

**PERALTA COMMUNITY COLLEGE DISTRICT  
REQUEST FOR QUALIFICATIONS**

**RFQ # 20-21/06**

**Design-Build Services, 2118 Milvia Street  
Berkeley City College**

NOTICE IS HEREBY GIVEN that the Peralta Community College District ("District") is seeking to prequalify and develop a shortlist of design-build entities or design-build teams to submit proposals to design and construct the District's 2118 Milvia Street Project ("Project"), in accordance with Education Code section 81700 et seq. Only respondents that have been shortlisted by the District in response to this Request for Qualifications ("RFQ") will be eligible to submit proposals in response to the District's subsequent Request for Proposals ("RFP") for the Project.

Respondents to this RFQ shall submit a fully completed Statement of Qualifications ("SOQ"), using the District's standard prequalification template for design-build projects, as further described herein.

**ALL RESPONSES ARE DUE BY 2:00 P.M. ON FRIDAY, NOVEMBER 6, 2020.**

**Deliver through the following way:**

- I. ELECTRONICALLY** using the Peralta Community College website, Purchasing Department through the following link:

<https://build.peralta.edu/vendor-registry>

In-person, Mail, Oral, telegraphic, facsimile, telephone, or email SOQs will not be accepted. SOQs received after this date and time will not be accepted and will be returned unopened.

District reserves the right to waive irregularities and omissions in the information contained in any SOQ, and to make all final determinations. District may use other sources of information outside of the SOQs to investigate respondents or to verify answers.

Each SOQ must be certified under penalty of perjury by the respondent. If any information provided by a respondent becomes inaccurate, the respondent must immediately notify District and provide updated, accurate information in writing, under penalty of perjury. District reserves the right to suspend or rescind prequalification at any time based on subsequently learned information.

Questions regarding this RFQ may be directed in writing via <https://build.peralta.edu/vendor-registry>, and must be submitted on or by **2:00 P.M. TUESDAY, October 27, 2020.**

A **Mandatory** Pre-Qualification video conference meeting will be held on **October 13, 2020 at 10:00A.M. via Zoom:**

<https://cccconfer.zoom.us/j/96213877346>

**I. RFQ SCHEDULE SUMMARY**

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

<b>DEADLINE</b>	<b>ACTION ITEM</b>
<b>October 2, 2020</b>	Release of RFQ.
<b>October 13, 2020 at 10:00 A.M.</b>	<b><u>Mandatory</u></b> Pre-Qualification Video Conference
<b>October 27, 2020 at 2:00 P.M.</b>	Last day to receive written questions from respondents.
<b>November 3, 2020 at 2:00 P.M.</b>	Last day for District to issue addenda or answer questions.
<b>November 6, 2020 at 2:00 P.M</b>	Deadline for submissions in response to RFQ.
<b><u>Anticipated</u> Late-November , 2020</b>	Release of RFP to shortlisted respondents.

**II. PROJECT DESCRIPTION AND SCOPE OF SERVICES**

Pursuant to Education Code section 81700 et seq., the District is seeking a design-build entity or team (“DBE”) to design and construct the District’s **2118 Milvia Street Project** (“Project”), located at Berkeley City College. The Project is further defined in the attached **APPENDIX A**, along with the District’s expected cost range and schedule for the Project. The District’s performance specifications, which the selected DBE must adhere to in delivering the Project, will be made available to shortlisted respondents at the RFP stage.

The selected DBE must be appropriately licensed and registered in the State of California for architectural, engineering, and construction services as needed to complete the Project. In addition, the selected 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.

Any contractor from the selected DBE must be registered with the Department of Industrial Relations (“DIR”) as required by law. The selected DBE will be required to comply with the Labor Code prevailing wage requirements and the District’s bonding and insurance requirements. The selected DBE shall be required to work cooperatively with District staff, the Board of Trustees, all other technical consultants, the criteria architect, the project inspector, and any program and/or construction manager, if any, retained by the District for

the Project, citizens' oversight committee, other District committees, and the community to facility timely and professional completion of the Project.

All vendors (firm/company/contractor) should follow the Alameda County Health Department's mandated COVID-19 workplace safety and health guidelines. Workers working under the Contract 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. Vendors shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work.

Information item regarding access to Build Peralta Website: The PCCD Build Peralta website has information about the Districts Bond Program and has additional information about the programs that are in place for all of the PCCD campuses including Berkeley City College. Information about the SLBE/SELBE Program and the PCCD Project Labor Agreement (PLA) can be found at this location. The link to the Build Peralta website is: <https://build.peralta.edu/doing-business>. The Project Labor Agreement can be found in Appendix E.

General Project Schedule: Issue the Request for Proposal "RFP" up to three (3) prequalified DBE's in late-November 2020, award DBE Contract in February 2021 and an anticipated DBE start in April 2021 and estimated start of construction in Q4-2022 and completion of Construction in Q4 2024.

### **III. DESIGN-BUILD PROCUREMENT PROCESS**

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

1. Prequalification – First, by this RFQ, the District intends to prequalify and shortlist up to three (3) highest scoring respondents using a standard template request for statements of qualifications, as outlined in **Appendix B**. The significant factors the District reasonably expects to consider in evaluating qualifications are identified in Section VIII, below.
2. Design-Build Competition – Second, the District will issue an RFP, inviting up to three (3) short-listed, prequalified respondents to submit competitive proposals for the Project. The District will use a **best value selection method** for evaluating proposals. The procedure for final selection will be as follows:
  - a. The District will evaluate responsive proposals using only the criteria and selection procedures specifically identified in the RFP.
  - b. At a minimum the request for proposal process will include the following components:
    - (1) Technical Expertise – Written narratives to demonstrate experience and capability with design and construction of like-projects, considering only design-build experience and California school design and construction experience.
    - (2) Proposed project schedule, including design and construction phases.

- (3) Proposed Design-Concepts, project features, alternative options, and solutions, building off of the criteria documents, in order to demonstrate budget adherence with the DBE Target Budget described herein.
  - (4) Life-Cycle cost analysis over 15 years or more.
  - (5) Skilled labor force availability - Agreement with a registered apprenticeship program that meets the requirements of Education Code section 81703, subdivision (c)(2)(F).
  - (6) Safety record – DBE’s proposed safety plan and experience modification rate and average total recordable injury/illness rate meet the requirements of Education Code section 81703, subdivision (c)(2)(G).
  - (7) Price Proposal - Including design costs, construction fee, general conditions costs, mark-up, insurance and bonds.
  - (8) Organization of RFP, insurance adherence, acknowledgment of the form of agreement (in which an initial copy is included hereto as Appendix C), and certifications.
  - (9) Participation in a collaborative interview during the RFP phase and a final interview/proposal presentation after submission of the RFP.
- c. The District may, at its discretion, request proposal revisions and hold discussions and negotiations with responsive proposers. The RFP will define applicable procedures to ensure that discussions or negotiations are conducted in good faith.
  - d. The two short-listed respondents receiving the RFP that submit a responsive proposal but who are not selected, will be eligible to receive a stipend not to exceed Twenty Five Thousand Dollars (\$25,000) for their efforts. A final stipend agreement will be included in the RFP. However, an initial copy is included hereto for reference as Appendix D.
  - e. The District will rank responsive proposers based on a determination of value provided, but shall not be required to rank more than three (3) proposers.
  - f. The District will award the contract, if at all, to the responsible DBE whose proposal is determined by the District to be the best value.

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. FULL OPPORTUNITY**

The District hereby affirmatively ensures that Disadvantaged Business Enterprise (“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 RFQ 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.

The District's Small Local Business Enterprise (SLBE) and Small Emerging Local Business Enterprise (SELBE) Programs are applicable to this Project. The description of the SLBE and SELBE Programs can be found at the following link on the PCCD Purchasing website: <https://web.peralta.edu/business/files/2011/06/SLBE-Program-and-Affidavit-.pdf>. The document can be downloaded from the Peralta Small Local Business Program section, at the bottom of the main page.

## **V. LIMITATIONS**

This RFQ is neither a formal request for bids, nor an offer by the District to contract with any party responding to this RFQ. The District reserves the right to add additional prequalified respondents for consideration after distribution of this RFQ, 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 issuing of a subsequent RFP and awarding of the contract pursuant to the subsequent RFP, if at all, is at the sole discretion of the District.

The District makes no representation that participation in this RFQ 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 response to this RFQ.

SOQs submitted by respondents are not public records and are not open to public inspection. All information provided will be kept confidential to the extent permitted by law. The contents, however, may be disclosed to third parties for purpose of verification or investigation. State law requires that the names of respondents applying for prequalification status shall be public records subject to disclosure.

## **VI. RESTRICTIONS ON LOBBYING AND CONTACTS**

From the period beginning on the date of the issuance of this RFQ and ending on the date of the award of the contract, no person, or entity submitting in response to this RFQ, 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 RFQ, the evaluation or selection process/or the award of the contract with any member of the District, Board of Trustees, selection members, or any member of the Citizens' Oversight Committee, (except as identified in Section III.2.c described herein). Any such contact shall be grounds for the disqualification of the respondent submitting a SOQ.

## **VII. STANDARD TEMPLATE FOR STATEMENT OF QUALIFICATIONS**

Attached hereto as **APPENDIX B** is the District's prequalification template. Respondent must complete the prequalification template, certify its answers under penalty of perjury, and attach all information requested herein. The completed, certified prequalification template, together with all attachments, constitutes respondent's SOQ.

Each SOQ must be certified under penalty of perjury. If any information provided by a respondent becomes inaccurate, the respondent must immediately notify District and provide updated, accurate information in writing, under penalty of perjury.

## **VIII. EVALUATION**

The District will evaluate all timely submitted SOQs. Each SOQ must complete. Incomplete SOQs will be considered nonresponsive and grounds for disqualification. The District retains the sole discretion to determine issues of compliance and to determine whether a respondent is responsive and qualified.

Significant factors the District reasonably expects to consider in evaluating qualifications are as follows:

- All required licenses and registration to design and construct the Project, with no recent revocations or suspensions;
- Established performance history, including an absence of criminal or civil violations or significant disputes;
- Capacity to obtain required bonds and insurance of the Project;
- Design expertise and experience (inc. related projects);
- Construction expertise and experience (inc. related projects);
- Acceptable safety record;
- Skilled labor force availability;
- Financial capacity to complete the Project;
- Team experience with Design-Build (in an urban setting and with a community college district), including key staff with DBIA credentials;
- Team experience with facility/building type;
- Team performance record (quality, schedule, cost); and
- Proposed team composition, including capability to work as an integrated project team and manage this project as a singular DBE.

District may use other sources of information outside of the SOQs to investigate respondents or verify answers. District's investigation may extend beyond contacting project references identified in SOQs.

After completing its evaluation, the District will notify respondents selected for prequalification.

## **IX. FINAL DETERMINATION**

Prequalification is at the sole discretion of the District. The District reserves the right to waive irregularities and omissions in the information contained in any SOQ, and to make all final determinations. The District further reserves the right to suspend or rescind prequalification at any time based on subsequently learned information.

The District makes no representation that participation in this RFQ 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 SOQ or other response to this RFQ.

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

## **APPENDIX A**

### **PROJECT DESCRIPTION, SCOPE OF SERVICES AND PROJECT REQUIREMENTS**

**PROJECT:** 2118 Milvia Street Project – Berkeley City College

#### **PROJECT DESIGN AND CONSTRUCTION COST ESTIMATE:**

**Design and Construction (DBE Target Budget):** \$63,000,000 (including DBE’s design contingency, DBE’s construction contingency, and project Escalation)

**Total Project Cost as Defined in the Bond Spending Plan:** \$83,851,707 (this includes the DBE’s Target Budget, District Soft Costs, and District Contingencies).

#### **PROJECT DESIGN, REVIEW, AND CONSTRUCTION SCHEDULE:**

The 2118 Milvia Street Project is anticipated to be awarded to the successful Design-Builder in Q1 of 2021. It is anticipated that construction of this project will begin in Q4 of 2022 and will be completed by Q4 of 2024.

#### **PROJECT DESCRIPTION:**

Founded in 1964, the Peralta Community College District (“PCCD” or “District”) is a collaborative community of colleges comprised of Berkeley City College, College of Alameda, Laney College, and Merritt College in Oakland, California. The Peralta Colleges provide a dynamic multicultural learning environment offering accessible, high-quality educational programs and services, including two-year degrees, certificates, and university transfer programs, to more than 30,000 students. The District currently has an active program at all four sites. This capital construction project is funded by a combination of sources, including local bond Measures A and G. Approved by the voters in 2006, Measure A allows the District to issue and sell bonds of up to \$390,000,000. Measure G was approved by the voters in November 2018 and allows the District to issue and sell bonds up to \$800,000,000.

The project involves demolition of the existing three story building (roughly 25,000 sq. ft.) and its replacement with a new six story 60,000 sq. ft. building. This project will expand classroom space, provide offices for faculty and administrators, include art studios, outdoor roof space, and provide for student activities services; including a Health Center, Veterans, Multi-Cultural Center, Bookstore, Student Lounge, and Learning Resource Center. It is planned that this project will obtain LEED Silver at a minimum.

#### **ANTICIPATED SCOPE OF SERVICES:**

The District is looking for an experienced design-build entity or team (“DBE”) to be a proactive team-member in delivering this project within the Anticipated Project Time Frame, Project Design and Construction Cost Estimate, and with a high level of Design-Excellence. The scope of work includes, but is not limited to, providing collaboration phase services to complete the criteria documents, design phase services, preconstruction services, project management services, labor, geotechnical surveys, survey services, hazardous materials abatement, demolition, coordination, materials, tools, and equipment to complete construction of the above-mentioned Project in Berkeley, CA. The following list outlines the types of services that the DBE may provide upon selection and award of a DBE contract. The list is not intended to be exhaustive and the services described in the final form of the Design Build Agreement will be more explicit. An initial copy of the Form of Agreement is

included hereto as Appendix C (Please note that the Form of Agreement is only a draft at this time and is subject to change during course of the RFQ and RFP process). The purpose of the list is to provide the DBE a frame of reference in responding to the questionnaire that follows.

The DBE will be responsible for all design, permitting, agency (including, without limitation, Division of the State Architect ("DSA") review and approval, construction and agency (including DSA) close-out of the Project, in accordance with the requirements of the RFP, Criteria Documents, and District's Design Standards (to be provided by the District in the RFP Phase). Such services shall include, without limitation:

1. Provide project management of DBE's work activities from design to permitting and agency approvals through completion of construction and close-out, including DSA final close-out. The District will pay all agency fees.
2. Provide full design and engineering services (including, without limitation, hazmat testing, geotechnical and survey services) necessary to complete the design and secure approval of all agencies, including, without limitation, DSA, for the Project and in accordance with the requirements of the RFP, Criteria Documents, and District's Design Standards. Design services generally required are evaluation of the site and of the design criteria documents and other Project-related information; preparation of a preliminary schedule and preliminary estimate; coordinating and obtaining all planning permits; preparing conceptual design, schematic design, and design development documents, including supporting the District's design review process, attending design review meetings and resolving review comments to the satisfaction of the District; preparing construction documents; securing design approval of DSA and other agencies; and performing work necessary to prepare and submit an acceptable Guaranteed Maximum Price ("GMP") proposal.
3. Provide accurate and timely estimates of Project costs, as will be described in the Design-Build Agreement.
4. Develop the Guaranteed Maximum Price ("GMP"), in conjunction with the District, for the Project, as will be set forth in the RFP and Design-Build Agreement, and provide a commitment to the GMP. Such work will include some or all of the following, without limitation, design completion, value engineering, detailed cost estimating (including variables and options in order to meet the District's budget), and development of the different trades' scopes of work, bidding, and preparation of a phased GMP proposal. A minimum of three bids, or "Best Value" proposals, is expected for each trade, except that, for work to be performed by the Design-Builder or any prequalified subcontractor listed in the Proposal, the Design-Builder shall submit sufficient information to establish that its price is competitive and reasonable for the area.
5. Provide all construction work necessary to complete the project. Construction services generally required are execution of subcontracts; provide on-site support and logistics, including but not limited to temporary construction office trailers and equipment; supervise and direct the work; ensure a safe project/site; participate in project meetings; manage the construction costs (ensure costs allocated to construction contingency have entitlement and meet the contract requirements prior to submission to the District Representative); coordinate the work with the different subcontractors in an efficient manner; update the monthly construction schedule; coordinate equipment start-up and acceptance testing; training; prepare record

construction documents; and close-out of the project. Necessary accommodations will need to be made to ensure normal educational activities are minimally impacted during the construction process.

6. Provide construction planning, phasing and scheduling during design and through construction completion.
7. Develop and maintain a Project schedule that incorporates all tasks and approvals of all involved parties necessary to complete the Project within the contract durations.
8. Provide preconstruction and construction quality control.

**BONDS REQUIRED:**

As part of the RFQ Response, each firm is required to provide evidence of available bonding capacity of \$63,000,000 + 10% for this Project.

**GENERAL CONTRACTOR'S LICENSE:**

Responding DBE's must have a valid California Contractor's A or B License to submit qualifications for this project.

**PUBLIC WORKS CONTRACTOR REGISTRATION:**

Responding DBE's are required that all contractors participating in this RFQ must register as public works contractor with the Department of Industrial Relations, State of California, in accordance with Labor Code section 1771.1

**PREVAILING WAGES:**

Respondent's attention is called to the requirements for payment of prevailing wages for work not covered by higher rates under the PLA.

**PROJECT LABOR AGREEMENT (PLA):**

This project is subject to the District's PLA. The successful proposer and its trade subcontractors shall agree to be bound by: (i) a PLA entered into by the District that will bind all contractors and subcontractors performing work on the project to use a skilled and trained workforce; (ii) the extension or renewal of a PLA that was entered into by the District prior to January 1, 2017; or (iii) a PLA entered into by the DBE that will bind the DBE and all its subcontractors at every tier performing work on the project to use a skilled and trained workforce.

Information about the Districts PLA can be found at this location:  
<https://build.peralta.edu/doing-business>

**APPENDIX B**

**STANDARD TEMPLATE FOR STATEMENT OF QUALIFICATIONS**

**SUBMISSION OF QUALIFICATIONS**

In one package, the Design-Build Team’s Prequalification Questionnaire including all sections and the required Project Data Sheets and all other attachments indicated. RFQ Response shall be organized in Sections 1 through 10 corresponding to the Questionnaire. Supplemental sheets shall be included in the Section to which they relate and shall reference the question number.

- (1) Section I – Information about Design-Build Entity Members
- (2) Section II – Licensing and Registration
- (3) Section III – Performance History
- (4) Section IV – Bonds and Insurance
- (5) Section V – Safety
- (6) Section VI – Project Experience and References
- (7) Section VII – Relevant Experience of Key Personnel
- (8) Section VIII – SLBE/SELBE Compliance
- (9) Section IX – Skilled and Trained Workforce Compliance
- (10) Section X – Exhibits

**SCORING**

SECTION I = PASS/FAIL  
SECTION II = PASS/FAIL  
SECTION III = 16 POINTS  
SECTION IV = Pass/Fail  
SECTION V = 10 POINTS  
SECTION VI = 32 POINTS  
SECTION VII = 32 POINTS  
SECTION VIII = 10 POINTS  
SECTION IX = PASS/FAIL  
SECTION X = PASS/FAIL

**TOTAL MAX POINTS = 100 POINTS**

**PERALTA COMMUNITY COLLEGE DISTRICT  
PREQUALIFICATION TEMPLATE  
DESIGN-BUILD ENTITIES  
APPENDIX B**

This standard prequalification template "Appendix B" should be completed by design-build entities or design-build teams seeking to prequalify for a Peralta Community College District ("District") design-build project in accordance with Education Code section 81700 et seq.

As used in here:

- "DBE" refers both design-build entities and design-build teams.
- "Member" refers to individuals or entities identified as members of the design-build team, including the general contractor and, if utilized in the design of the project, all electrical, mechanical, and plumbing contractors.
- "Associates" refers to all current officers, owners, and/or partners of DBE and of any Member.

Wherever additional space is needed to answer a question fully and accurately, attach additional copies of the template pages and/or additional signed sheets as needed.

**I. BUSINESS INFORMATION**

**A. Contact Information**

1. General Contractor Firm Name: \_\_\_\_\_
2. Architect of Record Firm Name: \_\_\_\_\_
3. Primary contact Person for the DBE: \_\_\_\_\_
4. Primary contact address for the DBE: \_\_\_\_\_
5. Primary Phone Number for the DBE: \_\_\_\_\_
6. Primary Email Address for the DBE: \_\_\_\_\_

**B. Form of Organization (Complete for each member of the DBE unless noted otherwise)**

1. If the DBE or any Member is a **corporation**:

- a. Date incorporated: \_\_\_\_\_
- b. Under laws of what state: \_\_\_\_\_
- c. If a privately held corporation, list all shareholders who will perform work on the project:

Name	Ownership Percentage

d. Attach a copy of the articles of incorporation.

2. If the DBE or any Member is a **limited liability company**:

- a. Date formed: \_\_\_\_\_
- b. Under laws of what state: \_\_\_\_\_
- c. List all LLC members who will perform work on the project:

Name	Ownership Percentage

d. Attach a copy of the articles of organization.

3. If the DBE or any Member is a **partnership**:

- a. Date formed: \_\_\_\_\_

b. Under laws of what state: \_\_\_\_\_

c. List all partners who will perform work on the project:

Name	Ownership Percentage

d. Attach a copy of the partnership agreement.

4. If the DBE or any Member is a **joint venture**:

a. Date formed: \_\_\_\_\_

b. Under laws of what state: \_\_\_\_\_

c. List all joint venture members who will perform work on the project:

Name	Ownership Percentage

d. Attach a copy of the joint venture agreement.

5. If the DBE or any Member is a **sole proprietorship**:

a. Date formed: \_\_\_\_\_

b. Under laws of what state: \_\_\_\_\_

c. List owner: \_\_\_\_\_

d. Attach a copy of organizational documents, if any.

**C. Financial Capacity**

1. Attach a reviewed or audited financial statement with accompanying notes and supplemental information for the past 2 full fiscal years for the General Contractor. A letter verifying availability of a line of credit may also be attached; however, it will be considered supplemental information only, and is not a substitute for the required financial statement.
  - a. The certificate of a licensed Certified Public Accountant will be required in all cases. It will be acceptable for the accountant to submit a certificate in the accountant's own words. However, such qualifications shall not be so extensive as to nullify the value of the statement or its usefulness to the District. Accountant's Release Letter will be required. The District may verify financial statement validity with responsible accountant.
2. Is DBE or any Member currently, or has DBE or any Member within the last 5 years been, the debtor in a bankruptcy case?

\_\_\_ Yes                      \_\_\_ No

If "yes," please attach a copy of the bankruptcy petition and a copy of the bankruptcy court's discharge or any other document that ended the case, if any.

**II. LICENSING AND REGISTRATION (COMPLETE FOR EACH MEMBER OF THE DBE)**

**A. General Contractor**

1. Name of license holder exactly as on file with the Contractors State License Board ("CSLB"): \_\_\_\_\_
2. License classification(s): \_\_\_\_\_
3. License #: \_\_\_\_\_
4. Issue Date: \_\_\_\_\_
5. Expiration Date: \_\_\_\_\_
6. Public Works Contractor Registration # on file with the Department of Industrial Relations ("DIR"): \_\_\_\_\_
7. Has any CSLB license held by the general contractor or its qualifying individual been suspended or revoked within the last 5 years?  
  
\_\_\_ Yes                      \_\_\_ No

If "yes," explain on a separate signed sheet.

8. Has the general contractor changed names or license numbers within the past 5 years?  
  
\_\_\_ Yes                      \_\_\_ No

If "yes," explain on a separate signed sheet.

**B. Architect of Record**

The architect of record is the architect whose stamp will appear on project documents.

1. Name of license holder exactly as on file with the California Architects Board ("CAB"): \_\_\_\_\_
2. License #: \_\_\_\_\_
3. Issue Date: \_\_\_\_\_
4. Expiration Date: \_\_\_\_\_
5. Has any CAB license held by the architect of record been suspended or revoked within the last 5 years?  
  
\_\_\_ Yes                      \_\_\_ No

If "yes," explain on a separate signed sheet.

6. Has the architect of record changed names or license numbers within the past 5 years?

\_\_\_ Yes                      \_\_\_ No

If "yes," explain on a separate signed sheet.

**C.     Engineer(s) of Record**

Engineering services will be dictated by the nature of the project. The DBE should respond, pre-qualifying the following four (4) engineer of record firms (Structural, Mechanical, Electrical, and Plumbing). Any other submissions will not be reviewed. Use additional signed sheets to respond for each of the four (4) engineering disciplines.

1. Name of license holder exactly as on file with the Board of Professional Engineers, Land Surveyors, and Geologists ("BPELSG"): \_\_\_\_\_
2. License Type: \_\_\_\_\_
3. Licenses #: \_\_\_\_\_
4. Issue Date: \_\_\_\_\_
5. Has any BPELSG license held by the engineer been suspended or revoked within the last 5 years?

\_\_\_ Yes                      \_\_\_ No

If "yes," explain on a separate signed sheet.

6. Has the engineer changed names or license numbers within the past 5 years?

\_\_\_ Yes                      \_\_\_ No

If "yes," explain on a separate signed sheet.

**D.     Mechanical, Electrical, Plumbing, Fire Protection Sub-Contractor(s)**

DBE prequalification requires the identification and submittal of the following four (4) sub-contractors (Mechanical, Electrical, Plumbing, and Fire Protection). Any other submissions will not be reviewed. Use additional signed sheets to respond for each of the four (4) MEPF contractors.

1. Name of license holder exactly as on file with the Contractors State License Board ("CSLB"): \_\_\_\_\_
2. License classification(s): \_\_\_\_\_
3. License #: \_\_\_\_\_
4. Issue Date: \_\_\_\_\_
5. Expiration Date: \_\_\_\_\_
6. Public Works Contractor Registration # on file with the Department of Industrial Relations ("DIR"): \_\_\_\_\_

7. Has any CSLB license held by the MEP contractor or its qualifying individual been suspended or revoked within the last 5 years?

Yes                       No

If "yes," explain on a separate signed sheet.

8. Has the contractor changed names or license numbers within the past 5 years?

Yes                       No

If "yes," explain on a separate signed sheet.

**III. PERFORMANCE HISTORY**

1. Has DBE or any Member or Associate ever been found liable in a civil suit, or found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or entity?

Yes                       No

If "yes," explain on a separate signed sheet, including identifying who was found liable or guilty, the court and case number, the name of the public entity, the civil or criminal verdict, the date, and the basis for the finding.

2. Has DBE or any Member or Associate ever been convicted of a crime involving any federal, state, or local law related to construction or any crime involving fraud, theft, or any other act of dishonesty?

Yes                       No

If "yes," explain on a separate signed sheet, including identifying who was convicted, the name of the victim, the date of the conviction, the court and case number, the crimes, and the grounds for the conviction.

3. At any time in the last 5 years, has DBE or any Member been assessed liquidated damages under a construction contract?

Yes                       No

If "yes," explain on a separate signed sheet, including the project, owner, owner's address, date of completion, and amount of liquidated damages.

4. At any time in the last 5 years, has DBE or any Member or Associate been debarred, disqualified, removed or otherwise prevented from bidding on, or completing, any public works project?

Yes                       No

If "yes," explain on a separate signed sheet, including the project, the year of the event, owner, owner's address, and basis for the action.

5. At any time in the last 5 years, has a public agency found that DBE or any Member was not a responsible bidder?

Yes                       No

If "yes," explain on a separate signed sheet, including the project, the year of the event, owner, owner's address, and basis for the finding.

6. In the past 5 years, has any claim exceeding \$50,000 been filed by or against DBE or any Member in court or arbitration concerning work or payment on a construction project?

Yes                       No

If "yes," explain on a separate signed sheet, including the project name, court or arbitration case name and number, and a brief description of the status of the claim.

7. In the past 5 years, has there been more than one occasion in which DBE or any DBE member was required to pay either back wages or penalties for failure to comply with California prevailing wage laws or federal Davis-Bacon prevailing wage requirements?

Yes                       No

If "yes," explain on a separate signed sheet, describing the nature of the violation(s), project, owner, and amount paid, if any.

8. At any time during the past 5 years, has DBE or any Member been found to have violated any provision of California apprenticeship laws or regulations, or laws pertaining to use of apprentices on public works projects?

Yes                       No

If "yes," explain on a separate signed sheet, including date(s) of such findings and attaching the DAS' final decision(s).

**IV. BONDS AND INSURANCE**

**A. Bonds**

1. Attach a notarized statement from an admitted surety insurer (approved by the California Department of Insurance and authorized to issue bonds in the State of California), which states the current bonding capacity of the General Contractor (both single job limit and aggregate limit). Note: General Contractor must have capacity to provide 100% payment bond and 100% performance bond, each issued by an admitted surety insurer, without bonding subcontractors.
2. Provide the name, address, and telephone number of the surety agent: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
3. List all sureties that have written bonds to the General Contractor or any Member during the last 5 years:

Name	Address	Date of Bond

4. In the last 5 years, has any surety paid on behalf of the DBE or any Member a result of a default to satisfy any claims made against a payment or performance bond?  
 Yes                       No

If "yes," explain on a separate signed sheet, including the amount of each claim, name and telephone number of claimant, date of and grounds for the claim, and present status.

5. If DBE or any Member was required to pay a premium of more than 1 percent for a performance and payment bond on any project in the last 5 years, state the percentage: \_\_\_\_\_

Explain on a separate signed sheet why DBE or Member was required to pay the premium of more than 1 percent.

6. In the last 5 years, has DBE or any Member been denied bond coverage by a surety company or had no surety bond in place when once was required?  
 Yes                       No

If "yes," explain on a separate signed sheet, including the name of the Surety Company and/or period during which DBE or Member had no bond in place.

**B. Insurance**

1. Does the General Contractor have liability insurance with a policy limit of at least \$5,000,000 per occurrence and \$10,000,000 aggregate for a California admitted company?

Yes                       No

If "no," provide on a separate signed sheet what policy limits are available to DBE.

2. Does DBE have current workers' compensation insurance as required by the California Labor Code or is DBE legally self-insured pursuant the California Labor Code?

Yes                       No

3. Does DBE have professional liability (errors and omissions) insurance with a policy limit of at least \$5,000,000 aggregate from a California admitted company?

Yes                       No

If "no," provide on a separate signed sheet what policy limits are available to DBE.

4. In the last 5 years, has any insurance carrier, for any form of insurance, refused to renew an insurance policy for DBE or any Member?

Yes                       No

If "yes," explain on a separate signed sheet, including the name of the insurance carrier, form of insurance, and year of the refusal.

**V. SAFETY**

1. Within the past 5 years, has the California or federal Occupation Safety and Health Administration ("OSHA") cited and assessed penalties against DBE or any Member, for "serious," "willful" or "repeat" violations of its safety or health regulations?

Yes                       No

If "yes," explain on a separate signed sheet, identifying the citation(s), nature of the violation(s), project, and amount of penalty paid, if any.

2. Within the past 5 years, has the Environmental Protection Agency ("EPA") or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against DBE or any Member or the owner of the project on which DBE/Member was the contractor?

Yes                       No

If "yes," explain on a separate signed sheet, identifying the citation(s), nature of the violation(s), project, and amount of penalty paid, if any.

3. State the Workers' Compensation Experience Modification Rate ("EMR") for DBE and each Member for the past 3 premium years:

Year	EMR

If EMR was 1.00 or higher in any of 3 years, attach a letter of explanation.

4. State the total recordable injury or illness rate and the lost work rate for DBE and each Member for the past 3 years:

Year	Incident Rate	Lost Work Rate

5. Within the past 5 years, has there ever been a period when DBE or any Member had employees but was without workers' compensation insurance or state-approved self-insurance?

Yes                       No

If "yes," explain on separate signed sheet, including the date(s) and reason(s) for the absence of workers' compensation insurance.

**VI. PROJECT EXPERIENCE AND REFERENCES**

The Design Build Team must show experience and expertise with the design and construction of similar projects. Listed work should include public sector projects that required coordination and close working relationships for project reviews/ approvals/project close out with both the Division of the State Architect (DSA) and the office of the State Fire Marshal (SFM). Listed projects should also indicate work done for California community colleges and specifically if any projects have been constructed in a dense urban environment.

The District is looking for DBEs that have shown creative/innovative design and technical expertise regarding the production of sound contract documents, rigid standards during construction administration and the ability to work collaboratively with the Districts management team and Facilities/Operations groups.

The DBE team should also show experience with working in a dense urban environment with the proven ability to prioritize student/staff/public safety and to minimize disruption to the operational needs of the College/District.

1. How many California community college construction projects (both under construction and completed) has/have:
  - a. The general contractor firm built in the past 5 years? \_\_\_\_\_
  - b. The architect of record design firm completed in the past 5 years? \_\_\_\_\_
  - c. The engineering firms (combined) designed in the past 5 years? \_\_\_\_\_
  - d. The MEPF contractor firms (combined) worked on in the past 5 years? \_\_\_\_\_
2. **Both** the General Contractor firm and the Architect of Record firm shall complete **both** project reference forms and tables attached hereto as **Exhibits A-1, A-1.1 (Table), A-2, and A-2.1 (Table)**. District may, in its discretion, contact project references.
  - a. Comparable projects are preferably:
    - i. Classroom and/or student services facilities for California Community College institutions.
    - ii. Multi-Story (3 Stories or more)
    - iii. Dense Urban City Site
    - iv. Higher Educational Facility of similar size in gross square footage
    - v. Projects exceeding \$50 Million Contract Price
    - vi. DSA Experience
    - vii. LEED Certification
    - viii. Project was Subject to a Project Labor Agreement

ix. Project was delivered through a Progressive Design-Build Methodology

**VII. RELEVANT EXPERIENCE OF KEY PERSONNEL**

1. Complete Exhibit B – Key Personnel Experience Table
2. Attach resumes or similar documents, not to exceed 1 page each, showing the experience, training, and qualifications for the following key personnel of the DBE:
  - a. General Contractor - Project Manager
  - b. General Contractor - Design Manager
  - c. General Contractor - Superintendent
  - d. Architect of Record - Project Manager
  - e. Architect of Record (Person who will be stamping the documents for submission to DSA)
  - f. Structural Engineer – Lead Person
  - g. Mechanical Engineer – Lead Person
  - h. Electrical Engineer – Lead Person
  - i. Plumbing Engineer – Lead Person
  - j. Mechanical Contractor – Lead Person
  - k. Electrical Contractor – Lead Person
  - l. Plumbing Contractor – Lead Person
  - m. Fire Protection Contractor – Lead Person
3. Key personnel must possess at least seven (7) years of experience to be considered, (identify number of years of experience on each resume).
4. Identify on resume and table key personnel which have DBIA credentials. Please list whether the credentials are a Certified DBIA Professional or an Associate Design Build Professional
5. Identify on each resume and table the percentage % of time each key personnel is anticipated to spend on the project during pre-construction and construction.
6. Identify on resume key personnel with the following experience:
  - a. Classroom and/or student services facilities for California Community College institutions

- b. Multi-story (3 stories or more)
  - c. Dense Urban City Site
  - d. Higher Education Facilities of similar size in gross square footage
  - e. Projects exceeding \$50 Million in contract price
  - f. DSA Experience
  - g. LEED Experience
  - h. Project Labor Agreement Experience
  - i. Design-Build Experience
  - j. Progressive Design-Build Experience
  - k. Community College Experience in California
7. Provide an organizational chart for the DBE outline each position and how the firms will be organized in hierarchy
  8. The district reserves the right for final approval of each key staff member that will be assigned to this project.
  9. The DBE may not substitute any key team members on this project, without written approval by the district.

### **VIII. SLBE OR SELBE COMPLIANCE**

The District is looking for DBE teams who can demonstrate a willingness to partner in a significant manner with firms who meet the District's definition of an SLBE or SELBE.

1. Complete Exhibit G – SLBE/SELBE Program and Self Certification Affidavit
2. Additional written response shall be provided within 1 page, answering the following questions:
  - a. In recognition of the District's mission to serve the local community, the proposer shall provide a narrative describing how the DBE will engage, encourage, and provide equal access to businesses (such as professional services, subcontractors, suppliers, vendors, etc.) to compete for opportunities on this project.
  - B. Proposer shall identify any firms submitted with this RFQ who meet the District's definition of an SLBE or SELBE, using Exhibit G. Proposer shall provide the appropriate backup as defined in the SLBE and SELBE Program in order to demonstrate this compliance, including each firm's annual gross revenue for the past consecutive three (3) years and their geographic location, in order for the District to verify compliance.

**IX. SKILLED AND TRAINED WORKFORCE COMPLIANCE**

1. By this submittal, and signing of Exhibit C, DBE and its members hereby acknowledges, agrees, and hereby provides an enforceable commitment to District that:
  - a. DBE and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Public Contract Code section 2600 et seq.; or
  - b. DBE will agree to be bound by: (i) a project labor agreement ("PLA") entered into by the District that will bind all contractors and subcontractors performing work on the project to use a skilled and trained workforce; (ii) the extension or renewal of a PLA that was entered into by the District prior to January 1, 2017; or (iii) a PLA entered into by the DBE that will bind the DBE and all its subcontractors at every tier performing work on the project to use a skilled and trained workforce.
- C. Information about the PCCD PLA can be found at this location: <https://build.peralta.edu/doing-business> and in Appendix E.

**X. EXHIBITS**

Complete all Exhibits attached hereto and return with completed Statement of Qualifications

**EXHIBIT A-1 – DESIGN BUILD PROJECT REFERENCE SHEETS**

**EXHIBIT A-1.1 – DESIGN BUILD PROJECT REFERENCE TABLE**

**EXHIBIT A-2 – COMMUNITY COLLEGE PROJECT REFERENCE SHEETS**

**EXHIBIT A-2.1 – COMMUNITY COLLEGE PROJECT REFERENCE TABLE**

**EXHIBIT B – KEY PERSONEL EXPERIENCE TABLE**

**EXHIBIT C – CERTIFICATION OF APPENDIX B**

**EXHIBIT D – VENDOR’S QUESTIONNAIRE AND CERTIFICATE BY COMPLIANCE**

**EXHIBIT E – CERTIFICATE OF WORKERS COMPENSATION**

**EXHIBIT F – STATEMENT OF EQUAL EMPLOYMENT OPPORTUNITY**

**EXHIBIT G – SLBE/SELBE PROGRAM AND SELF CERTIFICATION AFFIDAVIT**

**EXHIBIT H – NON-COLLUSION AFFIDAVIT**

**EXHIBIT I – RFQ ACKNOWLEDGEMENT AND SIGNATURE FORM**

## **QUALIFICATION CONDITIONS**

Answers to questions contained in the attached Questionnaire and provision of the Financial Statement are required, including a complete statement of Respondent's financial ability. Firms must have provided comparable Design-Build Entity services, including preconstruction service, scheduling, budgeting, and managing the construction of comparable complex projects in confined urban settings.

Interested Design-Build Entities shall closely examine the specific requirements and questions in the questionnaire and submit RFQ Responses as directed.

The District will not provide any oral clarifications or modifications to the RFQ or the requirements hereof; no employee, officer, agent or representative of the District is authorized to provide oral clarification or modifications to the RFQ. No Respondent shall rely on any oral clarification or modification to the RFQ. Any addenda issued will be e-mailed to all firms who are known by the District to have received a set of prequalification documents.

By submittal of a proposal, the prospective Design-Build Entity commits to providing the key staff named in the submittal and that the assigned individuals will remain on the Project throughout design and, subject to their remaining with the firm. The proposed key staff shall attend the interview during the request for proposal phase. The district reserves the right for final approval of each key staff member that will be assigned to this project. The design-build entity (including the General Contractor and Architect of Record) may not substitute any key team members for this project, without written approval by the district.

A Design-Build Contract will be awarded in the contract form, in which an initial copy is included hereto as Appendix C. Please note that this Form of Agreement is subject to change prior to the issuance of the RFP. The Contract will be authorized and awarded in the sole discretion of the District. Changes in terms of contract will not be considered.

The District expressly reserves the right to modify any portion, postpone or cancel this RFQ at any time, and/or reject any and all submissions without indicating any reason. No submission documents will be returned. Modifications, if any, made by the District to the RFQ will be in writing and distributed to the Respondents.

Unless and except when requested to do so in writing by the District or as otherwise permitted by this RFQ, Respondents shall not, prior to completion of the RFQ, communicate, either verbally or in writing, with: (i) any member of the RFQ Selection Committee; (ii) any consultant or professional retained by the District for the purpose of providing the District advice or professional services in respect to the Project or the RFQ; or (iii) any employee or representative of the District.

No compensation is offered for any work performed or expense incurred related to this RFQ. Submissions are entirely voluntary. All original documents including electronic files submitted in response to this RFQ become the property of the District, and any materials submitted by any firm (other than the financial statements) may be used for any purpose by the District after the Design-Build firm is selected. If any firm's submission is late or incomplete in any way, that proposal may be rejected as non-responsive.

The District reserves the right to modify the project schedule and/or budget.

**EXHIBIT A-1**

**Design-Build Project References**

List the three most recent, most comparable, and completed design-build projects (within the last 10 years), each with a project value over \$50M. The projects may be public or private. Contact information must be current and viable. (Copy additional sheets.) (Each project is limited to one single-sided page only)

1. Project Name: \_\_\_\_\_

2. Project Address: \_\_\_\_\_

\_\_\_\_\_

3. Owner (name and tel. #): \_\_\_\_\_

4. General Contractor (name and tel. #): \_\_\_\_\_

\_\_\_\_\_

5. Architect of Record (name and tel. #): \_\_\_\_\_

\_\_\_\_\_

6. Construction Manager (name and tel. #): \_\_\_\_\_

\_\_\_\_\_

7. Comparable Scope of Work: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. Original Completion Date: \_\_\_\_\_

9. Actual Complete Date: \_\_\_\_\_

10. Time Extensions Granted (# of days): \_\_\_\_\_

11. Initial Contract Value: \_\_\_\_\_

12. Final Contract Value: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Signature by authorized individual: \_\_\_\_\_

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

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

**Exhibit A-1.1 Data Table**

List the three most recent, most comparable, and completed design-build projects with

**General Contractor**

	Project Name	Year Completed	Project Value Over \$50M (List Value)
1			
2			
3			

**Exhibit A-1.1 Data Table**

List the three most recent, most comparable, and completed design-build projects with

**Architect of Record**

	Project Name	Year Completed	Project Value Over \$50M (List Value)
1			
2			
3			

in the last 10 years

<b>Classroom and/or Student Services Facilities for a California CCD (Yes or No)</b>	<b>Multi-Story (3 or more stories) (Yes or No)</b>	<b>Dense Urban City Site (Yes or No)</b>	<b>Higher Educational Facility Size (+/- 60,000 GSF) (List GSF)</b>

in the last 10 years

<b>Classroom and/or Student Services Facilities for a California CCD (Yes or No)</b>	<b>Multi-Story (3 or more stories) (Yes or No)</b>	<b>Dense Urban City Site (Yes or No)</b>	<b>Higher Educational Facility Size (+/- 60,000 GSF) (List GSF)</b>

<b>DSA (Yes or No)</b>	<b>LEED (What Level)</b>	<b>Project Labor Agreement (Yes or No)</b>	<b>Progressive Design-Build (Yes or No)</b>

<b>DSA (Yes or No)</b>	<b>LEED (What Level)</b>	<b>Project Labor Agreement (Yes or No)</b>	<b>Progressive Design-Build (Yes or No)</b>

**EXHIBIT A-2**

**CA Community College References**

List the three most recent, most comparable, and completed California community college construction projects (within the last 10 years), each with a project value over \$50M. Contact information should be current and viable. (Copy additional sheets.) (Each project is limited to one single-sided page only)

1. Project Name: \_\_\_\_\_
2. Project Address: \_\_\_\_\_  
\_\_\_\_\_
3. Owner (name and tel. #): \_\_\_\_\_
4. General Contractor (name and tel. #): \_\_\_\_\_
5. Architect of Record (name and tel. #): \_\_\_\_\_  
\_\_\_\_\_
6. Construction Manager (name and tel. #): \_\_\_\_\_  
\_\_\_\_\_
7. Comparable Scope of Work: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. Was this a design-build project? \_\_\_\_\_
9. Original Completion Date: \_\_\_\_\_
10. Actual Complete Date: \_\_\_\_\_
11. Time Extensions Granted (# of days): \_\_\_\_\_
12. Initial Contract Value: \_\_\_\_\_
13. Final Contract Value: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Signature by authorized individual: \_\_\_\_\_

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

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

**Exhibit A-2.1 Data Table**

List the three most recent, most comparable, and completed California community colle

**General Contractor**

	Project Name	Year Completed	Project Value Over \$50M (List Value)
1			
2			
3			

**Exhibit A-2.1 Data Table**

List the three most recent, most comparable, and completed California community colle

**Architect of Record**

	Project Name	Year Completed	Project Value Over \$50M (List Value)
1			
2			
3			

Large construction projects within the last 10 years

<b>Classroom and/or Student Services Facilities for a California CCD (Yes or No)</b>	<b>Multi-Story (3 or more stories) (Yes or No)</b>	<b>Dense Urban City Site (Yes or No)</b>	<b>Higher Educational Facility Size (+/- 60,000 GSF) (List GSF)</b>

Large construction projects within the last 10 years

<b>Classroom and/or Student Services Facilities for a California CCD (Yes or No)</b>	<b>Multi-Story (3 or more stories) (Yes or No)</b>	<b>Dense Urban City Site (Yes or No)</b>	<b>Higher Educational Facility Size (+/- 60,000 GSF) (List GSF)</b>

<b>DSA (Yes or No)</b>	<b>LEED (What Level)</b>	<b>Project Labor Agreement (Yes or No)</b>	<b>Progressive Design-Build (Yes or No)</b>

<b>DSA (Yes or No)</b>	<b>LEED (What Level)</b>	<b>Project Labor Agreement (Yes or No)</b>	<b>Progressive Design-Build (Yes or No)</b>

**Exhibit B****Relevant Experience of Key Personnel**

	<b>Position</b>	<b>Name of Individual</b>
1	<b>General Contractor - Project Manager</b>	
2	<b>General Contractor - Design Manager</b>	
3	<b>General Contractor - Superintendent</b>	
4	<b>Architect of Record - Project Manager</b>	
5	<b>Architect of Record - (Person who will be stamping the documents for submission to DSA)</b>	
6	<b>Structural Engineer - Lead Person</b>	
7	<b>Mechanical Engineer - Lead Person</b>	
8	<b>Electrical Engineer - Lead Person</b>	
9	<b>Plumbing Engineer - Lead Person</b>	
10	<b>Mechanical Contractor - Lead Person</b>	
11	<b>Electrical Contractor - Lead Person</b>	
12	<b>Plumbing Contractor - Lead Person</b>	
13	<b>Fire Protection Contractor - Lead Person</b>	









**EXHIBIT C**

**CERTIFICATION OF APPENDIX B**

DBE and all Members must sign. Copy this certification page as needed for each Member.

I certify and declare that I have read all the foregoing answers to this prequalification template; that all answers are correct and complete of my own knowledge and belief. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: \_\_\_\_\_, 20\_\_

Name of DBE or Member: \_\_\_\_\_

Signature by authorized individual: \_\_\_\_\_

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

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

Exhibit D



**PERALTA COMMUNITY COLLEGE DISTRICT**

**VENDOR'S QUESTIONNAIRE AND CERTIFICATE BY COMPLIANCE**

**RFQ 20-21/06 2118 Milvia Street Design Build Services  
Berkeley City College**

The following information is requested for information purposes only. It will not be used in determining bid award.

\_\_\_\_\_

**Date**

\_\_\_\_\_

**Firm Name**

**Telephone**

\_\_\_\_\_

**Business Fax**

**Email Address**

**Website**

\_\_\_\_\_

**Street Address**

**City/State**

**Zip Code+ 4®**

\_\_\_\_\_

**Mailing Address**

**City/State**

**Zip Code + 4®**

**Type of Organization (Check one) Individual  Partnership  Corporation**

**Name of Owner(s)**  
\_\_\_\_\_

**State of Incorporation (if applicable)**  
\_\_\_\_\_

**Name of Partners**  
\_\_\_\_\_

**(I) Indicate (G) General (L) Limited**  
\_\_\_\_\_

Local Address

Amount of Annual Business

The District is identifying vendor ownership as follows:

	Asian-American (Chinese, Japanese, Korean,	Black or African-American	Filipino	Latino (other than Mexican or Mexican-American	Mexican or Mexican-American	Native – American	Pacific Islander, other Asian	White	Disabled	Veteran	Women	Subcontract	Employee	Apprentice
Total #														
% of assets														

The District is identifying vendor workforce as follows:

	Asian-American (Chinese, Japanese, Korean,	Black or African-American	Filipino	Latino (other than Mexican or	Mexican or Mexican-American	Native – American	Pacific Islander, other Asian	White	Disabled	Veteran	Women	Subcontract	Employee	Apprentice
Total #														
% of assets														

Explain whether current workforce is racially and ethnically proportionate to the area from which the workforce is drawn (national, state, or local). Use separate sheet if necessary.

Detail steps taken by vendor since inception to assure non-discriminatory recruiting, hiring, and apprenticeship, placement, promotion, demotion, layoff and termination practices. Use separate sheet if necessary.

--

What are you interested in providing the District? (e.g., construction, consulting, goods or services).

--

<b>Main Headquarters Office(s) Address/Telephone</b>  (List all as applicable)	1.  2.  3.
--	------------------------

Total # of Employees \_\_\_\_\_

<b>Local Office(s) Address/Telephone</b>  (List all as applicable)	1.  2.  3.
--	------------------------

--	--

Total # of Employees \_\_\_\_\_

<p><b>Name and list residential zip code for each employee, subcontractor, or apprentice for awarded contract</b></p>     <p><b>(Please use the Zip+4®)</b></p> <p><b>Use separate sheet as necessary</b></p>	<ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li><li>4.</li><li>5.</li><li>6.</li></ol>
--	---

Exhibit E



**PERALTA COMMUNITY COLLEGE DISTRICT**

**CERTIFICATE REGARDING WORKERS' COMPENSATION**

**RFQ 20-21/06 2118 Milvia Street Design Build Services  
Berkeley City College**

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 in one or more insurers duly authorized to write compensation insurance in this State.
  
- (b) Be 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 and will require all subcontractors to do the same.

\_\_\_\_\_  
Contractor

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

(In accordance with Article 5 [commencing at Section 1860], Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this Contract.)

Exhibit F



**PERALTA COMMUNITY COLLEGE DISTRICT**

**STATEMENT OF EQUAL EMPLOYMENT OPPORTUNITY**

**RFQ 20-21/06 2118 Milvia Street Design Build Services  
Berkeley City College**

I hereby certify that \_\_\_\_\_

(Legal Name of Vendor/Consultant/Contractor)

Will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin and shall insure compliance with all provisions of Executive Order No. 11246 (as amended by Executive order No.11375).

The vendor's questionnaire requests information for record keeping purposes only. The information requested will not be used as a basis for contract award.

However, after a contract is awarded to your company, the District requires your company to report:

- a. Actual racial, gender and residential workforce composition of your company for the contract work.
- b. Actual racial, gender and residential workforce composition of subcontractors for the contract work.
- c. Number of apprenticeship workforce for the contract work.

This report must be submitted to the District Department of General Services on a quarterly basis.

I declare under penalty of perjury under the laws of the state of California that the information I have provided herein is true and correct and is of my own personal knowledge.

BY: \_\_\_\_\_

Date

\_\_\_\_\_

Print Name

## Exhibit G



### 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/SEBLE 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 contact 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

Exhibit H



**PERALTA COMMUNITY COLLEGE DISTRICT**

**NON-COLLUSION AFFIDAVIT**

(To be executed by Vendor and submitted with the Proposal)

**RFQ 20-21/06 2118 Milvia Street Design Build Services  
Berkeley City College**

State of California, County of \_\_\_\_\_

(Name) \_\_\_\_\_, being first duly sworn, deposes and says that he or she is (title) \_\_\_\_\_ of (company) \_\_\_\_\_ the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that 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, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

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

Exhibit I



**PERALTA COMMUNITY COLLEGE DISTRICT**

**RFQ ACKNOWLEDGEMENT AND SIGNATURE FORM**

**RFQ 20-21/06 2118 Milvia Street Design Build Services  
Berkeley City College**

The undersigned having carefully examined the location of the proposed work, the local conditions of the place where the work is to be done, the Invitation and all of the documents for this project, and accurately completed the Design-Build Prequalification Template and associated exhibits, and if shortlisted, proposer is able to enter into a contract with Peralta Community College District to perform the work listed in this RFQ including all of its component parts, and to furnish any and all required labor, materials, equipment, insurance, bonding, taxes, transportation and services required for this project in strict conformity with the RFQ, including any Addenda, within the time specified.

Addendum Acknowledgement

The following addendum(s) are acknowledged in thisRFQ: \_\_\_\_\_

Acknowledgement and Signature:

1. No SOQ is valid unless signed in ink by the person authorized to make the proposal.
2. I have carefully read, understand and agree to the terms and conditions on all pages of this RFQ. The undersigned agrees to furnish the services stipulated in this SOQ.

Vendor Name: \_\_\_\_\_ Title: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

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

Contractor License #: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

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

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

---

Decline RFQ:

We **do not** wish to submit a SOQ on this Project. Please state your reason below. Please also indicate if you would like to remain on our vendor list.

Reason: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Name: \_\_\_\_\_ Signature \_\_\_\_\_ Date: \_\_\_\_\_

# **APPENDIX C-1**

**DESIGN-BUILD PROJECT:**

**[NAME OF] 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 .....	49
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 – GUARANTEED MAXIMUM PRICE	

## **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 [INSERT CRITERIA ARCHITECT] ("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:** [INSERT ARCHITECT], 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 GMP and/or the Contract Time. The GMP 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** Non-Collusion Declaration

**1.17.2** Iran Contracting Act Certification

**1.17.3** Design-Build Agreement, including Exhibits A and B

**1.17.4** Performance Bond

**1.17.5** Payment Bond (Design/Builder's Labor & Material Bond)

**1.17.6** Registered Subcontractors List

**1.17.7** Hazardous Materials Procedures and Requirements

**1.17.8** Workers' Compensation Certification

**1.17.9** Prevailing Wage Certification

**1.17.10** Disabled Veterans Business Enterprise Participation Certification (if applicable)

**1.17.11** Drug-Free Workplace Certification

**1.17.12** Tobacco-Free Environment Certification

- 1.17.13** Hazardous Materials Certification
- 1.17.14** Lead-Based Materials Certification (if applicable)
- 1.17.15** Imported Materials Certification (if applicable)
- 1.17.16** Roofing Project Certification (if applicable)
- 1.17.17** Skilled and Trained Workforce Certification (if applicable)
- 1.17.18** Escrow Agreement for Security Deposits in Lieu of Retention (if used)
- 1.17.19** Guarantee Form
- 1.17.20** Agreement and Release of Any and All Claims
- 1.17.21** All Plans, Technical Specifications, and Drawings
- 1.17.22** Any and all addenda to any of the above documents
- 1.17.23** Any and all change orders or written modifications to the above documents if approved in writing by the District.

**1.18 Contract Time:** The time stated in the Contract for the completion of the Work.

**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 Guaranteed Maximum Price ("GMP"):** The price established as the maximum compensation to the Design/Builder for the design and construction of the Project after design has been approved by DSA.

**1.25 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.

**1.26 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.

**1.27 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.

**1.28 NTE Amount:** The not-to-exceed amount established by the District as the maximum compensation to the Design/Builder for the design and construction of the Project before design has been approved by DSA.

**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 " \_."**

**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 Drawings.

**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 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.

**1.37 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.

## **2. GENERAL PROVISIONS**

### **2.1 Scope of Work**

**2.1.1** 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 NTE Amount, which will be superseded by the GMP after DSA approval of the plans.

**2.1.2** 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.

**2.1.3** 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.

### **2.2 Status of Design/Builder**

**2.2.1** 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.

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

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

**2.2.4** 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.

### **2.3 Execution, Correlation and Intent:**

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

**2.3.2** 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.

**2.3.3** 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.

**2.3.4** 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.

**2.3.5** 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.

### **2.4 Conflicts in the Contract Documents**

**2.4.1** 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:

**2.4.1.1** 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.

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

**2.4.1.3** 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.

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

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

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

**2.4.1.4.3** Larger scale drawings shall govern over smaller scale drawings.

**2.4.1.4.4** Figured or numerical dimensions shall govern over dimensions obtained by scaling.

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

**2.4.2** 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.

## **2.5 Clarifications and Additional Instructions**

**2.5.1** 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.

**2.5.2** 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.

### **3. DESIGN/BUILDER'S DUTIES AND RESPONSIBILITIES: DESIGN**

#### **3.1 Design Phase Responsibilities**

**3.1.1** 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.

#### **3.2 Design/Builder's Responsibilities**

**3.2.1** Design/Builder agrees to design and construct the Project in consideration for the District's payment up to the NTE Amount, which will be superseded by the GMP after DSA approval of the plans, which may only be adjusted pursuant to the provisions of this Contract.

##### **3.2.2 General Responsibilities**

**3.2.2.1** 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.

**3.2.2.2** 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.

**3.2.2.3** 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.

**3.2.2.4** 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.

### **3.2.2.5 Design Confirmation Phase**

**3.2.2.5.1** 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.

**3.2.2.5.2** 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.

**3.2.2.5.3** Prepare and update at each document submittal milestone detailed estimates of the cost of construction to substantiate that the Project will not exceed the NTE Amount.

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

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

### **3.2.2.6 Construction Documents Phase**

**3.2.2.6.1** Prepare Construction Documents for the entire Project 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:

**3.2.2.6.1.1 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.

**3.2.2.6.1.2 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:

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

**3.2.2.6.1.2.2** 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.

**3.2.2.6.1.2.3** 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.

**3.2.2.6.1.3** 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.

**3.2.2.6.2** 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.

**3.2.2.6.3** 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.

### **3.2.2.7 Ownership of Design Materials**

**3.2.2.7.1** 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.

**3.2.2.7.2** 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.

**3.2.2.7.3** 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.

**3.2.2.7.4** 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.

**3.2.2.7.5** 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.

### **3.2.2.8 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.

## **4. DESIGN/BUILDER'S DUTIES AND RESPONSIBILITIES: CONSTRUCTION**

### **4.1 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:

**4.1.1** 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.

**4.1.2** 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 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.

**4.1.3** 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.

**4.1.4** 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.

**4.1.5** 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.

**4.1.6** 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.

**4.1.7** 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.

**4.1.8** 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.

**4.2 Standards of Performance.**

**4.2.1** 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.

**4.2.2** 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: \_\_\_\_\_

**4.2.2.1** 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.

**4.2.2.2** 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.

**4.2.3** 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.

**4.2.4** 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.

**4.2.5** 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.

### **4.3 Applicable Laws and Codes**

**4.3.1** 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 GMP, 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.

**4.3.2** 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.

**4.3.3** 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.

### **4.4 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.

#### **4.5 Permits, Fees and Notices**

**4.5.1** 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 GMP.

**4.5.2** 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.

#### **4.6 Use of Project Site**

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

**4.6.2** 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.

**4.6.3** 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.

**4.6.4** 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 GMP. If required, Design/Builder will paint such items in a color selected by the District.

#### **4.7 Cutting and Patching**

**4.7.1** Design/Builder shall be responsible for all cutting, fitting or patching required to complete the Work.

**4.7.2** 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.

#### **4.8 Cleaning**

**4.8.1** 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. 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.

**4.8.2** 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.

#### **4.9 Site Availability**

**4.9.1** 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.

**4.9.2** 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.

#### **4.10 Site Conditions**

**4.10.1** 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:

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

**4.10.1.2** the availability of labor, water, power and roads;

**4.10.1.3** normal weather conditions;

**4.10.1.4** physical conditions at the Site;

**4.10.1.5** the conditions of the ground; and

**4.10.1.6** the character of equipment and facilities needed prior to and during the performance of the Work.

**4.10.2** 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.

**4.10.3** 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.

#### **4.11 Hazardous Materials**

**4.11.1** 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.

**4.11.2** 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.

**4.11.3** "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 other 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.

**4.11.4** "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.

#### **4.12 Shop Drawings, Product Data, Samples, Materials, and Equipment.**

**4.12.1** 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.

**4.12.2** 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.

**4.12.3** 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.

**4.12.4** 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.

**4.12.5** 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.

### **4.13 Field Engineering**

**4.13.1** 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.

**4.13.2** 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.

**4.13.3** 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.

**4.13.4** 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.

### **4.14 Geotechnical Data and Existing Site Conditions**

**4.14.1** 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.

**4.14.2** 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.

**4.14.3** 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.

**4.14.4** 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.

#### **4.15 Meetings and Reports**

**4.15.1** 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.

**4.15.2** 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.

**4.15.3** 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.

**4.15.4** 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.

**4.15.5** 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.

#### **4.16 Other Reports**

**4.16.1** 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.

#### **4.17 Notices of Labor Disputes**

**4.17.1** 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.

**4.17.2** 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.

#### **4.18 Guarantee**

**4.18.1** 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.

**4.18.2** 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.

**4.18.3** 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.

**4.18.4** 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.

#### **4.19 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.

#### **4.20 Patents, Trademarks, and Copyrights**

The Design/Builder shall pay, as part of the GMP, 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 GMP), 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.

#### **4.21 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 GMP and paid by Design/Builder.

#### **4.22 Tests and Inspections**

**4.22.1** 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. 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.

**4.22.2** 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.

**4.22.3** 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.

**4.22.4** 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.

**4.22.5** 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.

**4.22.6** 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.

**4.22.7** 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.

#### **4.23 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.

#### **4.24 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.

### **5. DISTRICT'S DUTIES AND RESPONSIBILITIES**

#### **5.1 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.

#### **5.2 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.

#### **5.3 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.

## **6. SUBCONTRACTING**

### **6.1 Subletting and Subcontracting.**

**6.1.1** 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.

**6.1.2** 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.

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

**6.1.4** 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.

**6.1.5** 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.

**6.1.6** 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.

### **6.2 Subcontracting Relations**

**6.2.1** 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.

**6.2.2** 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.

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

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

### **6.3 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.

### **6.4 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.

### **6.5 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.

### **6.6 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.

## **7. STATE LABOR, WAGE AND HOUR, APPRENTICE, AND RELATED PROVISIONS**

### **7.1 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.

### **7.2 Wage Rates, Travel, and Subsistence**

**7.2.1** 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.

**7.2.2** 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.

**7.2.3** 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.

**7.2.4** 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.

**7.2.5** 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.

**7.2.6** 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.

**7.2.7** 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.

**7.2.8** 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).

### **7.3 Hours of Work**

**7.3.1** 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.

**7.3.2** 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.

**7.3.3** 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.

**7.3.4** 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.

#### **7.4 Payroll Records**

**7.4.1** 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.

**7.4.2** 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:

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

**7.4.2.2** 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.

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

**7.4.3.1** 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.

**7.4.3.2** 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.

**7.4.3.3** 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.

**7.4.4** 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.

**7.4.5** 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.

**7.4.6** 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.

**7.5 [Reserved]**

**7.6 Apprentices**

**7.6.1** 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.

**7.6.2** 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.

**7.6.3** 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.

**7.6.4** 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.

**7.6.5** 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.

**7.6.6** 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.

**7.6.7** 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:

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

**7.6.7.2** 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.

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

**7.6.7.4** 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.

## **7.7 Skilled and Trained Workforce**

**7.7.1** 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.

**7.7.1.1** "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.

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

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

**7.7.1.2.2** 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%	
1/1/2020 – 12/31/2020	At least 60%	

**7.7.1.2.3** 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.

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

**7.7.1.2.4.1** 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

**7.7.1.2.4.2** 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.

**7.7.1.3** “Skilled Journeyperson” means a worker who either:

**7.7.1.3.1** 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

**7.7.1.3.2** 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.

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

**7.7.2.1** 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

**7.8** 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.

## **7.9 Non-Discrimination**

**7.9.1** 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.

**7.9.2** 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.

## **7.10 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.).

## **8. PAYMENTS AND COMPLETION**

### **8.1 NTE Amount**

In consideration of Design/Builder's obligations under the Contract Documents, Design/Builder will be compensated in an amount not-to-exceed [Amount in Words] Dollars (\$[Amount in Numbers]), in accordance with the payment procedures set forth herein. Except as otherwise provided in the Contract Documents, the NTE Amount 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.

**8.1.1** The NTE Amount shall be superseded by the GMP after DSA approval of the plans and amendment of this Contract to incorporate the GMP.

**8.1.2** Any unused portion of the NTE Amount shall be considered as cost savings and retained by the District.

## **8.2 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 GMP.

## **8.3 Guaranteed Maximum Price**

Pursuant to the Contract, Design/Builder will cause the Project to be constructed for a GMP to be determined after the DSA approves the plans and specification for all phases of the Project. The GMP will consist of the amounts to be identified in Attachment 2 to **EXHIBIT C**. 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 GMP.

### **8.3.1 Cost of 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.

#### **8.3.1.1 General Conditions**

The General Conditions as set forth in Attachment 1 to **EXHIBIT C** 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.

### **8.3.1.2 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.

### **8.3.1.3 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:

**8.3.1.3.1** 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.

**8.3.1.3.2** 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.

**8.3.1.3.3** 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.

**8.3.1.3.4** 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.

**8.3.1.3.5** 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.

**8.3.1.3.6** 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.

**8.3.1.3.7** 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.

**8.3.1.3.8** 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.

**8.3.1.3.9** 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.

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

#### **8.3.1.4 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
Total Allowance Amount	

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 GMP. Any unused Allowance or unused portion thereof shall be deducted from the Cost of the Work to the benefit of the District.

**8.3.1.5 Miscellaneous Costs**

**8.3.1.5.1** 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.

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

**8.3.1.5.3** 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.

**8.3.1.5.4** Fees of laboratories for tests required by the Contract Documents.

**8.3.1.5.5** 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.

**8.3.1.5.6** 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.

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

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

**8.3.1.5.9** 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.

**8.3.1.5.10** 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.

#### **8.3.1.6 Excluded Costs**

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

**8.3.1.6.1** 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.

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

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

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

**8.3.1.6.5** Costs that would cause the any Phase GMP or GMP (as adjusted by Change Order) to be exceeded.

#### **8.3.1.7 Design/Builder's Fee**

\_\_\_\_\_ percent (\_\_\_\_\_% ) of the Cost of the Work as described in Section 8.1.1.

### **8.3.1.8 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.

### **8.3.1.9 Contingency**

**8.3.1.9.1** The GMP 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.

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

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

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

## **8.4 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.

## **8.5 Changes to GMP**

**8.5.1** The Parties acknowledge that the GMP, including all Phase GMPs, is based on the Construction Documents, including the plans and specifications.

**8.5.2** 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 GMP, or any Phase GMPs. 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 GMP and/or Phase GMP shall be calculated in accordance with Section 11.

**8.5.3** The Parties agree to reduce the GMP, or Phase GMP as appropriate, for the unused portion of the Design/Builder Contingency, if any.

#### **8.5.4 Cost Savings**

Design/Builder shall work cooperatively with Bridging 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 GMP 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 Bridging 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.

#### **8.6 Compensation for Construction Phase Services**

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

#### **8.7 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.

**8.7.1** This Schedule of Values may be adjusted from time-to-time as the subcontracting plan is finalized.

#### **8.8 Application for Payment.**

**8.8.1** 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 GMP 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.

**8.8.2** 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 in 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.

## **8.9 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.

## **8.10 Withholding of Payment**

**8.10.1** 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:

**8.10.1.1** Defective Work not remedied within FORTY-EIGHT (48) hours of written notice to Design/Builder.

**8.10.1.2** Stop Payment Notices or other liens served upon the District as a result of the Contract.

**8.10.1.3** Failure to provide to the District a complete, monthly report demonstrating that Design/Builder and its Subcontractors are complying with the requirements of Public Contract Code section 2600 et seq., unless Design/Builder and its subcontractors have agreed to be bound by a Project Labor Agreement ("Skilled and Trained Workforce Requirements").

**8.10.1.4** Failure to provide a monthly report is cured by providing a complete report.

**8.10.1.5** Failure to demonstrate compliance with the Skilled and Trained Workforce Requirements is cured by providing a plan to achieve substantial compliance with the Skilled and Trained Workforce Requirements, with respect to the relevant apprenticeable occupation, prior to completion of the Project.

**8.10.1.6** Liquidated damages assessed against the Design/Builder.

**8.10.1.7** The cost of completion of the Contract if there exists reasonable doubt that the Work can be completed for the unpaid balance of the GMP or by the Contract Time.

**8.10.1.8** Damage to the District or other contractor(s).

**8.10.1.9** Unsatisfactory or untimely prosecution of the Work by the Design/Builder.

**8.10.1.10** Failure to store and properly secure materials.

**8.10.1.11** 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.

**8.10.1.12** Failure of the Design/Builder to maintain As-Built Drawings.

**8.10.1.13** Unauthorized deviations from the Contract Documents.

**8.10.1.14** 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.

**8.10.1.15** 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.

**8.10.1.16** Failure to comply with any, if applicable federal requirements regarding minimum wages, withholding, payrolls and basic records, apprentice and trainee employment requirements, equal employment opportunity requirements, Copeland Act requirements, Davis-Bacon Act and related requirements, Contract Work Hours and Safety Standards Act requirements.

**8.10.1.17** Failure to properly maintain or clean up the Site.

**8.10.1.18** Failure to timely indemnify, defend, or hold harmless the District.

**8.10.1.19** 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.

**8.10.1.20** Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits.

**8.10.1.21** Failure to pay any royalty, license or similar fees.

**8.10.1.22** Failure to pay Subcontractor(s) or supplier(s) as required by law and Design/Builder's subcontract agreement and by the Contract Documents; and

**8.10.1.23** Design/Builder is otherwise in breach, default, or in substantial violation of any provision of the Contract Documents.

### **8.11 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.

### **8.12 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.

### **8.13 Payment Not a Waiver**

**8.13.1** 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.

**8.13.2** 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.

#### **8.14 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, 8134, 8136 or 8138, 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 make available copies of similar waivers from its subcontractors of all tiers and suppliers.

#### **8.15 Retention**

**8.15.1** 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.

**8.15.2** 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.

##### **8.15.3 Investment Alternative.**

**8.15.3.1** 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.

**8.15.3.2** 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.

**8.15.3.3** 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.

#### **8.16 Final Payment, Occupancy, and Completion**

**8.16.1** The District reserves the right to occupy all or any part of the Project prior to completion of the Work, upon written notice.

**8.16.2** 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.

**8.16.3 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.

**8.16.4** 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.

**8.16.5** 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.

**8.16.6 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.

**8.16.7 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.

**8.16.7.1** The District shall pay the remaining amount up to the GMP due to the Design/Builder, after:

**8.16.7.1.1** Acceptance and Close-out of the Work.

**8.16.7.1.2** Resolution of all stop payment notices.

**8.16.7.1.3** Execution by the Design/Builder of a release of all claims against the District pursuant to this Contract.

**8.16.7.1.4** Any and all other requirements in this Contract that provide for satisfaction prior to final payment.

**8.16.8** 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.

## **9. SCHEDULE**

### **9.1 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.

### **9.2 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.

### **9.3 Schedules**

**9.3.1** 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.

**9.3.2** 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.] .

**9.3.3** Design/Builder shall Design/Builder will provide all data files electronically by email or on compact disc or flash drive.

**9.3.4 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:

**9.3.4.1** dates established in the District's Project Milestone Schedule;

**9.3.4.2** dates to acquire, set up and occupy the field office;

**9.3.4.3** dates of all mobilization activities on site, including notices and permits;

**9.3.4.4** dates detailing the planned design schedule, including submittals and reviews;

**9.3.4.5** anticipated dates for the start and completion of each stage of the design and construction process; and

**9.3.4.6** 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.

**9.3.5** 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.

**9.3.6 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:

**9.3.6.1** 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.

**9.3.6.2** 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.

**9.3.6.3** 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.

**9.3.6.4** 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.

**9.3.6.5** Activities showing the start and finish dates for all temporary works; all construction of mock-ups, and prototypes and/or samples.

**9.3.6.6** 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.

**9.3.6.7** Activities showing start and finish of tenant programming (as appropriate), modular furniture, tenant improvement work and phased occupancy.

**9.3.6.8** Close-out activities, including activities required for DSA certification.

**9.3.6.9** 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.

**9.3.6.10** 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.)

**9.3.6.11** 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.

**9.3.6.12** 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.

**9.3.6.13** 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.

**9.3.7** 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.

**9.3.8** 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 1/2" x 11"), and complete its submission of the Baseline Schedule, which shall include the following:

**9.3.8.1** Bar Charts generated using the format template provided by the District for:

**9.3.8.1.1** Project Milestones only;

**9.3.8.1.2** Summary Level (sorted by craft/trade and area);

**9.3.8.1.3** Detail (sorted by Early Dates); and

**9.3.8.1.4** Detail (sorted by Responsibility).

**9.3.8.2** Reports generated separately using the format template, if any, provided by the District for:

**9.3.8.2.1** Float (sorted low to high);

**9.3.8.2.2** Resource histogram; and

**9.3.8.2.3** Cost Summary and Cash flow Projection.

**9.3.8.3** Activities shall be coded to the activity code structure, if any, provided to the Design/Builder by the District.

**9.3.8.4** Once accepted by the District, this schedule shall become the Baseline Schedule for the Project from which all future Progress Schedules will be generated.

**9.3.9 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:

**9.3.9.1** Monthly update/status of electronic database shall include recording of all Actual Start Dates and Actual Finish Dates and status of activities in progress.

**9.3.9.2** Review of "Planned" versus "Actual" work force allocations and progress for the preceding month.

**9.3.9.3** Reviews of revisions added or deleted work and how those activities are being integrated into the Design/Builder's work plan.

**9.3.9.4** Review of Design/Builder's interface and coordination with other work on the Project.

**9.3.9.5** 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.

**9.3.9.6** 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:

**9.3.9.6.1** Computer plotted time-scaled CPM network (36" x 48") in color;

**9.3.9.6.2** Bar Charts generated separately using the format template provide by the District for:

- 9.3.9.6.2.1** Project Milestones only (Baseline vs. forecast);
- 9.3.9.6.2.2** Summary Level (sorted by craft/trade and area);
- 9.3.9.6.2.3** Detail (sorted by Early Dates); and
- 9.3.9.6.2.4** Detail (sorted by Responsibility).

**9.3.9.6.3** Reports generated separately using the format template provided by the District for:

- 9.3.9.6.3.1** Variance (Baseline vs. forecast);
- 9.3.9.6.3.2** Progress Curves (Baseline vs. Earned/Forecast);
- 9.3.9.6.3.3** Float (sorted low to high); and
- 9.3.9.6.3.4** Resource histogram.

The Progress Schedule will be the basis for the Short-Term Schedule.

**9.3.10 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.

**9.3.10.1** 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.

**9.3.11 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 GMP. 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.

**9.3.12 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.

#### **9.4 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.

#### **9.5 Computation of Time / Adverse Weather**

**9.5.1** 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:

**9.5.1.1** The weather conditions constitute Adverse Weather, as defined herein.

**9.5.1.2** 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.

**9.5.1.3** The Design/Builder's crew is dismissed as a result of the Adverse Weather;

**9.5.1.4** Said delay adversely affects the critical path in the Baseline Schedule; and

**9.5.1.5** Exceeds twelve (12) days of delay per year.

**9.5.2** 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.

**9.5.3** 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.

**9.5.4** 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.

### **10. EXTENSIONS OF TIME – LIQUIDATED DAMAGES**

#### **10.1 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]) 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.

## **10.2 Excusable Delay**

**10.2.1** 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.

**10.2.2** 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.

**10.2.3** 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:

**10.2.3.1** 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.

**10.2.3.2** 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.)

**10.2.3.3** A recovery schedule must be submitted within twenty (20) calendar days of written notification to the District of causes of delay.

### **10.3 No Additional Compensation for Delays within Design/Builder's Control**

**10.3.1** 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 GMP, 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.

**10.3.1.1** Design/Builder shall only be entitled to compensation for delay when all of the following conditions are met:

**10.3.1.1.1** The District is responsible for the delay.

**10.3.1.1.2** The delay is unreasonable under the circumstances involved.

**10.3.1.1.3** The delay could not have been avoided or mitigated by Design/Builder's reasonable diligence; and

**10.3.1.1.4** Design/Builder timely complies with the claims procedure of the Contract Documents.

## **11. CHANGES IN THE WORK**

### **11.1 General**

**11.1.1** 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 GMP will be adjusted by written Change Order for changes materially increasing or decreasing the time for performance or cost.

**11.1.2** 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.

**11.1.3** 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 GMP.

## **11.2 Change Orders**

**11.2.1** Methods used in determining the value of a Change Order shall be based on one of the following methods:

**11.2.1.1** 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.

**11.2.1.2** By the District, on the basis of the District's estimate of increase or decrease in the costs.

**11.2.1.3** By the District, whether or not negotiations are initiated as provided in this Contract.

**11.2.1.4** 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.

**11.2.1.5** By a manner agreed upon by the District and the Design/Builder.

**11.2.2 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:

**11.2.2.1** Mark-Ups for Added Work.

**11.2.2.1.1** 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]

**11.2.2.1.2** 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:

	<b><u>DESIGN/BUILDER PERFORMED WORK</u></b>	
(a)	<b>Material</b> (attach supplier's invoice or itemized quantity and unit cost plus sales tax)	
(b)	<b>Add Labor</b> (attach itemized hours and rates, fully encumbered)	
(c)	<b>Add Equipment</b> (attach suppliers' invoice)	
(d)	<b><u>Subtotal</u></b>	
(e)	<b>Add Design/Builder's Overhead and Profit</b> , not to exceed _____ percent (___%) of <b>Item (d)</b> .	
(f)	<b><u>Subtotal</u></b>	
(g)	<b>Add Bond and Insurance</b> , not to exceed _____ percent (___%) of <b>Item (f)</b>	
(h)	<b><u>TOTAL</u></b>	
(i)	<b>Time</b> (zero unless indicated; "TBD" not permitted)	<b>__ Calendar Days</b>

[REMAINDER OF PAGE INTENTIONALLY BLANK]

**11.2.2.1.3** 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:

	<b><u>SUBCONTRACTOR PERFORMED WORK</u></b>	
(a)	<b><u>Material</u></b> (attach supplier's invoice or itemized quantity and unit cost plus sales tax)	
(b)	<b><u>Add Labor</u></b> (attach itemized hours and rates, fully encumbered)	
(c)	<b><u>Add Equipment</u></b> (attach suppliers' invoice)	
(d)	<b><u>Subtotal</u></b>	
(e)	<b><u>Add Design/Builder's Overhead and Profit</u></b> , not to exceed _____ percent (___%) of <b>Item (d)</b> .	
(f)	<b><u>Subtotal</u></b>	
(g)	<b><u>Add Bond and Insurance</u></b> , not to exceed _____ percent (___%) of <b>Item (f)</b>	
(h)	<b><u>TOTAL</u></b>	
(i)	<b><u>Time</u></b> (zero unless indicated; "TBD" not permitted)	<b>__ Calendar Days</b>

**11.2.2.1.4** 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.

**11.2.2.1.5** For Change Orders that involve both added and deleted work, the GMP 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 GMP, 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.

### **11.2.3 Direct Costs:**

#### **11.2.3.1 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.

#### **11.2.3.2 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.

### **11.2.3.3 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.

### **11.2.3.4 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.

## **11.3 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.

#### **11.4 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).

#### **11.5 Covering and Uncovering of Work**

**11.5.1** When inspections are required by the Contract Documents the Design/Builder shall notify the District two (2) working days prior to covering any work.

**11.5.2** 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.

#### **11.6 Correction of Work**

**11.6.1** 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.

**11.6.2** 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.

**11.6.3** 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.

**11.6.4** 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.

**11.6.5** 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 GMP 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.

**11.6.6** 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.

**11.6.7** 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.

### **11.7 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 GMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not Final Payment to the Design/Builder has been made.

## **12. TERMINATION AND SUSPENSION**

### **12.1 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.

## **12.2 District's Right to Terminate Design/Builder for Cause**

**12.2.1 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:

**12.2.1.1** 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

**12.2.1.2** Design/Builder fails to complete said Work within the time specified or any extension thereof, or

**12.2.1.3** Design/Builder persistently fails or refuses to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or

**12.2.1.4** 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

**12.2.1.5** Design/Builder fails to make prompt payment to Subcontractors, or for material, or for labor; or

**12.2.1.6** Design/Builder persistently disregards laws, or ordinances, or instructions of District; or

**12.2.1.7** 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

**12.2.1.8** 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.

### **12.2.2 Notification of Termination**

**12.2.2.1** 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.

**12.2.2.2** 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:

**12.2.2.2.1** 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

**12.2.2.2.2** Commences performance of this Contract within three (3) days from date of serving of its notice to District.

**12.2.2.3** 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.

**12.2.2.4** 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.

### **12.3 Termination of Design/Builder for Convenience**

**12.3.1** 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.

**12.3.2** Upon notice, Design/Builder shall:

**12.3.2.1** Cease operations as directed by the District in the notice;

**12.3.2.2** Take necessary actions for the protection and preservation of the Work as soon as possible; and

**12.3.2.3** Terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**12.3.3** 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.

**12.3.4** 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.

## **12.4 Effect of Termination**

**12.4.1** 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.

**12.4.2** 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.

**12.4.3** 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.

**12.4.4** 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.

**12.4.5** If the expense to the District to finish the Work exceeds the unpaid GMP, Design/Builder and Surety shall pay difference to District within twenty-one (21) days of District's request.

**12.4.6** 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.

**12.4.7** The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to District.

## **12.5 Emergency Termination of Public Contracts Act of 1949**

**12.5.1** 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.

**12.5.1.1** 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.

**12.5.1.2** 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.

**12.5.2** 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 GMP as the reasonable value of the work done or any portion thereof.

## **12.6 Suspension of Work**

**12.6.1** 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.

**12.6.1.1** 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:

**12.6.1.1.1** That performance is, was or would have been so suspended, delayed or interrupted by another cause for which Design/Builder is responsible; or

**12.6.1.1.2** That an equitable adjustment is made or denied under another provision of the Contract; or

**12.6.1.1.3** 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.

### **13. DISPUTES AND CLAIMS**

#### **13.1 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.

#### **13.2 Definition of Claim**

**13.2.1** 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:

**13.2.1.1** A time extension, including without limitation, for relief of damages or penalties for delay assessed by the District under the Contract;

**13.2.1.2** 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

**13.2.1.3** An amount of payment disputed by the District.

#### **13.3 Claims Presentation**

##### **13.3.1 Form and Contents of Claim**

**13.3.1.1** 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.

**13.3.1.2** 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:

**13.3.1.2.1** The issues, events, conditions, circumstances and/or causes giving rise to the dispute, and shall show, in detail, the cause and effect of same;

**13.3.1.2.2** 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;

**13.3.1.2.3** The pertinent dates and/or durations and actual and/or anticipated effects on the Contract Price, Contract Schedule milestones and/or Contract Time adjustments;

**13.3.1.2.4** The Time Impact Analysis of all time delays that shows actual time impact on the critical path; and

**13.3.1.2.5** 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.

**13.3.1.3** The Claim shall include the following certification by the Design/Builder:

**13.3.1.3.1** 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.

**13.3.1.3.2** 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.

**13.3.2** Design/Builder shall bear all costs incurred in the preparation and submission of a claim.

**13.3.3** 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.

#### **13.4 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:

##### **13.4.1 STEP 1:**

**13.4.1.1** 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.

**13.4.1.1.1** 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.

**13.4.1.2** 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.

**13.4.1.3** 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.

### **13.4.2 STEP 2:**

**13.4.2.1** 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.

**13.4.2.1.1** 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.

### **13.4.3 STEP 3:**

**13.4.3.1** 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.

**13.4.3.1.1** 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.

**13.4.3.2** 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.

### **13.4.4 STEP 4:**

**13.4.4.1** 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.

### **13.5 Subcontractor Pass-Through Claims**

**13.5.1** 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.

**13.5.2** 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.

**13.5.3** The Design/Builder shall bind all its Subcontractors to the provisions of this section and will hold the District harmless against Claims by Subcontractors.

### **13.6 Government Code Claim Act Claim**

**13.6.1** 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.

**13.6.2** 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.

**13.6.3** 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.

**13.7 Claim Resolution pursuant to Public Contract Code section 20104 et seq.**

**13.7.1** 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.

**13.7.1.1** Design/Builder shall file with the District any written Claim, including the documents necessary to substantiate it, upon the application for final payment.

**13.7.1.2** 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.

**13.7.1.2.1** If additional information is required, it shall be requested and provided by mutual agreement of the parties.

**13.7.1.2.2** 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.

**13.7.1.3** 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.

**13.7.1.3.1** If additional information is required, it shall be requested and provided upon mutual agreement of the District and the Design/Builder.

**13.7.1.3.2** 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.

**13.7.1.4** 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.

**13.7.1.5** 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.

**13.7.1.6** 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.

**13.7.1.7** 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.

**13.7.1.8** 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.

**13.7.2** Design/Builder shall bind its Subcontractors to the provisions of this Section and will hold the District harmless against disputes by Subcontractors.

## **13.8 Claim Procedure Compliance**

**13.8.1** 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.

**13.8.2** 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.

### **13.9 Claim Resolution Non-Applicability**

**13.9.1** The procedures for dispute and claim resolutions set forth in this Article shall not apply to the following:

**13.9.1.1** Personal injury, wrongful death or property damage claims;

**13.9.1.2** Latent defect or breach of warranty or guarantee to repair;

**13.9.1.3** Stop payment notices;

**13.9.1.4** District's rights set forth in the Article on Suspension and Termination;

**13.9.1.5** Disputes arising out of labor compliance enforcement by the Department of Industrial Relations; or

**13.9.1.6** 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.

### **13.10 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.

## **14. PROJECTION OF PERSONS AND PROPERTY**

### **14.1 Safety of Persons and Property**

**14.1.1** 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.

**14.1.2** 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.

**14.1.3** The Design/Builder shall take precautions for safety and provide protection to prevent damage, injury or loss to:

**14.1.3.1** Workers working under the Contract and other persons who may be affected by it;

**14.1.3.2** 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

**14.1.3.3** 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.

**14.1.4** 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.

**14.1.5** 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.

**14.1.6** 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.

**14.1.7** 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.

**14.1.8** 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.

**14.1.9** 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.

**14.1.10** 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.

## **14.2 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.

## **15. INSURANCE, BONDS, AND INDEMNIFICATION**

### **15.1 Insurance**

The Design/Builder shall comply with the insurance requirements as indicated below.

#### **15.1.1 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.

#### **15.1.2 Commercial General Liability and Automobile Liability Insurance**

**15.1.2.1** 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.

**15.1.2.2** 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.

**15.1.2.3** All such policies shall be written on an occurrence form.

### **15.1.3 Excess Liability Insurance**

**15.1.3.1** 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.

**15.1.3.2** 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.

**15.1.3.3** 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.

### **15.1.4 Subcontractor**

**15.1.4.1** 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.

### **15.1.5 Workers' Compensation and Employers' Liability Insurance**

**15.1.5.1** 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.

**15.1.5.2** 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.

#### **15.1.6 Builder's Risk Insurance: Builder's Risk "All Risk" Insurance**

**15.1.6.1** 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.

#### **15.1.7 Pollution Liability Insurance**

**15.1.7.1** 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.

**15.1.7.2** 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.

**15.1.7.3** 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.

### **15.1.8 Proof of Insurance and Other Requirements: Endorsements and Certificates**

**15.1.8.1** 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.

**15.1.8.2** Endorsements, certificates, and insurance policies shall include the following:

**15.1.8.2.1** 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.”

**15.1.8.2.2** 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.

**15.1.8.3** 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.

**15.1.8.4** All endorsements shall waive any right to subrogation against any of the named additional insureds.

**15.1.8.5** 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).

**15.1.8.6** Design/Builder's insurance limit shall apply separately to each insured against whom a claim is made or suit is brought.

**15.1.8.7** 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.

**15.1.8.8** 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.

**15.1.8.9** All policies shall be written on an occurrence form.

**15.1.8.10** All of Design/Builder's insurance shall be with insurance companies with an A.M. Best rating of no less than A: XI.

**15.1.8.11** 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.

**15.1.8.12** 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]

**15.1.9 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		\$5,000,000
Commercial General Liability	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	\$5,000,000 per occurrence; \$10,000,000 aggregate
Automobile Liability – Any Auto	Combined Single Limit	\$2,000,000
Workers’ Compensation		Statutory limits under State law
Employer’s Liability		\$5,000,000
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 [redacted] Dollars (\$ [redacted]) shall not be less than the following amounts:

Commercial General Liability	Product Liability and Completed Operations, Fire Damage Liability – Split Limit	\$ [redacted],000,000 per occurrence; \$ [redacted],000,000 aggregate
Automobile Liability – Any Auto	Combined Single Limit	\$ [redacted],000,000
Workers’ Compensation		Statutory limits under State law
Employer’s Liability		\$ [redacted],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.

**15.2 Indemnification**

**15.2.1** 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:

**15.2.1.1** 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.

**15.2.1.2** 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.

**15.2.2** 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.

**15.2.3** 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.

**15.2.4** 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.

**15.2.5** 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.

**15.2.6** 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.

**15.2.7** The indemnification and defense obligations hereunder shall survive the completion of Work, including the warranty/guarantee period, and/or the termination of the Contract.

**15.2.8** 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.

### **15.3 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.

### **15.4 Performance Bond and Payment Bonds**

**15.4.1** 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 GMP 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 GMP.

**15.4.2** 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.

## **16. SEPARATE CONTRACTS**

### **16.1 District's Right to Perform Construction and to Award Separate Contracts**

**16.1.1** 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.

**16.1.2** 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.

**16.1.3** 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.

**16.1.4** 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.

## **16.2 Mutual Responsibility**

**16.2.1** 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.

**16.2.2** 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.

**16.2.3** 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.

## **17. MISCELLANEOUS**

### **17.1 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.

### **17.2 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.

### 17.3 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:

<p><u>District:</u></p> <p>[NAME] Peralta Community College District Department of General Services 333 East 8th Street Oakland, CA 94606 [FAX] [EMAIL]</p>	<p><u>Design/Builder:</u></p> <p>[NAME] [ADDRESS] [FAX] [EMAIL]</p>
<p>With a mandatory copy to:</p> <p>Deidree Y.M.K. Sakai, Esq. DANNIS WOLIVER KELLEY 275 Battery Street, Suite 1150 San Francisco, CA 94111 Fax: 415.543.4384 Email: dsakai@DWKesq.com</p>	<p>With a mandatory copy to:</p> <p>[NAME] [ADDRESS] [FAX] [EMAIL]</p>

### 17.4 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.

### 17.5 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.

### 17.6 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.

### **17.7 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.

### **17.8 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.

### **17.9 Record Retention and Audits**

**17.9.1** 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.

**17.9.2** 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.

### **17.10 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.

**17.11 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.

**17.12 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]

DRAFT

**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.**

# **APPENDIX C-2**

## **CONTRACT DOCUMENTS**

**For the following design-build project:**

[Name Of] Project  
[Address]

**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

---

**CONTRACT DOCUMENTS**

**[NAME OF] PROJECT**

DWK DMS 3489233v1

**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:

**[Name Of] Project**

("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:

**[Name Of] Project**

("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: **[Name Of] Project**

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 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.

I hereby certify that I will also conform to the Federal Labor Standards Provisions regarding minimum wages, withholding, payrolls and basic records, apprentice and trainee employment requirements, equal employment opportunity requirements, Copeland Act requirements, Davis-Bacon and Related Act requirements, Contract Work Hours and Safety Standards Act requirements, and any and all other applicable requirements for federal funding for all Work on the above Project.

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.

<b>YOUR BUSINESS ENTERPRISE IS:</b>	<b>AND YOU WILL</b>	<b>AND YOU WILL</b>
<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"/> <b>NOT</b> 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:**

	<b>TOTAL CONTRACT PRICE</b>
<b>A. Prime Bidder, if DVBE (own participation)</b>	\$
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.

<b>CATEGORY</b>	<b>TELEPHONE NUMBER</b>	<b>DATE CONTACTED</b>	<b>PERSON CONTACTED</b>
The District, if any			*
OSB, which publishes a list of DVBE's; Internet Address: <a href="http://www.dgs.ca.gov/osbcr">http://www.dgs.ca.gov/osbcr</a>	(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 <b>NOT</b> 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



By my signature below, I hereby certify that, to the best of my knowledge, the contents of this disclosure are true, or are believed to be true. I further certify on behalf of the Firm that I am aware of section 3000 et seq. of the California Public Contract Code, and the sections referenced therein regarding the penalties for providing false information or failing to disclose a financial relationship in this disclosure. 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:

<b>APPLICABLE DATES</b>	<b>% REQUIREMENT</b>	<b>EXCLUDED OCCUPATIONS</b>
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:

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 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:

On behalf of Design/Builder:

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
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:

**[Name Of] Project**

("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

## Appendix D

### 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. \_\_\_\_\_, to prequalify/shortlist design-build entities/teams for the District's [Insert Name of Project] ("Project");

**WHEREAS**, pursuant to Education Code section 81700 et seq., District has now issued a Request for Proposals ("RFP") No. \_\_\_\_\_, 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 8<sup>th</sup> 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.

[SIGNATURE PAGE FOLLOWS]

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.: \_\_\_\_\_

Employer Identification and/or  
Social Security Number

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

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

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Type of Business Entity:

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

**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 E

**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.

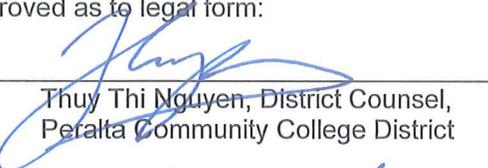
- b. There will be two subcommittees to the JAC, for the purpose of resolving grievances filed by any party. The composition of the first grievance subcommittee, which will only address grievances against contractors under Article 16 Local Hiring Program, will be one (1) representative from labor, one (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><b>PERALTA COMMUNITY COLLEGE DISTRICT</b></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><b>BUILDING AND CONSTRUCTION TRADES COUNCIL OF ALAMEDA COUNTY:</b></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>	

**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 21<sup>st</sup> 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 8<sup>th</sup> 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**

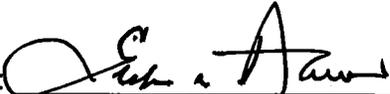
20.1 The Agreement shall be included as a condition of the award of all Construction Contracts that are part of the PLA Program.

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

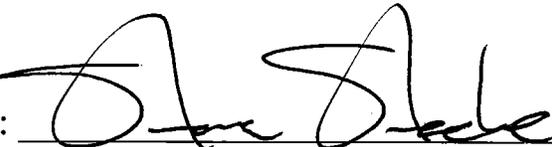
BY:   
Barry Luboviski  
Secretary-Treasurer

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:  \_\_\_\_\_

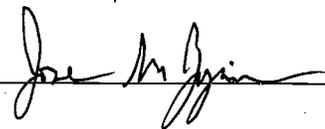
Sam Robinson

**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: 

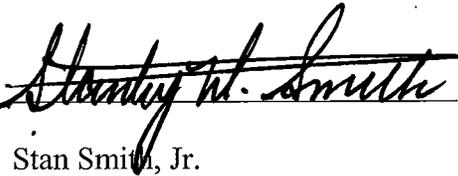
Bruce Word

**Sign Display & Allied Crafts, Local 510**

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

Mike Hardeman

**Sprinkler Fitters, Local 483**

By:   
Stan Smith, Jr.

**Teamsters, Local 853**

By:   
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**

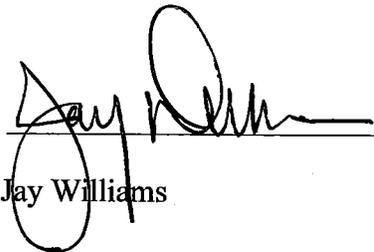
By: \_\_\_\_\_

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

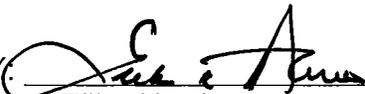
**Attachment C**

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

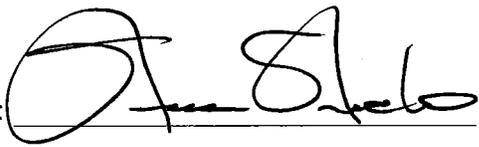
DATE: \_\_\_\_\_

**Alameda County Building &  
Trades Council AFL-CIO (Council)**

BY:   
Barry Luboviski  
Secretary-Treasurer

DATE: 7-21-2009

**Asbestos Workers, Local 16**

By:   
Steve Steele

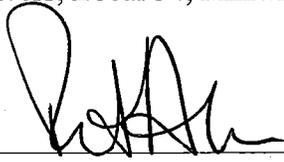
**Boilermakers, Local 549**

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: \_\_\_\_\_

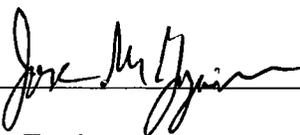
Pat McGarvey

**Hod Carriers, Local 166**

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

Sam Robinson

**Laborers, Local 304**

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

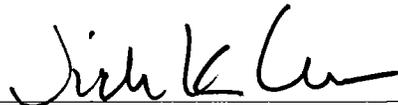
Jose Zapien

**District Council Ironworkers of the State of California and Vicinity**

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

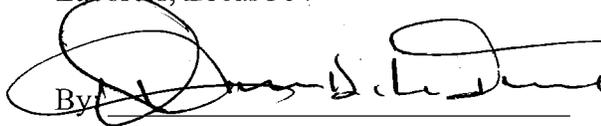
Joe Standley

**Electrical Workers, Local 595**

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

Victor Uno

**Laborers District Council on behalf of, Hod Carriers, Local 166, Laborers, Local 67, Laborers, Local 304**

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

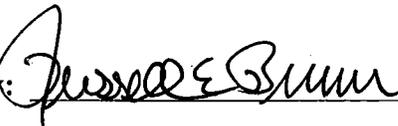
Oscar De La Torre

**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**

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

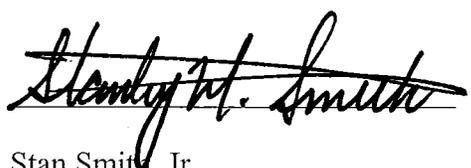
Bruce Word

**Sign Display & Allied Crafts, Local 510**

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

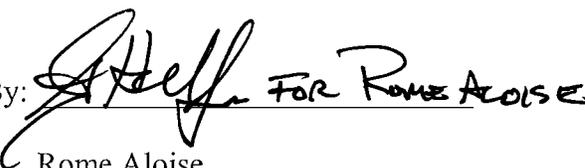
Mike Hardeman

**Sprinkler Fitters, Local 483**

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

Stan Smith, Jr.

**Teamsters, Local 853**

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

Rome 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

**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:

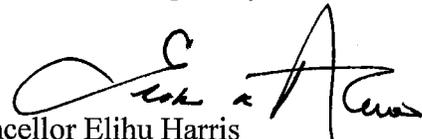
In our negotiations of the captioned Project Labor Agreement, the District and the Unions came to agreement on the Term of the Project Labor Agreement, in Article 1, Definitions and Article 20, Term. It is clearly understood by the Unions and the District that the parties agree that Section 20.2 shall 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.