project Labor Agreement Side Letter” and
“Helmets to Hardhats Program Side Letter”


These two side letters are addendum to the Project Labor Agreement, and shall constitute the entire Agreement. The effective date of the Agreement is July 21, 2009. Mr. Barry Luboviski, Secretary-Treasurer confirms that all parties agree to the side letters, along with the Project Labor Agreement, and all Union Signatories will confirm their agreement below.

**Peralta Community College District
Construction**

BY: 
Elihu Harris
Chancellor

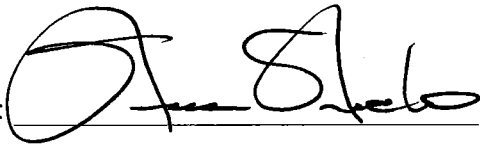
DATE: _____

**Alameda County Building &
Trades Council AFL-CIO (Council)**

BY: 
Barry Luboviski
Secretary-Treasurer

DATE: 7-21-2009


Asbestos Workers, Local 16

By: 
Steve Steele

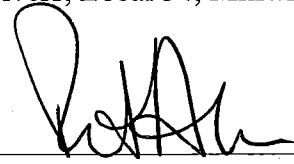
Boilermakers, Local 549

By: _____
Dale Bilyeu

Bricklayers & Allied Craftsmen, Local 3

By: 
Tom Spear

**Northern California Regional Council of
Carpenters** on behalf of, Carpenters, Local 713,
Carpenters, Local 2236, Lathers, Local 68L,
Pile Drivers, Local 34, Millwrights, Local 102

By: 
Robert Alvarado

**District Council of Plasterers and Cement
Masons of Northern California**

By: _____
Steve Scott

Cement Masons, Local 300

By: _____
Steve Scott

Attachment C

Plasterers, Local 66

By: _____

Chester Murphy, Jr.

Elevator Constructors, Local 8

By: _____

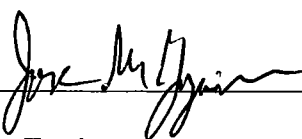
Pat McGarvey

Hod Carriers, Local 166

By:  _____

Sam Robinson

Laborers, Local 304

By:  _____

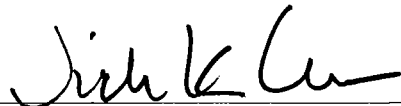
Jose Zapien

District Council Ironworkers of the State of California and Vicinity

By: _____

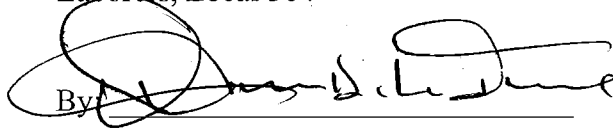
Joe Standley

Electrical Workers, Local 595

By:  _____

Victor Uno

Laborers District Council on behalf of, Hod Carriers, Local 166, Laborers, Local 67, Laborers, Local 304

By:  _____

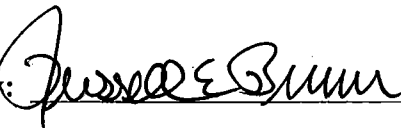
Oscar De La Torre

Laborers, Local 67

By:  _____

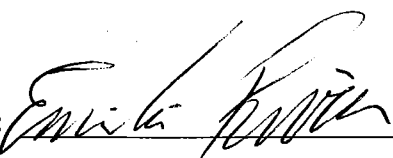
Victor Parra

Operating Engineers, Local 3

By:  _____

Russ Burns

Ironworkers, Local 378

By:  _____

Emilio Rivera

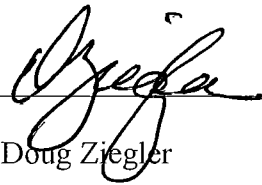
TIN-Final

Attachment C

District Council 16, Painters & Allied Trades Roofers and Waterproofers, Local 81
on behalf of Auto & Marine Painters, Local
1176, Carpet & Linoleum Layers, Local 12,
Glaziers, Architectural Metal & Glassworkers,
Local 169, Painters & Tapers, Local 3


By: _____

Doug Christopher

By:  _____
Doug Ziegler

Sheet Metal Workers, Local 104

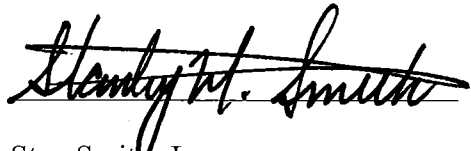
Sign Display & Allied Crafts, Local 510

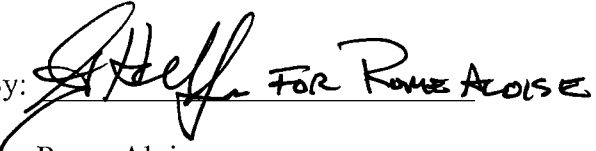
By:  _____
Bruce Word

By: _____
Mike Hardeman

Sprinkler Fitters, Local 483

Teamsters, Local 853

By:  _____
Stan Smith, Jr.

By:  _____
Rome Aloise

**United Association of Steamfitters,
Pipefitters, Plumbers & Gasfitters,
Local 342**

**United Association of Journeyman &
Apprentices of the Pipe Fitting Industry,
Underground Utility / Landscape, Local 355**

By: _____
Jay Williams

By:  _____
Dennis Soares

Attachment C

District Council 16, Painters & Allied Trades Roofers and Waterproofers, Local 81
on behalf of Auto & Marine Painters, Local
1176, Carpet & Linoleum Layers, Local 12,
Glaziers, Architectural Metal & Glassworkers,
Local 169, Painters & Tapers, Local 3

By: _____

Doug Christopher

Sheet Metal Workers, Local 104

By: _____

Bruce Word

Sprinkler Fitters, Local 483

By: _____

Stan Smith, Jr.

**United Association of Steamfitters,
Pipefitters, Plumbers & Gasfitters,
Local 342**

By: _____

Jay Williams

By: _____

Doug Ziegler

Sign Display & Allied Crafts, Local 510

By: _____

Mike Hardeman

Teamsters, Local 853

By: _____

Rome Aloise

**United Association of Journeyman &
Apprentices of the Pipe Fitting Industry,
Underground Utility / Landscape, Local 355**

By: _____

Dennis Soares

Attachment D

Term of Project Labor Agreement Side Letter

Chancellor Elihu Harris
Peralta Community College District
333 East 8th Street
Oakland, CA 94606

Re: Peralta Community College District Construction Project Labor Agreement: Term of Agreement

Dear Chancellor Harris:

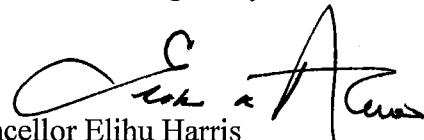
In our negotiations of the captioned Project Labor Agreement, the District and the Unions came to agreement on the Term of the Project Labor Agreement, in Article 1, Definitions and Article 20, Term. It is clearly understood by the Unions and the District that the parties agree that Section 20.2 shall be modified as follows:

20.2 *This Agreement shall become effective on the day the District Governing Board ratifies the Agreement and shall continue in full force and effect for a period of five (5) years, at which time this Agreement will be reviewed and considered for extension or renewal with modifications if appropriate. The term of this Agreement will be extended for additional successive five (5) year terms unless the District, 60 to 90 days prior to the expiration of any such term, after meeting with the Council and the Unions, gives written notice to the Council that it wishes to re-open the contract and make proposals to amend, modify, add to, or delete from the Agreement. After the expiration of any term of this Agreement, the provisions of the Agreement shall continue to apply to those Projects subject to this Agreement until construction is completed. The parties may mutually agree in writing to amend, extend or terminate this Agreement at any time.*

Sincerely,



Barry Luboviski, Secretary-Treasurer,
Alameda County Building and Construction Trades Council
on behalf of the signatory Unions and Councils to the Project Labor Agreement

x 

Chancellor Elihu Harris
Peralta Community College District

Acknowledged and agreed to this 21 day of July 2009

Attachment E

Helmets to Hardhats Program Side Letter

Chancellor Elihu Harris
Peralta Community College District
333 East 8th Street
Oakland, CA 94606

Re: Peralta Community College District Construction Project Labor Agreement: Helmets to Hard Hats

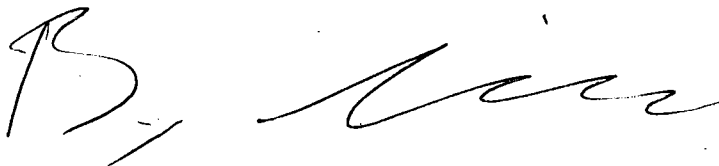
Dear Chancellor Harris:

In our negotiations of the captioned Project Labor Agreement, the District and the Unions discussed career pathways. To insure that all avenues are available to effectively reach out to potential applicants and to insure entry into the building and construction trades of men and women veterans who have served their Country and are interested in careers in the building and construction industry, we subscribe to the following:


When appropriate, the Employers and Unions will agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

We further agree that the Unions and Employers will, as a consequence of signing the Letter of Assent, coordinate with the Center to create and maintain an integrated database of veterans interested in working on Projects covered by this Agreement and which of them are interested in apprenticeship and employment opportunities made available by such Projects. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

Sincerely,



Barry Luboviski, Secretary-Treasurer,
Alameda County Building and Construction Trades Council
on behalf of the signatory Unions and Councils to the Project Labor Agreement



Chancellor Elihu Harris
Peralta Community College District

Acknowledged and agreed to this 21 day of July 2009.

AMENDMENT NUMBER 1
TO THE
PROJECT LABOR AGREEMENT
FOR THE
PERALTA COMMUNITY COLLEGE DISTRICT

Recitals

WHEREAS, the Peralta Community College District (“District”), contractors and subcontractors (“Contractors”) who are or become signatory and the Building and Construction Building Trades Council of Alameda County and its member local unions (Collectively “Union(s)”) are parties to the Project Labor Agreement (“Agreement”) negotiated in 2009; and

WHEREAS, the District and the Unions have met and agreed that there are certain modifications that should be made based on experience; and

WHEREAS, Article 20.3 of the Agreement provides, in part, that “The parties may mutually agree in writing to amend, extend or terminate this agreement at any time”; and

WHEREAS, the District and the Unions now desire to amend and extend the Agreement to address certain areas of mutual concern.

NOW THEREFORE, the District and the Unions, in consideration of the mutual promises and covenants herein contained, mutually agree as follows:

1. The Agreement shall be amended to include the provisions in EXHIBIT A to this Amendment Number 1 in five (5) specific areas: local hiring, committee structure, jurisdictional disputes, arbitrators and core employees.
2. It is understood and agreed that, as a result, certain Articles of the PLA will be modified once this Amendment is approved by the District Board of Directors.

EXHIBIT A

MEMORANDUM OF UNDERSTANDING/SIDE LETTER

Project Labor Agreement Revisions
Peralta Community College District

December 10, 2014

Mr. Andreas Cluver
Building and Construction Trades Council of Alameda County
100 Hegenberger Road, Suite 120
Oakland, CA 94621

Re: Peralta Community College District Project Labor Agreement Revisions
Memorandum of Agreement/Side Letter

Dear Mr. Cluver,

After several meetings over the last few months, Davillier-Sloan, Inc. (DSI), as agent of the Peralta Community College District (District), has met with some members of the Construction and Building Trades Council of Alameda County (BTC). The purpose of the meetings was to discuss certain changes and additions to the Project Labor Agreement (PLA), originally negotiated in July, 2009. We have reached five (5) specific areas of mutual agreement: local hiring, committee structure, jurisdictional disputes, arbitrators and core employees. It is understood and agreed that, as a result, certain Articles of the PLA will be modified once the following is agreed to by the District Board of Directors:

1. Local Hiring: Article 16.1 of the existing PLA shall be modified with the additional language that follows: The agreement will allow placement” of graduates of the District’s construction related training programs into union apprenticeship programs, along with District students who may be graduates of other pre-apprenticeship programs such as the Cypress Mandela Training Center, provided that they meet the minimum requirements of the applicable Joint Apprenticeship Training Committee. The agreement will focus on the disadvantaged population in the District service area as a first source for direct placement. “Disadvantaged Population” shall mean Local Area Residents of the District’s six cities: Alameda, Albany, Berkeley, Emeryville, Piedmont and especially the City of Oakland who meet at least one of specified criteria, including but not limited to: household income below 50% of the Alameda County median, non-minor dependent youth, homeless, welfare recipients, have a history of involvement with the criminal justice system, are unemployed, or a single parent. To assure mutual satisfaction in quality of training, the BTC and the applicable trades will partner closely with the District’s training programs in an officially recognized advisory capacity.

- a. For each PLA covered project, the contractors will be responsible to ensure that it and/or its subcontractors hire at least one (1) new apprentice for the first \$1 million of construction value and for each succeeding \$5 million of construction contract value, the contractors and/or their subcontractors will be required to hire at least one (1) additional new apprentice. A new apprentice shall be defined as a Local Area Resident that has not worked in construction prior to the award date of the contract that they are being hired for or have been in state approved Labor Management Apprenticeship Program for no more than two years. All such apprentices should be graduates of approved construction related programs at Laney College or Laney graduates who have completed pre-apprenticeship training at programs with a known and successful track record of apprentice placement into jobs and is MC3 certified. All the pre-apprenticeship program graduates must be residents of The District service area and as a first source a member of the Disadvantaged Population, as described below. The District shall be responsible for developing and maintaining a list of such residents.
- b. “Disadvantaged Population” shall mean those Local Area Residents of the District’s six cities of: Alameda, Albany, Berkeley, Emeryville, Piedmont and especially the City of Oakland who meet at least one of the following criteria: household income below 50% of the Alameda County median, non-minor dependent youth (AB-12 youth – emancipated foster youth), homeless, welfare recipients, or veterans and have a history of involvement with the criminal justice system, are unemployed, or a single parent.
- c. Contractors will be required to document their good faith efforts to maximize the project work hours for the new hire apprentices. Contractors shall report those hours to a newly formed Joint Administrative Committee (JAC), as described below, which will evaluate those good faith efforts.
- d. Each Signatory Union will be responsible for dispatching/referring such Local Area Resident apprentices to the contractor if they are available, capable and willing to work on the covered projects. No one trade can be used to satisfy the goal by the provision of more than one (1) such first stage apprentices, unless required by the nature of the work and or agreed upon by the JAC.
- e. The Signatory Unions and contractors shall exercise, to the extent of their authority, their best efforts to recruit apprenticeship program applicants from the District service area and who are members of a Disadvantaged Population, as defined above. Further, for apprentices hired, there will be no limitation on where such apprentices will work subsequent to being hired for the covered projects. Contractors will be allowed to receive credit when utilizing apprentices for non-Project work during the life of the covered project, regardless of the location of the work.

- f. The Unions will cooperate with the District, contractors and the PLA Program Manager in conducting outreach activities to recruit and refer Local Area Residents applicants to apprenticeship programs. In addition, the Unions will work with designated pre-apprenticeship programs to promote graduates and enhance their entry into Apprenticeship programs.
- g. To the extent permitted by law and the Joint Apprenticeship Training Committee (JATC) requirements, the Unions will give credit to bona fide, provable past experience to applicants, including work for non-union contractors who become signatory to the PLA. The experience and practical knowledge of applicants will be reviewed and tested by the applicable JATC. Applicants will be placed at the appropriate stage of apprenticeship or journey level as the case may be. Final decisions will be the responsibility of the applicable JATC.
- h. On a quarterly basis, the signatory Unions agree to the following:
 - a) report to the PLA Program Manager in accordance with any limits set by applicable labor law, the availability and dispatch/placement of any new apprentices, as defined above on District projects.
 - b) assist the PLA Program Manager with maintaining a current list of Disadvantaged Population new apprentices available to work on the project.
 - c) provide the District and PLA Program Manager a report on the status of District identified Disadvantaged Population new apprentices, including but not limited to their placement and advancement who have signed a consent waiver.
- i. On an annual basis or upon request, the Union, District and the PLA Program Manager shall provide a report to the Board that shall include but not be limited to the local hiring and apprentice goal performance, as well as challenges and benefits of the PLA.
- j. The signatory Unions agree to co-host an annual job fair to provide maximum knowledge of the industry and apprenticeship opportunities to interested District students and other interested Local Area Residents.

2. Committee Structure:

- a. It is agreed to establish a four (4) person Joint Administrative Committee (JAC). This committee shall be comprised of two (2) representatives selected by the District, and two (2) representatives selected by the Union(s). Each representative shall designate an alternate who shall serve in his or her absence. The JAC shall meet as needed to review compliance with PLA policies including but not limited to local hire and grievance issues.


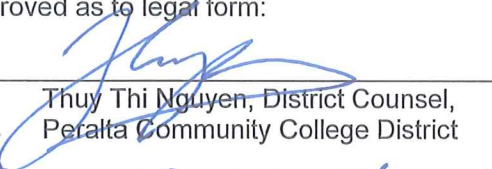
- b. There will be two subcommittees to the JAC, for the purpose of resolving grievances filed by any party. The composition of the first grievance subcommittee, which will only address grievances against contractors under Article 16 Local Hiring Program, will be one (1) representative from labor, one (1) representative from management and one (1) representative from a Community Based Organization, approved by mutual agreement. The composition of the second grievance subcommittee, which will address all other grievances, will be one (1) representative from labor and one (1) representative from District. The recommendations of both subcommittees will be made to the JAC. The final decision of the JAC will be binding upon all parties. In the event that no decision is made, then the matter will be referred to arbitration.
3. Jurisdictional Disputes: BTC will forward updated language for the resolution of jurisdictional disputes, to be included in the revised PLA)
4. Arbitrators: The updated list of arbitrators shall be:
 - a. For Article 6 Work Stoppages, Strikes, Sympathy Strikes and Lockouts to be forwarded by BTC;
 - b. For grievances found in Article 12.2 Step 3, arbitrators shall be: Barbara Kong-Brown, William Riker, Jerri-Lou Cossack, and others to be forwarded by BTC
 - c. For jurisdictional disputes found in Article 15.6, names can be found in the revised PLA.
5. Capacity Building/Core Workers: The Union(s) shall be the primary source of all craft labor employed on the Project. However, in the event that a small local Contractor has its own core workforce, the Contractor may request by name, and the Union(s) shall honor, referral of persons who demonstrate the following qualifications:
 - possess any license and/or certifications required by state or federal law for the Project work to be performed;
 - have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;
 - were on the Contractors' active payroll for at least sixty (60) out of the one hundred forty (140) calendar days prior to the contract award; and
 - have the ability to perform safely the basic functions of the applicable trade.
 - be a Local Area resident for at least six months prior to the hire date.
 - a. The Union(s) will first refer to such Contractors one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will thereafter refer one of such Contractors' "core" employees as a journeyman and shall repeat the process,

one and one, until such Contractors' crew requirements are met or until such Contractors have hired no more than five (5) Core Employees, whichever occurs first. Thereafter, all additional employees shall be hired exclusively from the Union(s)' hiring hall out-of-work list(s). For the duration of the Contractors' work the ratio shall be maintained and when the Contractors' workforce is reduced, Employees shall be laid off in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring. Contractors signatory to a Local, Regional, and/or National collective bargaining agreement(s) with Signatory Union(s) hereto shall be bound to use the hiring hall provisions contained in the relevant MLA of the affected Union(s), and nothing in the referral provisions of this Agreement shall be construed to supersede the local hiring hall provisions of the MLAs as they relate to such Contractors.

- b. All Contractors shall be bound by and utilize the registration facilities and referral systems established or authorized by the Signatory Union(s) so long as such procedures are in compliance with applicable federal, state or local law. The Contractor shall have the right to determine the competency of all employees and may reject any referral for any reason, provided that the Contractor complies with Article 22, Non-Discrimination, and in accordance with the applicable MLA.
- c. In accordance with the applicable Master Labor Agreement and in the event that referral facilities maintained by the Union(s) are unable, despite good faith efforts, to fill the request of a Contractor for employees within a forty-eight (48) hour period after such request is made by the Contractor, Saturdays, Sundays and Holidays excluded, the Contractor shall be free to obtain work persons from any source ("Alternative Employees"). Upon hiring Alternative Employees, the Contractor shall immediately notify the appropriate Union(s) of the name and address of the Alternative Employees hired, which Alternative Employees shall be bound by the provisions of this Article and the Union(s)' hiring hall rules.
- d. The Union(s) will exert their utmost efforts to assist the Joint Apprenticeship Training Committees in recruiting and training sufficient numbers of skilled craft persons to fulfill the requirements of the Contractors. The parties to this Agreement support the development of increased numbers of skilled construction workers from the Residents of Alameda County to meet the needs of the Project and the requirements of the industry generally. Accordingly, contingent upon request by the Contractor, the Unions agree to encourage the referral and utilization of Local Resident graduates of Peralta's construction related training programs as journeyman and apprentices on the Project and the entrance of Residents into apprenticeships and training programs, as long such Residents possess the requisite skills and qualifications. In the instance of

apparent noncompliance by any of the parties to the agreement, the matter may be referred to the grievance procedure in Article 17 of the existing PLA.

All of the above is the understanding of the District in relation to the execution of a Memorandum of understanding/Side Letter to modify or add to the Articles of the Project Labor Agreement executed July 21, 2009.

<p>PERALTA COMMUNITY COLLEGE DISTRICT</p> <p>By:  José M. Ortiz, Chancellor (Authorized Agent)</p> <p>Date: <u>1.14.15</u></p> <p>Approved as to legal form:</p> <p>By:  Thuy Thi Nguyen, District Counsel, Peralta Community College District</p> <p>Date: <u>12-23-14</u></p>	<p>BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY:</p> <p>A California corporation,</p> <p>Address: 100 Hegenberger Road, Suite 120 Oakland, California 94621.</p> <p>By: _____</p> <p>Title: _____</p> <p>Attest: _____</p> <p>_____ Print Name and Title (If Corporate: Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer)</p>
<p>Requisition No.: <u>Not Applicable</u></p> <p>Date: _____</p> <p>By: _____</p>	

END OF SECTION

NOTICE TO PROCEED WITH DESIGN

Dated: _____

TO: **[name of Design-Build Entity]**
(Design-Build Entity)

ADDRESS: **[address]**

PROJECT: **Laney College- Locker Room Renovation Project**
PCCD Project No. 19-20/11

You are notified that the Contract Time under the above Contract will commence to run on _____, 2020, for the Laney College- Locker room Renovation Project. By that date, you are to start performing your design obligations under the Contract Documents. In accordance with Paragraph 3.1 of Document 00 50 00 Agreement, the date of Substantial Completion of is _____, **20XX**, the date of Final Completion is _____, **20XX**.

Before you may start any Work at the site, you must:

PERALTA COMMUNITY COLLEGE DISTRICT

By: _____
[Name of Project Manager]
Project Manager

END OF DOCUMENT

NOTICE TO PROCEED WITH CONSTRUCTION

Dated: _____

TO: **[name of Design-Build Entity]**
(Design-Build Entity)

ADDRESS: **[address]**

PROJECT: **Laney College- Locker Room Renovation Project**
PCCD Project No. 19-20/11

You are hereby authorized to start performing your construction obligations under the Contract Documents. In accordance with Paragraph 2.1.2 of Document 00 50 00 Agreement, the date of Substantial Completion of [description of project increment] is _____, **20XX**, the date of Final Completion is _____, **20XX**.

Before you may start any Work at the site, you must:

PERALTA COMMUNITY COLLEGE DISTRICT

By: _____
[Name of Project Manager]
Project Manager

END OF DOCUMENT

NOTICE OF AWARD

Dated _____

TO: _____

ADDRESS: _____

CONTRACT FOR:

**PCCD Project No. 19-20/11
Title IX Locker Room Renovation Project Laney College**

The Contract Sum of your contract is _____ Dollars
(\$_____).

1. DBE shall provide the District with one (1) electronic copy of the DB documents.
2. You must comply with the following conditions by 2:00 p.m. on [__ **day** _____], [__ **date** _____].
 - a. Deliver to District two fully executed counterparts of Section 00 50 00 (Agreement).
 - b. Deliver to District one original Section 00 43 00 (Bond Accompanying Proposal), executed by you and your surety.
 - c. Deliver to District one original Section 00 45 00 (Proposal Certifications), executed by you and your surety.
 - d. Deliver to District one (1) original set of the insurance certificates with endorsements required under Article 15 of Section 00 50 00 (Agreement).
 - e. Project Labor Agreement (PLA) Addendum A: Agreed to Letter of Assent as set forth in Exhibit C (Project Labor Agreement) in Section 00 50 00 (Agreement). Submit one original.
3. Failure to comply with these conditions within the time specified will entitle District to consider your Bid abandoned, to annul this Notice of Award, and to declare your Bid security forfeited.
4. Within ten (10) Days after you comply with the conditions in paragraph 2 of this Section 00 51 03, District will return to you one fully executed copy of Section 00 50 00 (Agreement) from the Contract Documents.
5. Upon commencement of the Work, you and each of your Subcontractors shall certify and make available for inspection payroll records on forms provided by the Division of Labor Standards Enforcement, in accordance with Section 1776 of the California Labor Code.

6. Send all of the required above listed items to:

**Peralta Community College District
Attn: Nicanor Custodio / Purchasing Buyer
333 East 8th Street, Oakland, CA 94606**

PERALTA COMMUNITY COLLEGE DISTRICT
("District")

BY: _____
Project Manager Name

END OF DOCUMENT

NOTICE OF INTENT TO AWARD DESIGN-BUILD CONTRACT

DATE POSTED: [insert date]
PROJECT NUMBER: **19-20/11**
PROJECT TITLE: **LANEY COLLEGE- LOCKER ROOM RENOVATION PROJECT**

Leigh Sata, the **Executive Bonds Manager** of the Peralta Community College District, intends to recommend to the Board of Trustees of the Peralta Community College District on [Month Day, Year] the award of the above-referenced Project to **[Name of Design-build Entity]**.

If approved, a formal Notice of Award will be issued.

SIGNATURE _____ DATE _____

[_____] ,
[Name]
[_____]]
[Title]

END OF DOCUMENT

ESCROW BID DOCUMENTATION

1. Requirement to Escrow Bid Documentation

- a. Design Builder shall submit, within seven (7) days after the date of the Notice of Award, one copy of all documentary information received or generated by Design Builder in preparation of bid prices for this Contract, as specified herein. This material is referred to herein as "Escrow Bid Documentation." The Escrow Bid Documentation of the Design Builder will be held in escrow for the duration of the Contract.
- b. Design Builder agrees, as a condition of award of the Contract, that the Escrow Bid Documentation constitutes all written information used in the preparation of its bid, and that no other written bid preparation information shall be considered in resolving disputes or claims. Design Builder also agrees that nothing in the Escrow Bid Documentation shall change or modify the terms or conditions of the Contract Documents.
- c. The Escrow Bid Documentation will not be opened by District except as indicated herein. The Escrow Bid Documentation will be used only for the resolution of change orders and claims disputes.
- d. Design Builder's submission of the Escrow Bid Documentation, as with the bonds and insurance documents required, is considered an essential part of the Contract award. Should the Design Builder fail to make the submission within the allowed time specified above, District may deem the Design Builder to have failed to enter into the Contract, and the Design Builder shall forfeit the amount of its bid security, accompanying the Design Builder's bid, and District may award the Contract to the next most advantageous proposal.
- e. NO PAYMENTS WILL BE MADE, NOR WILL DISTRICT ACCEPT PROPOSED CHANGE ORDERS UNTIL THE ABOVE REQUIRED INFORMATION IS SUBMITTED AND APPROVED.
- f. The Escrow Bid Documentation shall be submitted in person by an authorized representative of the Design Builder to the District.

2. Ownership of Escrow Bid Documentation

- a. The Escrow Bid Documentation is, and shall always remain, the property of Design Builder, subject to review by District, as provided herein.
- b. Escrow Bid Documentation constitute trade secrets, not known outside Design Builder's business, known only to a limited extent and only by a limited number of employees of Design Builder, safeguarded while in Design Builder's possession, extremely valuable to Design Builder, and could be extremely valuable to Design Builder's competitors by virtue of it reflecting Design Builder's contemplated techniques of construction. Subject to the provisions herein, District agrees to safeguard the Escrow Bid Documentation, and all information contained therein, against disclosure to the fullest extent permitted by law.

3. Format and Contents of Escrow Bid Documentation

- a. Design Builder may submit Escrow Bid Documentation in its usual cost-estimating format; a standard format is not required. The Escrow Bid Documentation shall be submitted in English.
- b. Escrow Bid Documentation must clearly itemize the estimated costs of performing the work of each bid item contained in the bid schedule, separating bid items into sub-items as required to present a detailed cost estimate and allow a detailed cost review. The Escrow Bid Documentation shall include all subcontractor bids or quotes, supplier bids or quotes, quantity takeoffs, crews, equipment, calculations of rates of production and progress, copies of quotes from subcontractors and suppliers, and memoranda, narratives, add/deduct sheets, and all other information used by the Design Builder to arrive at the prices contained in the bid proposal. Estimated costs should be broken down into Design Builder's usual estimate categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract costs as appropriate. Plant and equipment and indirect costs should be detailed in the Design Builder's usual format. The Design Builder's allocation of indirect costs, contingencies, markup, and other items to each bid item shall be identified.
- c. All costs shall be identified. For bid items amounting to less than \$10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials, and subcontracts, as applicable, are included and provided that indirect costs, contingencies, and markup, as applicable, are allocated.
- d. Bid Documentation provided by District should not be included in the Escrow Bid Documentation unless needed to comply with the following requirements.

4. Submittal of Escrow Bid Documentation

- a. The Escrow Bid Documentation shall be submitted by the Design Builder in a sealed container within seven (7) days after the date of the Notice of Award. The container shall be clearly marked on the outside with the Design Builder's name, date of submittal, project name and the words "Escrow Bid Documentation – Intended to be opened in the presence of Authorized Representatives of Both District and Design Builder".
- b. By submitting Escrow Bid Documentation, Design Builder represents that the material in the Escrow Bid Documentation constitutes all of the documentary information used in preparation of the bid and that the Design Builder has personally examined the contents of the Escrow Bid Documentation container and has found that the documents in the container are complete.
- c. If Design Builder's proposal is based upon subcontracting any part of the work, each subcontractor whose total subcontract price exceeds 5 percent of the total contract price proposed by Design Builder, shall provide separate Escrow Documents to be included with those of Design Builder. Those documents shall be opened and examined in the same manner and at the same time as the examination described above for Design Builder.
- d. If Design Builder wishes to subcontract any portion of the Work after award, District retains the right to require Design Builder to submit Escrow Documents for the subcontractor before the subcontract is approved.

5. Storage, Examination and Final Disposition of Escrow Bid Documentation

- a. The Escrow Bid Documentation will be placed in escrow, for the life of the Contract, in a mutually agreeable institution. The cost of storage will be paid by Design Builder for the duration of the project until final Contract payment. The storage facilities shall be the appropriate size for all of the Escrow Bid Documentation and located conveniently to both District's and Design Builder's offices.
- b. The Escrow Bid Documentation shall be examined by both District and Design Builder, at any time deemed necessary by either District or Design Builder, to assist in the negotiation of price adjustments and change orders or the settlement of disputes and claims. In the case of legal proceedings, Escrow Bid Documentation shall be used subject to the terms of an appropriate protective order if requested by Design Builder.

Examination of the Escrow Bid Documentation is subject to the following conditions:

- (1) As trade secrets, the Escrow Bid Documentation is proprietary and confidential to the extent allowed by law.

- (2) District and Design Builder shall each designate, in writing to the other party seven (7) days prior to any examination, the names of representatives who are authorized to examine the Escrow Bid Documentation. No other person shall have access to the Escrow Bid Documentation.
 - (3) Access to the documents may take place only in the presence of duly designated representatives of both District and Design Builder. **If Design Builder fails to designate a representative or appear for joint examination on seven (7) days notice, then the District representative may examine the Escrow Bid Documentation alone upon an additional three (3) days notice if a representative of Design Builder does not appear at the time set.**
- c. The Escrow Bid Documentation will be returned to Design Builder at such time as the Contract has been completed and final settlement has been achieved.

END OF SECTION

SECTION 00 51 60

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

P.C.C. Section 22300

This Escrow Agreement ("Escrow Agreement") is made and entered into this ____ day of _____, 20____, by and between the Peralta Community College District (hereinafter "District"), whose address is _____, California, and _____ whose place of business is located at _____, ("Design Builder"); and _____, a state or federally chartered bank in the state of California, whose place of business is located at _____, ("Escrow Agent").

For the consideration hereinafter set forth, District, Design Builder, and Escrow Agent agree as follows:

1. Pursuant to section 22300 of Public Contract Code of the State of California, which is hereby incorporated by reference, Design Builder has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract No. _____ entered into between District and Design Builder for the _____, in the amount of _____ dated, _____, 20____, (the "Contract"). Alternatively, on written request of Design Builder, District shall make payments of the retention earnings directly to Escrow Agent. When Design Builder deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify District within ten (10) calendar days of the deposit. The market value of the securities at the time of substitution and at all times from substitution until the termination of the Escrow Agreement shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between District and Design Builder. Securities shall be held in name of _____, and shall designate Design Builder as beneficial owner.
2. District shall make progress payments to Design Builder for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified above.
3. When District makes payment of retention earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Design Builder until the time that the escrow created under this Escrow Agreement is terminated. Design Builder may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the Parties shall be equally applicable and binding when District pays Escrow Agent directly.
4. Design Builder shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of District. These expenses and payment terms shall be determined by District, Design Builder, and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Design Builder and shall be subject to withdrawal by Design Builder at any time and from time to time without notice to District.

6. Design Builder shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from District to Escrow Agent that District consents to withdrawal of amount sought to be withdrawn by Design Builder.
7. District shall have the right to draw upon the securities in event of default by Design Builder as determined solely by District. Upon seven (7) days written notice from District to Escrow Agent of an event of default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by District.
8. Upon receipt of written notification from District certifying that the Contract is final and complete, and that Design Builder has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Design Builder all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on written notifications from District and Design Builder pursuant to Paragraphs 5, 6 and 8, inclusive, of this Escrow Agreement, and District and Design Builder shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth above. With respect to paragraph 7, Escrow Agent shall rely solely on District's notification that an event of default has occurred, and shall disregard Design Builder's notifications that may claim to the contrary.
10. Names of persons who are authorized to give written notice or to receive written notice on behalf of District and on behalf of Design Builder in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of District:

On behalf of Design Builder:

Title

Title

Name

Name

Signature

Signature

Address

Address

On behalf of Escrow Agent:

_____ Title

_____ Name

_____ Signature

_____ Address

At the time of Escrow Account is opened, District and Design Builder shall deliver to Escrow Agent a fully executed of this Agreement.

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

On behalf of District:

On behalf of Design Builder:

_____ Title

_____ Title

_____ Name

_____ Name

_____ Signature

_____ Signature

_____ Address

_____ Address

On behalf of Escrow Agent:

_____ Title

_____ Name

_____ Signature

_____ Address

ACCOUNT #: _____
(For Escrow Deposit)

END OF SECTION

SECTION 00 52 00

PRE-PROPOSAL MEETING AGREEMENT AND WAIVER OF CLAIMS

This Agreement and Waiver of Claims ("Agreement and Waiver") is made and entered into by and between the PERALTA COMMUNITY COLLEGE DISTRICT ("District" or "PCCD"), and pre-qualified _____ Proposers

_____ (hereinafter "Proposer(s)").

RECITALS

1. Pursuant to its "Request for Pre-Qualification of Design-Build Entities for the Peralta Community College District Laney College- Locker Room Renovation Project," dated _____, District pre-qualified ____ Design-Build Entities, the Proposers, to submit Proposals to design and construct Project No. 19-20/11.
2. On _____, District issued to Proposers a "Request for Proposals From Proposers" for Project No. 19-20/11. In that Request, District listed certain mandatory pre-Proposal conferences to be attended by Proposers. District also stated that additional pre-Proposal meetings may be scheduled as required by District - see Section 00 10 00 (Request for Proposals). The purpose of this Agreement and Waiver is to define and enable such additional pre-Proposal meetings.
3. By their execution of this Pre-Proposal Meeting Agreement and Waiver of Claims document Proposers have evidenced their desire for confidential pre-Proposal meetings and Site tours to be held between the District and each Proposer separately in order to facilitate each Proposer's independent understanding of the Bridging Documents and to facilitate each Proposer's development of a unique and competitive Proposal offering Best Value to the District.
4. The District has determined that confidential pre-Proposal meetings and Site tours are likely to increase Proposers' independent understanding of the District's intent for the Project as expressed by and through the Bridging Documents and may help refine Project requirements and specifications. Accordingly, District finds that such confidential meetings and Site tours are likely to increase competition between Proposers and enhance the Best Value delivered to the District for the Project.

Therefore, District and Proposers mutually agree as follows:

AGREEMENT

5. District will hold confidential pre-Proposal meetings ("Meetings") and Site tours ("Tours") independently with each pre-qualified Proposer. District will give each Proposer an equal opportunity for the same number of Meetings and Tours. Should the District exercise its right to issue a Request for Supplemental Information (RSI), the District may hold additional confidential pre-Response meeting (also "Meetings") with each pre-qualified Proposer who has submitted a Proposal and is otherwise eligible to respond to an RSI.
6. In order to provide consistency of information and responses to Proposers, District will identify a core group of District representatives and will exercise best efforts to cause that core group to attend each Meeting and Tour requested by each Proposer. To the extent Proposers request Meetings or Tours addressing a specific system or aspect of Project

design that require the attendance of additional District representatives or consultants, District will exercise best efforts to cause the same additional District representatives or consultants to attend each such Meeting or Tour.

7. Meetings. Meetings may be held at the Project Site or off-site at a location mutually agreed to by District and Proposer. Proposers agree that off-site Meetings may be held at the offices of any Proposer. Additional pre-Proposal Meetings, normally limited to one additional meeting per month per Proposer, may be scheduled at the request of Proposers. Pre-Response Meetings held subsequent to the issuance of an RSI will be scheduled by agreement of the District and the Proposers. A Proposer's request for an additional Meeting will be shared with other Proposers.
8. Confidentiality. District will exercise best efforts to cause all information and discussion exchanged during each Meeting and Tour to remain confidential as between the District and the Proposer present at that Meeting or Tour. To that end, District will cause each individual present at each Meeting or Tour to sign a joint Confidentiality Agreement in the form attached as Exhibit A to this Agreement and Waiver. However, District and Proposers agree that issues relating to compliance with Program, Basis or Design criteria, Contract Documents, or Bridging Documents, or relating to changes to Project requirements that arise out of Meetings or Tours will be documented in written form and distributed to Proposers as Addenda.
9. Waiver of Claims. In order to induce the District to hold Meetings and Tours, Proposers hereby waive their right, individually and collectively, to object to or protest the Design Builder selection process for the Project because of such Meetings or Tours, or because of anything related in any way to such Meetings or Tours.

***** CAUTION: THIS IS A WAIVER - READ BEFORE EXECUTING *****

BY: _____ BY: _____

Its: _____ Its: _____

BY: _____ BY: _____

Its: _____ Its: _____

PERALTA COMMUNITY COLLEGE DISTRICT

BY: _____

Its: _____

END OF DOCUMENT

(EXHIBIT A FOLLOWS NEXT PAGE)

Exhibit A

Pre-Proposal Meeting/Tour Confidentiality Agreement

1. **CONFIDENTIAL AND PROPRIETARY NATURE OF THE INFORMATION.** The undersigned each agree, by affixing their signatures below, to treat all ideas or information discussed, displayed, or exchanged during the Meeting/Tour described in paragraph 4 below as confidential and proprietary to the single Proposer listed in paragraph 4 below.
2. **RESTRICTED USE OF CONFIDENTIAL INFORMATION.** Except as among themselves to the extent required to perform or respond to Section 00 10 00 (Request for Proposal), the undersigned each agree not to reproduce, transmit, use, or disclose any ideas or information discussed, displayed, or exchanged during the Meeting/Tour described in paragraph 4 below without the advance written consent of both the District and the single Proposer listed in paragraph 4 below.
3. **EXCEPTIONS.** The obligations and restrictions above do not apply to information that: (a) was or becomes generally available to the public prior to, and other than as a result of, a disclosure by the undersigned or the undersigned's representative(s) or (b) was available, or becomes available, to the undersigned on a non-confidential and non-proprietary basis prior to its disclosure to the undersigned during the Meeting/Tour described below.
4. **MEETING/TOUR INFORMATION:**
Date of Meeting/Tour: _____
Location of Meeting/Tour: _____
Name of Proposer: _____

I have read paragraphs 1 through 4 above and, with my signature below, I hereby agree that I will not reproduce, transmit, use, or disclose any ideas or information discussed, displayed, or exchanged during the Meeting/Tour described in paragraph 4 above, except as is permitted by this Confidentiality Agreement.

Signature	Printed Full Name	Organization / Entity

I have read paragraphs 1 through 4 above and, with my signature below, I hereby agree that I will not reproduce, transmit, use, or disclose any ideas or information discussed, displayed, or exchanged during the Meeting/Tour described in paragraph 4 above, except as is permitted by this Confidentiality Agreement.

Signature	Printed Full Name	Organization / Entity

END OF SECTION