

- quantities specified in the Specifications and in Manufacturer's recommendations.
- 1.6.2. Contractor shall provide District all required Operation and Maintenance Data.

FIELD ENGINEERING

1. GENERAL

1.1. REQUIREMENTS INCLUDED

- 1.1.1. Contractor shall provide and pay for field engineering services by a California-registered engineer, required for the Project, including, without limitations:
 - 1.1.1.1. Survey work required in execution of the Project.
 - 1.1.1.2. Civil or other professional engineering services specified, or required to execute Contractor's construction methods.

1.2. QUALIFICATIONS OF SURVEYOR OR ENGINEERS

Contractor shall only use a qualified licensed engineer or registered land surveyor, to whom District makes no objection.

1.3. SURVEY REFERENCE POINTS

- 1.3.1. Existing basic horizontal and vertical control points for the Project are those designated on the Drawings.
- 1.3.2. Contractor shall locate and protect control points prior to starting Site Work and preserve all permanent reference points during construction. In addition Contractor shall:
 - 1.3.2.1. Make no changes or relocation without prior written notice to District and Architect.
 - 1.3.2.2. Report to District and Construction Manager when any reference point is lost or destroyed, or requires relocation because of necessary changes in grades or locations.
 - 1.3.2.3. Require surveyor to replace Project control points based on original survey control that may be lost or destroyed.

1.4. RECORDS

Contractor shall maintain a complete, accurate log of all control and survey work as it progresses.

1.5. SUBMITTALS

- 1.5.1. Contractor shall submit name and address of Surveyor and Professional Engineer to District and Construct Manager prior to its/their work on the Project.
- 1.5.2. On request of District and Construction Manager, Contractor shall submit documentation to verify accuracy of field engineering work, at no additional cost to the District.
- 1.5.3. Contractor shall submit a certificate signed by registered engineer or surveyor certifying that elevations and locations of improvements are in conformance or nonconformance with Contract Documents.

2. EXECUTION

2.1. COMPLIANCE WITH LAWS

Contractor is responsible for meeting all applicable codes, OSHA, safety and shoring requirements.

2.2. NONCONFORMING WORK

Contractor is responsible for any re-surveying required by correction of nonconforming work.

CUTTING AND PATCHING

1. GENERAL

1.1. CUTTING AND PATCHING

- 1.1.1. Contractor shall be responsible for all cutting, fitting, and patching, including associated excavation and backfill, required to complete the Work or to:
 - 1.1.1.1. Make several parts fit together properly.
 - 1.1.1.2. Uncover portions of Work to provide for installation of ill-timed Work.
 - 1.1.1.3. Remove and replace defective Work.
 - 1.1.1.4. Remove and replace Work not conforming to requirements of Contract Documents.
 - 1.1.1.5. Remove Samples of installed Work as specified for testing.
 - 1.1.1.6. Provide routine penetrations of non-structural surfaces for installation of piping and electrical conduit.
 - 1.1.1.7. Attaching new materials to existing remodeling areas – including painting (or other finishes) to match existing conditions.
- 1.1.2. In addition to Contract requirements, upon written instructions from District, Contractor shall uncover Work to provide for observations of covered Work in accordance with the Contract Documents; remove samples of installed materials for testing as directed by District; and remove Work to provide for alteration of existing Work.
- 1.1.3. Contractor shall not cut or alter Work, or any part of it, in such a way that endangers or compromises the integrity of the Work, the Project, or work of others.
- 1.1.4. Contractor shall not cut and patch operating elements and safety related components in a manner that results in reducing their capacity to perform as intended or that results in increased maintenance or decreased operational life or safety. Operating elements include the following:
 - 1.1.4.1. Primary operational systems and equipment.
 - 1.1.4.2. Air or smoke barriers.
 - 1.1.4.3. Fire-suppression systems.
 - 1.1.4.4. Mechanical systems piping and ducts.
 - 1.1.4.5. Control systems.
 - 1.1.4.6. Communication systems.
 - 1.1.4.7. Conveying systems.
 - 1.1.4.8. Electrical wiring systems.
- 1.1.5. Contractor shall not cut and patch miscellaneous elements or related components in a manner that could change their load-carrying capacity, that results in reducing capacity to perform as intended, or that results in increased maintenance or decreased operational life of safety. Miscellaneous elements include the following:
 - 1.1.5.1. Water, moisture or vapor barriers.
 - 1.1.5.2. Membranes and flashings.
 - 1.1.5.3. Exterior curtain-wall construction.
 - 1.1.5.4. Equipment supports.
 - 1.1.5.5. Piping, ductwork, vessels and equipment.
 - 1.1.5.6. Noise and vibration control elements and systems.
 - 1.1.5.7. Shoring, bracing and sheeting.

1.2. SUBMITTALS

- 1.2.1. Contractor shall submit written notice to District pursuant to the applicable notice provisions of the Contract Documents, requesting consent to proceed with the cutting or alteration (Request) at least ten (10) days prior to any cutting or alterations that may affect the structural safety of Project, or work of others, including the following:
 - 1.2.1.1. The work of the District or other trades.

- 1.2.1.2. Structural value or integrity of any element of Project.
- 1.2.1.3. Integrity or effectiveness of weather-exposed or weather-resistant elements or systems.
- 1.2.1.4. Efficiency, operational life, maintenance or safety of operational elements.
- 1.2.1.5. Visual qualities of sight-exposed elements.
- 1.2.2. Contractor's Request shall also include:
 - 1.2.2.1. Identification of Project.
 - 1.2.2.2. Description of affected Work.
 - 1.2.2.3. Necessity for cutting, alteration, or excavations.
 - 1.2.2.4. Affects of Work on District, other trades, or structural or weatherproof integrity of Project.
 - 1.2.2.5. Description of proposed Work:
 - 1.2.2.5.1. Scope of cutting, patching, alteration, or excavation.
 - 1.2.2.5.2. Trades that will execute Work.
 - 1.2.2.5.3. Products proposed to be used.
 - 1.2.2.5.4. Extent of refinishing to be done.
 - 1.2.2.6. Alternates to cutting and patching.
 - 1.2.2.7. Cost proposal, when applicable.
 - 1.2.2.8. The scheduled date the Contractor intends to perform the Work and the duration of time to complete the Work.
 - 1.2.2.9. Written permission of other trades whose Work will be affected.
- 1.3. **QUALITY ASSURANCE**
 - 1.3.1. Contractor shall ensure that cutting, fitting, and patching shall achieve security, strength, weather protection, appearance for aesthetic match, efficiency, operational life, maintenance, safety of operational elements, and the continuity of existing fire ratings.
 - 1.3.2. Contractor shall ensure that cutting, fitting, and patching shall successfully duplicate undisturbed adjacent profiles, materials, textures, finishes, colors, and that materials shall match existing construction. Where there is dispute as to whether duplication is successful or has been achieved to a reasonable degree, the District's decision shall be final.
- 1.4. **PAYMENT FOR COSTS**
 - 1.4.1. Cost caused by ill-timed or defective Work or Work not conforming to Contract Documents, including costs for additional services of the District, its consultants, including but not limited to the Construction Manager, the Architect, the Project Inspector(s), Engineers, and Agents, will be paid by Contractor and/or deducted from the Contract by the District.
 - 1.4.2. District shall only pay for cost of Work if it is part of the original Contract Price or if a change has been made to the contract in compliance with the provisions of the General Construction Provisions (Exhibit D to the Facilities Lease). Cost of Work performed upon instructions from the District, other than defective or nonconforming Work, will be paid by District on approval of written Change Order. Contractor shall provide written cost proposals prior to proceeding with cutting and patching.
- 2. **PRODUCTS**
 - 2.1. **MATERIALS**
 - 2.1.1. Contractor shall provide for replacement and restoration of Work removed. Contractor shall comply with the Contract Documents and with the Industry Standard(s), for the type of Work, and the Specification requirements for each specific product involved. If not specified, Contractor shall first recommend a product of a manufacturer or appropriate trade association for approval by the District.
 - 2.1.2. Materials to be cut and patched include those damaged by the performance of the Work.
- 3. **EXECUTION**

3.1. INSPECTION

- 3.1.1. Contractor shall inspect existing conditions of the Site and the Work, including elements subject to movement or damage during cutting and patching, excavating and backfilling. After uncovering Work, Contractor shall inspect conditions affecting installation of new products.
- 3.1.2. Contractor shall report unsatisfactory or questionable conditions in writing to District as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease) and shall proceed with Work as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease) by District.

3.2. PREPARATION

- 3.2.1. Contractor shall provide shoring, bracing and supports as required to maintain structural integrity for all portions of the Project, including all requirements of the Project.
- 3.2.2. Contractor shall provide devices and methods to protect other portions of Project from damage.
- 3.2.3. Contractor shall, provide all necessary protection from weather and extremes of temperature and humidity for the Project, including without limitation, any work that may be exposed by cutting and patching Work. Contractor shall keep excavations free from water.

3.3. ERECTION, INSTALLATION AND APPLICATION

- 3.3.1. With respect to performance, Contractor shall:
 - 3.3.1.1. Execute fitting and adjustment of products to provide finished installation to comply with and match specified tolerances and finishes.
 - 3.3.1.2. Execute cutting and demolition by methods that will prevent damage to other Work, and provide proper surfaces to receive installation of repairs and new Work.
 - 3.3.1.3. Execute cutting, demolition excavating, and backfilling by methods that will prevent damage to other Work and damage from settlement.
 - 3.3.1.4. Contractor shall employ original installer or fabricator to perform cutting and patching for:
 - 3.3.1.5. Weather-exposed surfaces and moisture-resistant elements such as roofing, sheet metal, sealants, waterproofing, and other trades.
 - 3.3.1.6. Sight-exposed finished surfaces.
- 3.3.2. Contractor shall execute fitting and adjustment of products to provide a finished installation to comply with specified products, functions, tolerances, and finishes as shown or specified in the Contract Documents including, without limitation, the Drawings and Specifications.
- 3.3.3. Contractor shall fit Work airtight to pipes, sleeves, ducts, conduit, and other penetrations through surfaces. Contractor shall conform to all Code requirements for penetrations or the Drawings and Specifications, whichever calls for a higher quality or more thorough requirement. Contractor shall maintain integrity of both rated and non-rated fire walls, ceilings, floors, etc.
- 3.3.4. Contractor shall restore Work which has been cut or removed. Contractor shall install new products to provide completed Work in accordance with requirements of the Contract Documents and as required to match surrounding areas and surfaces.
- 3.3.5. Contractor shall refinish all continuous surfaces to nearest intersection as necessary to match the existing finish to any new finish.

OPERATION AND MAINTENANCE DATA

1. GENERAL

1.1. QUALITY ASSURANCE

Contractor shall prepare instructions and data by personnel experienced in maintenance and operation of described products.

1.2. FORMAT

- 1.2.1. Contractor shall prepare data in the form of an instructional manual entitled "OPERATIONS AND MAINTENANCE MANUAL & INSTRUCTIONS" ("Manual").
- 1.2.2. Binders: Contractor shall use commercial quality, 8-1/2 by 11 inch, three-side rings, with durable plastic covers; two inch maximum ring size. When multiple binders are used, Contractor shall correlate data into related consistent groupings.
- 1.2.3. Cover: Contractor shall identify each binder with typed or printed title "OPERATION AND MAINTENANCE MANUAL & INSTRUCTIONS"; and shall list title of Project and identify subject matter of contents.
- 1.2.4. Contractor shall arrange content by systems process flow under section numbers and sequence of Table of Contents of the Contract Documents.
- 1.2.5. Contractor shall provide tabbed fly leaf for each separate Product and system, with typed description of Product and major component parts of equipment.
- 1.2.6. Text: The content shall include Manufacturer's printed data, or typewritten data on 24 pound paper.
- 1.2.7. Drawings: Contractor shall provide with reinforced punched binder tab and shall bind in with text; folding larger drawings to size of text pages.

1.3. CONTENTS, EACH VOLUME

- 1.3.1. Table of Contents: Contractor shall provide title of Project; names, addresses, and telephone numbers of the Architect, any engineers, subconsultants, Subcontractor(s), and Contractor with name of responsible parties; and schedule of Products and systems, indexed to content of the volume.
- 1.3.2. For Each Product or System: Contractor shall list names, addresses, and telephone numbers of Subcontractor(s) and suppliers, including local source of supplies and replacement parts.
- 1.3.3. Product Data: Contractor shall mark each sheet to clearly identify specific Products and component parts, and data applicable to installation. Delete inapplicable information.
- 1.3.4. Drawings: Contractor shall supplement Product data to illustrate relations of component parts of equipment and systems, to show control and flow diagrams. Contractor shall not use Project Record Documents as maintenance drawings.
- 1.3.5. Text: The Contractor shall include any and all information as required to supplement Product data. Contractor shall provide logical sequence of instructions for each procedure, incorporating manufacturer's instructions.

1.4. MANUAL FOR MATERIALS AND FINISHES

- 1.4.1. Building Products, Applied Materials, and Finishes: Contractor shall include Product data, with catalog number, size, composition, and color and texture designations. Contractor shall provide information for re-ordering custom manufactured Products.
- 1.4.2. Instructions for Care and Maintenance: Contractor shall include Manufacturer's recommendations for cleaning agents and methods, precautions against detrimental agents and methods, and recommended schedule for cleaning and maintenance.
- 1.4.3. Moisture Protection and Weather Exposed Products: Contractor shall include Product data listing applicable reference standards, chemical composition, and details of installation. Contractor shall provide recommendations for inspections, maintenance, and repair.
- 1.4.4. Additional Requirements: Contractor shall include all additional requirements as specified in the Specifications.
- 1.4.5. Contractor shall provide a listing in Table of Contents for design data, with tabbed fly

sheet and space for insertion of data.

1.5. MANUAL FOR EQUIPMENT AND SYSTEMS

- 1.5.1. Each Item of Equipment and Each System: Contractor shall include description of unit or system, and component parts and identify function, normal operating characteristics, and limiting conditions. Contractor shall include performance curves, with engineering data and tests, and complete nomenclature, and commercial number of replaceable parts.
- 1.5.2. Panelboard Circuit Directories: Contractor shall provide electrical service characteristics, controls, and communications.
- 1.5.3. Contractor shall include color coded wiring diagrams as installed.
- 1.5.4. Operating Procedures: Contractor shall include start-up, break-in, and routine normal operating instructions and sequences. Contractor shall include regulation, control, stopping, shut-down, and emergency instructions. Contractor shall include summer, winter, and any special operating instructions.
- 1.5.5. Maintenance Requirements: Contractor shall include routine procedures and guide for trouble-shooting; disassembly, repair, and reassembly instructions; and alignment, adjusting, balancing, and checking instructions.
- 1.5.6. Contractor shall provide servicing and lubrication schedule, and list of lubricants required.
- 1.5.7. Contractor shall include manufacturer's printed operation and maintenance instructions.
- 1.5.8. Contractor shall include sequence of operation by controls manufacturer.
- 1.5.9. Contractor shall provide original manufacturer's parts list, illustrations, assembly drawings, and diagrams required for maintenance.
- 1.5.10. Contractor shall provide control diagrams by controls manufacturer as installed.
- 1.5.11. Contractor shall provide Contractor's coordination drawings, with color coded piping diagrams as installed.
- 1.5.12. Contractor shall provide charts of valve tag numbers, with location and function of each valve, keyed to flow and control diagrams.
- 1.5.13. Contractor shall provide list of original manufacturer's spare parts, current prices, and recommended quantities to be maintained in storage.
- 1.5.14. Additional Requirements: Contractor shall include all additional requirements as specified in Specification(s).
- 1.5.15. Contractor shall provide a listing in Table of Contents for design data, with tabbed fly sheet and space for insertion of data.

1.6. SUBMITTAL

- 1.6.1. Concurrent with the Submittal Schedule as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease), Contractor shall submit to the District for review two (2) copies of a preliminary draft of proposed formats and outlines of the contents of the Manual.
- 1.6.2. For equipment, or component parts of equipment put into service during construction and to be operated by District, Contractor shall submit draft content for that portion of the Manual within ten (10) days after acceptance of that equipment or component.
- 1.6.3. On or before the Contractor submits its final application for payment, Contractor shall submit two (2) copies of a complete Manual in final form. The District will provide comments to Contractor and Contractor must revise the content of the Manual as required by District prior to District's approval of Contractor's final Application for Payment.
- 1.6.4. Contractor must submit two (2) copies of revised Manual in final form within ten (10) days after receiving District's comments. Failure to do so will be a basis for the District withholding funds sufficient to protect itself for Contractor's failure to provide a final Manual to the District. All final documents to be concurrently provided to the District in an electronic format.

WARRANTIES

1. GENERAL

1.1. FORMAT

- 1.1.1. Binders: Contractor shall use commercial quality, 8-1/2 by 11 inch, three-side rings, with durable plastic covers; two inch maximum ring size.
- 1.1.2. Cover: Contractor shall identify each binder with typed or printed title "WARRANTIES" and shall list title of Project.
- 1.1.3. Table of Contents: Contractor shall provide title of Project; name, address, and telephone number of Contractor and equipment supplier, and name of responsible principal. Contractor shall identify each item with the number and title of the specific Specification, document, provision, or section in which the name of the Product or work item is specified.
- 1.1.4. Contractor shall separate each warranty with index tab sheets keyed to the Table of Contents listing, providing full information and using separate typed sheets as necessary. Contractor shall list each applicable and/or responsible Subcontractor(s), supplier(s), and/or manufacturer(s), with name, address, and telephone number of each responsible principal(s).

1.2. PREPARATION

- 1.2.1. Contractor shall obtain warranties, executed in duplicate by each applicable and/or responsible subcontractor(s), supplier(s), and manufacturer(s), within ten (10) days after completion of the applicable item or work. Except for items put into use with District's permission, Contractor shall leave date of beginning of time of warranty until the date of completion is determined.
- 1.2.2. Contractor shall verify that warranties are in proper form, contain full information, and are notarized, when required.
- 1.2.3. Contractor shall co-execute submittals when required.
- 1.2.4. Contractor shall retain warranties until time specified for submittal.

1.3. TIME OF SUBMITTALS

- 1.3.1. For equipment or component parts of equipment put into service during construction with District's permission, Contractor shall submit a draft warranty for that equipment or component within ten (10) days after acceptance of that equipment or component.
- 1.3.2. On or before the Contractor submits its final application for payment, Contractor shall submit all warranties and related documents in final form. The District will provide comments to Contractor and Contractor must revise the content of the warranties as required by District prior to District's approval of Contractor's final Application for Payment.
- 1.3.3. For items of Work that are not completed until after the date of Completion, Contractor shall provide an updated warranty for those item(s) of Work within ten (10) days after acceptance, listing the date of acceptance as start of warranty period.

RECORD DOCUMENTS

1. RECORD DRAWINGS

1.1. GENERAL

- 1.1.1. "Record Drawings" may also be referred to in the Contract as "As-Built Drawings."
- 1.1.2. As indicated in the Contract Documents, District will provide Contractor with one set of reproducible plans of the original Contract Drawings.
- 1.1.3. Contractor shall maintain at each Project Site(s) one (1) set of marked-up plans and shall transfer all changes and information to those marked-up plans, as often as required in the Contract Documents, but in no case less than once each month. Contractor shall submit to the Project Inspector one set of the Project Record Drawings ("As-Built") showing all changes incorporated into the Work since the preceding monthly submittal. The As-Built shall be available at the Project Site(s). The Contractor shall submit reproducible documents at the conclusion of the Project following review of the red-lined prints.
- 1.1.4. Label and date each Record Drawing "RECORD DOCUMENT" in legibly printed letters.
- 1.1.5. All deviations in construction, including but not limited to pipe and conduit locations and deviations caused by without limitation Change Orders, Construction Directives, RFI's, and Addenda, shall be accurately and legibly recorded by Contractor
- 1.1.6. Locations and changes shall be done by Contractor in a neat and legible manner and, where applicable, indicated by drawing a "cloud" around the changed or additional information.

1.2. RECORD DRAWING INFORMATION

- 1.2.1. Contractor shall record the following information:
 - 1.2.1.1. Locations of Work buried under or outside each building, including, without limitation, all utilities, plumbing and electrical lines, and conduits.
 - 1.2.1.2. Actual numbering of each electrical circuit.
 - 1.2.1.3. Locations of significant Work concealed inside each building whose general locations are changed from those shown on the Contract Drawings.
 - 1.2.1.4. Locations of all items, not necessarily concealed, which vary from the Contract Documents.
 - 1.2.1.5. Installed location of all cathodic protection anodes.
 - 1.2.1.6. Deviations from the sizes, locations, and other features of installations shown in the Contract Documents.
 - 1.2.1.7. Locations of underground work, points of connection with existing utilities, changes in direction, valves, manholes, catch basins, capped stubouts, invert elevations, etc.
 - 1.2.1.8. Sufficient information to locate Work concealed in each building with reasonable ease and accuracy.
- 1.2.2. In some instances, this information may be recorded by dimension. In other instances, it may be recorded in relation to the spaces in the building near which it was installed.
- 1.2.3. Contractor shall provide additional drawings as necessary for clarification.
- 1.2.4. Contractor shall provide reproducible record drawings, made from final Shop Drawings marked "No Exceptions Taken" or "Approved as Noted."

2. RECORD SPECIFICATIONS

Contractor shall mark each section legibly to record manufacturer, trade name, catalog number, and supplier of each Product and item of equipment actually installed.

3. MAINTENANCE OF RECORD DOCUMENTS

- 3.1. Contractor shall store Record Documents apart from documents used for construction as follows:
 - 3.1.1. Provide files and racks for storage of Record Documents.
 - 3.1.2. Maintain Record Documents in a clean, dry, legible condition and in good order.
- 3.2. Contractor shall not use Record Documents for construction purposes.

COMMISSIONING

1. RELATED DOCUMENTS AND PROVISIONS

Contractor shall review all Contract Documents for applicable provisions related to the provisions in this document, including without limitation:

- 1.1. LEED Certification Sustainable Design Requirements.

2. SUMMARY

- 2.1. Commissioning is a process for validating and documenting that the facility and its systems are constructed and perform in conformity with the Contract Documents.
- 2.2. The objective of the commissioning process is to verify that the performance of the facility and its systems meet or exceed the design intent.
- 2.3. Commissioning includes special facility start-up processes used to bring the facility to a fully operational state, free of deficiencies in an efficient and timely manner.
- 2.4. Training on related systems and equipment operation and maintenance shall be scheduled to commence only after start-up is complete and systems are verified to be 100% complete and functional.

3. DESCRIPTION

The following applies to all Contract Documents:

- 3.1. **Contractor Startup:** Sub-phase of Contractor's work ending with Acceptance of Work, during which Contractor performs a pre-planned program of activities including starting, testing, inspecting, adjusting balancing, correcting deficiencies and other similar activities.
 - 3.1.1. The District, Construction Manager and Architect and the Inspector shall be present to observe, inspect and identify deficiencies in building systems operations.
- 3.2. The completion of startup means the entire Construction Project including startup and fine tuning has been performed to the requirements of the Contract Documents and is verified in writing by the District, Construction Manager and Architect.
- 3.3. **Fine Tuning:** Fine tuning is the responsibility of Contractors after District occupancy and ending one (1) year after District occupancy. During this time, the Contractor is responsible for optimizing systems and correcting deficiencies arising under normal operating conditions.
 - 3.3.1. Includes a period after occupancy where systems are optimized under "live" operating conditions and any outstanding construction deficiencies are corrected.
 - 3.3.2. Fine Tuning shall extend from date of District occupancy to one year after occupancy.

4. DEFINITION OF TERMS

- 4.1. **Contractor's Pre-Commissioning Checklists:** Includes installation and start-up items as specified to be completed by the appropriate contractors prior to operational verification through the functional testing process.
- 4.2. **Installation Verification Process:** Includes the on-site inspection and review of related system components for conformance to Contract Documents. The Contractor shall verify systems readiness for functional testing procedures prior to the start of functional testing. Deficiencies will be documented by the Inspector for future resolution.
- 4.3. **Functional Performance Testing Process:** Includes the documented testing of system parameters, under actual or simulated operating conditions. Final performance commissioning of systems will begin only after the appropriate Contractor certifies that systems are 100% complete and ready for functional testing. The Contractor will be required to schedule, coordinate and perform device tests, calibration and functional performance test procedures.
- 4.4. **Deficiencies and Resolutions List:** Includes a list of noted deficiencies discovered as a result of the commissioning process. This list also includes the current disposition of issues, and the date of final resolution as confirmed by the Construction Manager and Inspector. Deficiencies are defined as those issues where products execution or performance does not satisfy the Project Contract Documents and/or the design intent.

5. COMMISSIONING SCHEDULE

- 5.1. Provide schedules for Contractor Start-Up work.
- 5.2. Incorporate in overall construction schedule.

- 5.3. Contractor's activities, which will be performed as specified under Fine Tuning, shall be completed within one (1) year from date of occupancy by the District.

6. CONTRACTOR RESPONSIBILITIES

- 6.1. Provide utility services required for the commissioning process.
- 6.2. Contractor is responsible for construction means, methods, job safety, and/or management function related to commissioning on the Project Site.
- 6.3. Contractor shall assign representatives with expertise and authority to act on behalf of Contractor and schedule the representatives to participate in and perform commissioning team activities including, but not limited to, the following:
 - 6.3.1. Participate in design and construction-phase coordination meetings.
 - 6.3.2. Participate in maintenance orientation and inspection.
 - 6.3.3. Participate in operation and maintenance training sessions.
 - 6.3.4. Participate in final review.
 - 6.3.5. Certify that Work is complete and systems are operational according to the Contract Documents, including calibration of instrumentation and controls.
 - 6.3.6. Evaluate performance deficiencies identified in test reports and, in collaboration with entity responsible for system and equipment installation, recommend corrective action.
 - 6.3.7. Review and comment on final commissioning documentation.
- 6.4. Contractor shall integrate all commissioning activities into Contractor's Construction Schedule.
- 6.5. Contractor's Subcontractors shall assign representatives with expertise and authority to act on behalf of subcontractors and schedule the representatives to participate in and perform commissioning team activities including, but not limited to, the following:
 - 6.5.1. Participate in design and construction-phase coordination meetings.
 - 6.5.2. Participate in maintenance orientation and inspection.
 - 6.5.3. Participate in procedures meeting for testing.
 - 6.5.4. Participate in final review.
 - 6.5.5. Provide schedule for operation and maintenance data submittals, equipment startup, and testing to Commissioning Authority for incorporation into the commissioning plan. Update schedule on a weekly basis throughout the construction period.
 - 6.5.6. Provide information to the Commissioning Authority for developing construction phase commissioning plan.
 - 6.5.7. Participate in training sessions for District's operation and maintenance personnel.
 - 6.5.8. Provide updated Project Record Documents to Commissioning Authority on a daily basis.
 - 6.5.9. Gather and submit operation and maintenance data for systems, subsystems, and equipment to the Commissioning Authority, as specified in Division 01 Document "Operation and Maintenance Data."
 - 6.5.10. Provide technicians who are familiar with the construction and operation of installed systems, who shall execute the test procedures developed by the Commissioning Authority, and who shall participate in testing of installed systems, subsystems, and equipment.

7. SUBMITTALS

- 7.1. Submit Draft and Final Contractor Start-up Forms as described in this Document. Submit Draft Report for Construction Manager and Architect's review and comment prior to Final Submission. Submit Final Report not later than twenty weeks before scheduled date of Acceptance of Work.
- 7.2. Prepare and submit one copy of report form to be used in preparation of system reports for:
 - 7.2.1. Food Service Equipment.
 - 7.2.2. Gymnasium Equipment and Scoreboards
 - 7.2.3. Laboratory Fume Hoods
 - 7.2.4. Elevators
 - 7.2.5. Each mechanical system specified in Division 15.
 - 7.2.6. Each Electrical system specified in Division 16.
- 7.3. Each System Report shall be submitted including the following:

- 7.3.1. Project Name
- 7.3.2. Name of System
- 7.3.3. Index of report's content
- 7.3.4. Adjacent to list of equipment, columns to indicate status of equipment operation, to date and to sign off equipment start-up.
- 7.3.5. Space to record equipment and operational problems which cannot be corrected with scheduled Contractor Start-Up program and which may delay Acceptance of Work.
- 7.3.6. Manufacturer's equipment start-up reports.
- 7.3.7. Systems' testing, balancing, and adjusting reports.
- 7.3.8. Equipment Report Forms shall include the following: Project name, name of equipment, starting and testing procedures to be performed and observations and test results to be recorded.

8. QUALITY ASSURANCE

- 8.1. Training Instructor Qualifications: Contractor shall provide factory-authorized service representatives, experienced in training, operation, and maintenance procedures for installed systems, subsystems, and equipment.
- 8.2. Test Equipment Calibration: Comply with test equipment manufacturer's calibration procedures and intervals. Recalibrate test instruments (per NIST requirements if applicable) immediately whenever instruments have been repaired following damage or dropping. Affix calibration tags to test instruments. Instruments shall have been calibrated within six months prior to use.

9. EQUIPMENT & SYSTEM SCHEDULE

The following equipment shall be commissioned in this Project:

System	Equipment	Note	Req'd by LEED
HVAC System	Chillers		X
	Boilers		X
	Pumps		X
	Cooling towers		X
	Variable frequency drives		X
	Air handlers		X
	Packaged AC units		X
	Terminal units for Office areas	2	X
	Unit heaters		X
	Heat exchangers		X
	Exhaust fans		X
	Supply fans		X
	Return fans		X
Building Management System	Sequences of Operation, Monitored Points, and Alarms		X
	Metering/Monitoring Devices and Equipment		X
	Software Commissioning, GUI presentation commissioning, system access performance criteria, software tools/source code commissioning, instrument data sheets, middleware commissioning, Internet Protocol commissioning		
Electrical System	Sweep or scheduled lighting controls	2	X
	Daylight dimming controls		X
	Lighting occupancy sensors		X
	Electrical grounding		

Plumbing System	Domestic water heaters		X
Security Alarm Systems	Security cameras and monitoring system personal duress alarm system; Intercom system; Paging System.		
System	Equipment	Note	Req'd by LEED
Security Electronics	Security plumbing fixture water management system.		
	Door Controls.		
	Fire alarm system.		
	Distributed radio antenna system.		
	Access control system.		
Courtroom Systems	Room acoustics.		
	Sound masking system.		
	Assisted listening.		
	Video projection.		
	Audio system.		
	Lighting and lighting controls.		X
Fire/Life Safety Systems	All devices		
	Alarm drivers		
	HVAC/Fire System Integration		
	Event Notifying and Reporting Systems		
Communication System			

9.1. SYSTEM FAILURES

- 9.2. After a second failure of a system to successfully meet the criteria as set for in the functional performance testing process, the Contractor shall reimburse the District for cost associated with any additional retesting required due to uncorrected deficiencies. Costs shall include salary, benefits, overhead, travel costs and per diem lodging costs if applicable.

EXHIBIT J
TO FACILITIES LEASE

PLANS, TECHNICAL SPECIFICATIONS, AND DRAWINGS

IF THE PARTIES AGREE TO A GUARANTEED PROJECT COST AND AMEND THE CONTRACT, THE PARTIES SHALL ALSO AMEND THIS EXHIBIT AND INCLUDE THE PLANS, TECHNICAL SPECIFICATIONS, AND DRAWINGS FOR THE PROJECT PURSUANT TO THE CONTRACT.

**EXHIBIT K
TO FACILITIES LEASE**

REVISIONS TO CONTRACT DOCUMENTS

FACILITIES LEASE

Section 3.4 (Operating School): The phasing plan shall be as follows:

- _____TBD_____
- _____
- _____

Section 3.6 (No Work During Student Testing): The following dates and times apply to this section:

- TBD

EXHIBIT D TO FACILITIES LEASE

Section 6.2.1 [Staffing Requirement]: The minimum staffing for the Project shall be a competent:

- Project Manager,
- Full-time Construction Superintendent on each active component/project,
- Project Engineer, and
- Project Administrator

Contractor shall provide with its proposal the name and resume for each specific individual that it is proposing for each position. Those persons shall be made available for interviews with the District, if requested.

Section 7.3 Bidding for Subcontractor Work

7.3.1 CONTRACTOR SHALL SOLICIT AND PROCURE SUBCONTRACTORS PURSUANT TO THE SUBCONTRACTOR PROCUREMENT PROCESS ATTACHED TO THE FACILITIES LEASE AS EXHIBIT H.

7.3.2 Contractor agrees and acknowledges that the Subcontractor Procurement Process is integral to the Parties negotiating in good faith to agree upon a GMP. If Contractor fails to comply with any of its obligations to procure Subcontractors in the Contract Documents, it will be considered a material breach and Default of the Facilities Lease, and the District shall have the right to terminate the Facilities Lease.

Article 10 – CONTRACTOR'S SUBMITTALS AND SCHEDULES

Item	Description	Due Date
Construction Schedule	Must be in Microsoft Project or Primavera or Equivalent	Within 30 days of District's Notice to Proceed.
Schedule of Values	With all the detail as required in Exhibit D.	Prior to the District's approval of the Contractor's first Application for Tenant Improvement Payment
Shop Drawings		Within 30 days of District's Notice to Proceed.

Safety Plan		Within 30 days of District's Notice to Proceed.
Complete Subcontractor List		Within 30 days of District's Notice to Proceed.
Logistics Plan		Within 30 days of District's Notice to Proceed.

Section 15.1.1.4: The number of days that must be exceeded to claim extra time for "Adverse Weather":
[ALTERNATIVELY: THE DISTRICT AND CONTRACTOR MAY NEGOTIATE A CUMULATIVE NUMBER OF DAYS FOR THE DURATION OF THE PROJECT.]

January	<u>7</u>	July	<u>0</u>
February	<u>7</u>	August	<u>0</u>
March	<u>4</u>	September	<u>0</u>
April	<u>3</u>	October	<u>2</u>
May	<u>1</u>	November	<u>2</u>
June	<u>1</u>	December	<u>2</u>

END OF DOCUMENT

**EXHIBIT L
TO FACILITIES LEASE**

AGREEMENT FOR PRELIMINARY SERVICES

This Agreement for Preliminary Services ("Agreement") dated October 14, 2021 ("Effective Date"), is made and entered into by and between the Alameda Unified School District ("District") and BHM Construction, Inc. ("Contractor") (together, the "Parties").

WHEREAS, the District's Governing Board, in order to enable the District to utilize the lease-leaseback delivery method for future construction projects, adopted procedures for a fair and impartial solicitation process to evaluate qualifications and proposals to determine which proposer provides the "best value" pursuant to Education Code section 17406(a)(2) ("Lease-Leaseback Procedures"); and

WHEREAS, Education Code section 17406(a)(1) permits the District to utilize the lease-leaseback delivery method to enter into a lease whereby the District leases the project site to the contractor to construct the project, and the contractor then leases the project site back to the District; and

WHEREAS, prior to entering into the lease to construct the project, Education Code section 17406(b)(1) permits the District to enter into a contract for the performance of preliminary services before the Division of the State Architect ("DSA") approves the plans and specifications for a project so long as the contractor does not perform any services for which a contractor's license is required; and

WHEREAS, consistent with the Lease-Leaseback Procedures, the District issued a request for qualifications and proposals ("RFQ/P") to solicit proposals from qualified firms to perform both preliminary services and construction services for the District's Wood Middle School HVAC Modernization – DSA App 01-119458 ("Project"), and through the RFQ/P the District intended to award both the performance of preliminary phase services and construction phases services to the successful contractor; and

WHEREAS, after receiving and scoring the proposals, the District determined that the Contractor presented the District the "best value" to the District and the District's Governing Board awarded the Project to the Contractor; and

WHEREAS, the District seeks to have the Contractor perform preliminary services as more fully described in Attachment A attached hereto ("Preliminary Services") pursuant to Education Code section 17406(b)(1), and the Contractor represents that it is able and qualified to perform Preliminary Services for the Lease-Leaseback Project prior to the Contractor providing construction phase services; and

WHEREAS, after the Contractor performs Preliminary Services, the Parties acknowledge that Contractor shall procure subcontractors, propose a Guaranteed Maximum Price / Guaranteed Project Cost ("GMP" or "GPC"), and the Parties shall enter into a Site Lease and Facilities Lease for the construction of the Lease-Leaseback Project based on the Contractor's response to the RFQ/P.

AGREEMENT

NOW, THEREFORE, for good and sufficient consideration, receipt of which is acknowledged, the Parties agree as follows:

1. **Services.** The Contractor shall provide the services as described in Attachment A, attached hereto and incorporated herein by this reference ("Services" or "Work"). The scope of services will generally consist of the following:
- 2.

Contractor shall perform Preliminary Services for the Project upon the District's issuance of a Notice to Proceed consistent with the Schedule.

- 2.1. The Services shall be performed at Wood Middle School, 420 Grand St., Alameda CA 94501, as further described in the Scope of Work for Preliminary Services attached hereto as **Attachment A ("Project")**.
3. **Term.** Unless terminated or otherwise cancelled as permitted herein, the term of this Agreement shall be for the duration of the Services provided under this Agreement consistent with the Schedule.
- 3.1. **Notice to Proceed.** Within a reasonable time after the Parties execute this Agreement, the District shall issue a Notice to Proceed to Contractor at which time Contractor shall commence the performance of the Services.
- 3.2. **Schedule.** The schedule for the Preliminary Services is as follows ("**Schedule**"):
- 3.2.1. Contractor shall commence the Preliminary Services on or before October 27, 2021, and
- 3.2.2. Contractor shall complete the Preliminary Services on or before November 30, 2021.
4. **One Project.** The Parties agree and acknowledge, consistent with the RFQ/P and relevant law, that upon the District's award to the Contractor of the Lease-Leaseback Project, the Parties intended the Contractor to perform Preliminary Services and construction services for the Lease-Leaseback Project as one continuous project, and, except insofar as the Parties cannot agree on a GPC for the Lease-Leaseback Project at the conclusion of Preliminary Services, the District intends, and always has intended, for the Contractor to construct the Lease-Leaseback Project.
5. **Submittal of Documents.** The Contractor shall not commence the Work under this Agreement until the Contractor has submitted and the District has approved the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:
- ☒ Signed Agreement
- ☒ Workers' Compensation Certification
- ☒ Fingerprinting/Criminal Background Investigation Certification
- ☒ Insurance Certificates and Endorsements
- ☒ W-9 Form
- ☒ Bonds (as required or requested by District)
6. **Compensation.** The District shall pay Contractor for Contractor's performance of Preliminary Services a total fee **not to exceed Forty Two Thousand Dollars (\$42,000)** based on the amount of Work satisfactorily performed and approved by the District pursuant to the scope and provisions in **Attachment A** attached hereto and as indicated herein ("**Fee**"):

Item	Amount
Review of Design Documents	\$8,000
Value Engineering	\$4,000
Constructability Review	\$6,000
Confirm Modifications to Design Drawings	\$4,000
Review of Budget for Project Costs	\$7,000
Preparation of Construction Schedule and Phasing Plan	\$5,000
Construction Planning and Bidding	\$8,000
Total	\$42,000

<u>Job Title</u>	<u>Hourly Rate</u>
Project Manager	\$120
Constructability Reviewer	\$110
Estimator	\$120
Scheduler	\$120

- 6.1. The Fee includes all costs and expenses for all time and materials required and expended to provide the specific Preliminary Services including but not limited to the costs of hiring sub-consultants, contractors and other professionals, review of the Lease-Leaseback Project, Plans and Specifications, review and preparation of necessary documentation relating to the development of the Lease-Leaseback Project, all travel-related expenses, as well as for meetings with District and its representatives, long distance telephone charges, copying expenses, salaries of Contractor staff and employees working on the Project, overhead, and any other reasonable expenses incurred by Contractor in performance of the Preliminary Services.
- 6.2. The Contractor shall submit a monthly itemized statement of Service charges and expenses to the District on the fifth (5th) day of each month. The itemized statement shall reflect the hours spent, or scopes of work performed, by the Contractor in performing its Services, and, if applicable, the statements shall reflect expenses and materials. The itemized statement shall show the days and hours worked each workday Contractor performs Services for the previous month. District will permit a one (1) month grace period beyond this time for the Contractor to submit its invoice for a particular month's work. No amounts shall be due or owing to the Contractor if it fails to submit an invoice to the District at or before the end of that grace period.
- 6.3. Payment for the Work shall be made for all undisputed amounts in monthly installment payments within forty five (45) days after the Contractor submits an itemized statement to the District for Work actually completed and after the District's written approval of the Work, or the portion of the Work for which payment is to be made.
7. **Expenses.** District shall not be liable to Contractor for any costs or expenses paid or incurred by Contractor in performing the Services, except as expressly provided for in this Agreement.
8. **Independent Contractor.** Contractor, in the performance of this Agreement, shall be and act as an independent contractor. Contractor understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of the District, and are not entitled to benefits of any kind or nature normally provided employees of the District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Contractor 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 Contractor's employees. In the performance of the work herein contemplated, Contractor is an independent contractor or business entity, with the sole authority for controlling and directing the performance of the details of Contractor's Work, District being interested only in the results obtained.
9. **Contractor and Subcontractor Registration and Compliance.**
 - 9.1. Contractor acknowledges that, for purposes of Labor Code section 1725.5, all or some of the Work is a public work to which Labor Code section 1771 applies and that the Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements for itself and its subcontractors. Contractor represents that all of its subcontractors are registered pursuant to labor

Code section 1725.5.

9.2. Labor Code section 1771.1(a) states the following:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work Contractor to Section 1725.5 at the time the contract is awarded."

- 9.3. Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations.
- 9.4. Contractor shall post job site notices, as required by law, including without limitation Labor Code section 1771.4.
- 9.5. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.
10. **Designated Representatives.** Contractor shall coordinate with District personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by the District for the design, coordination or management of other work related to the Project.
11. **Materials.** Contractor shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement, except as expressly provided for in this Agreement.
12. **Performance of Services.**
- 12.1. **Standard of Care.**
- 12.1.1. Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control or supervision of District. Contractor's Services will be performed, findings obtained, reports and recommendations prepared in accordance with generally and currently accepted principles and practices of its profession for services to California school districts. Contractor's Services will be performed with due care and in accordance with applicable law, code, rule, regulation, and/or ordinance.
- 12.1.2. Contractor hereby represents, to the extent applicable, that it possesses the necessary professional capabilities, qualifications, licenses, skilled personnel, experience, expertise, and financial resources, and it has available and will provide the necessary equipment, materials, tools, and facilities to perform the Services in an efficient, professional, and timely manner in accordance with the terms and conditions of the Agreement.
- 12.1.3. Contractor shall be responsible for the professional quality, technical accuracy, completeness, and coordination of the Services, and Contractor understands that the District relies upon such professional quality, accuracy, completeness, and coordination by Contractor in performing the

Services.

12.1.4. Contractor shall ensure that any individual performing work under the Agreement requiring a California license shall possess the appropriate license required by the State of California. All personnel shall have sufficient skill and experience to perform the work assigned to them.

12.2. **Meetings.** In addition to all public hearings and meetings, Contractor agrees to participate in coordination meetings to discuss District strategies, timetables, implementations of Services, and any other issues deemed relevant to the Project.

12.3. **District Approval.**

12.3.1. The District has the right to inspect and supervise to secure satisfactory completion of the Services.

12.3.2. Prior to any documents being made public, Contractor shall provide in draft form to District staff and District legal counsel, all documents that it or its subcontractors prepare.

13. **Information.**

13.1. **Furnished by District.** Upon request by Contractor, District shall furnish Contractor any information and documents readily available to District that the Contractor determines may be of use to the Contractor in the performance of the Services. District shall rely upon Contractor to determine which information and documents may be of use to the Contractor in performance of the Services. District makes no representations with respect to the reliability, accuracy, or completeness of any information or documents furnished by the District. Contractor shall determine if it is appropriate to rely on the District furnished information or documents. Contractor shall determine if clarification, additional information, or additional data is needed, and if so, to seek it out.

13.2. **Furnished by Others.** Contractor is to obtain, utilizing its own personnel, any required information that has been developed by other public or private entities that are not under contract to District. Contractor shall determine if it is appropriate to rely on the information or data developed by these other public or private entities. Contractor shall determine if clarification, additional information, or additional data is needed.

14. **Originality of Services.** Except as to standard generic details, Contractor agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to the District and/or used in connection with this Agreement, shall be wholly original to Contractor and shall not be copied in whole or in part from any other source, except that submitted to Contractor by District as a basis for such services.

15. **Copyright/Trademark/Patent.** Contractor understands and agrees that all matters produced under this Agreement shall become the property of District and cannot be used without District's express written permission. District shall have all right, title and interest in said matters, including the right to secure and maintain the copyright, trademark and/or patent of said matter in the name of the District. Contractor consents to use of Contractor's name in conjunction with the sale, use, performance and distribution of the matters, for any purpose and in any medium.

16. **Audit.** Contractor shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Contractor transacted under this Agreement. Contractor shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. Contractor shall permit the District, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and

records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the District shall give reasonable prior notice to Contractor and shall conduct audit(s) during Contractor's normal business hours, unless Contractor otherwise consents. For a period of three (3) years after final payment under this Agreement, all expenditures of public funds in excess of ten thousand dollars (\$10,000) shall be subject to examination and audit by the State Auditor. The audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering the Agreement.

17. Termination.

17.1. Without Cause by District. District may, at any time, with or without reason, terminate this Agreement and compensate Contractor only for the Services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of Services by Contractor. Notice shall be deemed given when received by the Contractor or no later than three (3) days after the day the notice was mailed, whichever is sooner.

17.2. Without Cause by Contractor. Contractor cannot terminate this Agreement without cause.

17.3. With Cause by District. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

17.3.1. material violation of this Agreement by the Contractor; or

17.3.2. any act by Contractor exposing the District to liability to others for personal injury or property damage; or

17.3.3. Contractor is adjudged a bankrupt, Contractor makes a general assignment for the benefit of creditors or a receiver is appointed on account of Contractor's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the Services from another Contractor. If the expense, fees, and/or costs to the District exceeds the cost of providing the Services pursuant to this Agreement, the Contractor shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

17.4. With Cause by Contractor. Contractor may only terminate this Agreement after giving written notice of intention to terminate for cause and the expiration of the time to cure. Cause shall only include:

17.4.1. Material violation of this Agreement by the District, or

17.4.2. Failure of the District to timely pay undisputed Contractor invoices.

Written notice by Contractor shall contain the reasons for such intention to terminate and unless within thirty (30) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the thirty (30) calendar days cease and terminate. During the thirty (30) calendar days the Inspector shall continue providing Services to the District until the Agreement ceases and terminates. In the event of this termination, the District may secure the Services from another Contractor.

17.5. **Ownership of Records.** It is mutually agreed that all materials prepared by Contractor under this Agreement shall become the property of the District and Contractor shall have no property right therein whatsoever. Contractor hereby assigns to District any copyrights associated with the materials prepared pursuant to the Agreement. Immediately upon termination and upon written request, the District shall be entitled to, and Contractor shall deliver to the Contractor, all data, drawings, specifications, reports, estimates, summaries and such other materials and commissions as may have been prepared or accumulated to date by the District in performing the Agreement which is not Contractor privileged information, as defined by law, or Contractor's personnel information.

18. **Indemnification.** The Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District, and their respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Contractor or its subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property, except to the extent caused by the negligence or willful misconduct of the Indemnitees. This agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein.

19. **Insurance.**

19.1. The Contractor shall procure and maintain at all times it performs any portion of the Services the following insurance with minimum limits equal to the amount indicated below.

19.1.1. **Commercial General Liability and Automobile Liability Insurance.** Commercial General Liability Insurance and Any Auto Automobile Liability Insurance that shall protect the Contractor, the District, and the State from all claims of bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising performing any portion of the Services. (Form CG 0001 and CA 0001, or forms substantially similar, if approved by the District.)

19.1.2. **Workers' Compensation and Employers' Liability Insurance.** Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees performing any portion of the Services. In accordance with provisions of section 3700 of the California Labor Code, the Contractor shall be required to secure workers' compensation coverage for its employees. If any class of employee or employees engaged in performing any portion of the Services under this Agreement are not protected under the Workers' Compensation Statute, adequate insurance coverage for the protection of any employee(s) not otherwise protected must be obtained before any of those employee(s) commence performing any portion of the Services.

19.1.3. **Professional Liability (Errors and Omissions).** This insurance shall cover the Contractor and his/her subcontractors(s) for two million dollars (\$2,000,000) aggregate limit subject to no more than twenty-five thousand dollars (\$25,000) per claim deductible, coverage to continue through completion of construction plus two years thereafter. The policy must contain terms or endorsements extending coverage that requires the insurer to defend and indemnify for acts which happen before the effective date of the policy provided the claim is first made during the policy period.

Type of Coverage	Minimum Requirement
------------------	---------------------

Commercial General Liability Insurance , including Bodily Injury, Personal Injury, Property Damage, Advertising Injury, and Medical Payments	
Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
Automobile Liability Insurance - Any Auto	
Each Occurrence	\$ 1,000,000
Professional Liability	\$ 2,000,000
Workers Compensation	Statutory Limits
Employer's Liability	\$ 1,000,000

19.2. **Proof of Carriage of Insurance.** The Contractor shall not commence performing any portion of the Services until all required insurance has been obtained and certificates indicating the required coverage have been delivered in duplicate to the District and approved by the District. Certificates and insurance policies shall include the following:

19.2.1. A clause stating: "This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District, stating date of cancellation or reduction. Date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice."

19.2.2. 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.

19.2.3. An endorsement stating that the District and the State and their agents, representatives, employees, trustees, officers, consultants, and volunteers ("Additional Insureds") are named Additional Insureds under all policies except Workers' Compensation Insurance, Professional Liability, and Employers' Liability Insurance. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. An endorsement shall also state that Contractor's insurance policies shall be primary to any insurance or self-insurance maintained by District.

19.2.4. All policies except the Professional Liability Policy shall be written on an occurrence form.

19.3. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the District.

20. **Assignment.** The obligations and liabilities of the Contractor pursuant to this Agreement shall not be assigned voluntarily by the Contractor nor assigned by operation of law, without express written consent of the District.

21. **Binding Contract.** This Agreement shall be binding upon the Parties hereto and upon their successors and assigns and shall inure to the benefit of the Parties and their successors and assigns.

22. **Compliance with Laws.** Contractor shall observe and comply with all rules and regulations of the governing board of the District and all federal, state, and local laws, ordinances and regulations. Contractor shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Contractor observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs

arising therefrom.

23. **Certificates/Permits/Licenses.** Contractor and all Contractor's employees or agents shall secure and maintain in force such certificates, permits and licenses as are required by law in connection with the furnishing of the Services. Except for any license or permits furnished by District, Contractor shall be fully responsible for identifying and obtaining all necessary licenses and permits for the timely prosecution of the Services.
24. **Anti-Discrimination.** It is the policy of the District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age and therefore the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and District policy. Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).
25. **Fingerprinting of Employees.** The Fingerprinting/Criminal Background Investigation Certification must be completed and attached to this Agreement prior to Contractor's performing of any portion of the Services.
26. **Disabled Veteran Business Enterprises.** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building to have a participation goal of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). In accordance therewith, the Contractor must submit, upon request by District, appropriate documentation to the District identifying the steps the Contractor has taken to solicit DVBE participation in conjunction with this Agreement, if applicable.
27. **Interaction with the Media and Public.** Contractor shall promptly refer all inquiries from the news media or public to District and shall not make any statements to the media or the public relating to the Services. If Contractor receives a complaint from a citizen or the community, Contractor shall promptly inform the District about the complaint.
28. **Taxes.** Contractor shall be liable and solely responsible for paying all required taxes and other obligations, including but not limited to federal and state income taxes and social security taxes payable in connection with the Services and this Agreement. Contractor agrees to release, indemnify, defend, and hold District harmless from and against any worker's compensation or any tax liability which District may incur to any Federal or State governments with jurisdiction as a consequence of this Agreement. All payments made to Contractor may be reported to the Internal Revenue Service.
29. **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.
30. **District's Evaluation of Contractor and Contractor's Employees and/or Subcontractors.** The District may evaluate the Contractor in any way the District is entitled pursuant to applicable law. The District's evaluation may include, without limitation:
 - 30.1. Requesting that District employee(s) evaluate the Contractor and the Contractor's employees and subcontractors and each of their performance.
 - 30.2. Announced and unannounced observance of Contractor, Contractor's employee(s), and/or subcontractor(s).

31. **Limitation of District Liability.** Other than as provided in this Agreement, District's financial obligations under this Agreement shall be limited to the payment of the compensation 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.
32. **Disputes.** In the event of a dispute between the Parties as to performance of Work, Agreement interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties. Pending resolution of the dispute, Contractor shall neither rescind the Agreement nor stop performing the Services.
33. **Confidentiality.** The Contractor and all Contractor's agents, personnel, employee(s), and/or subcontractors(s) shall maintain the confidentiality of all information received in the course of performing the Services. Contractor understands that student records are confidential and agrees to comply with all state and federal laws concerning the maintenance and disclosure of student records. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.
34. **Employment with Public Agency.** Contractor, if an employee of another public agency, agrees that Contractor will not receive salary or remuneration, other than vacation pay, as an employee of another public agency for the actual time in which Services are actually being performed pursuant to this Agreement.
35. **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 sent by overnight delivery service, addressed as follows:

Alameda Unified School District
2060 Challenger Drive
Alameda, CA 94501
ATTN: Robbie Lyng

BHM Construction, Inc.
221 Gateway Road West, Suite 405
Napa, CA 94558
ATTN: Jeff Mazet

Any notice personally given 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.

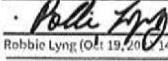
36. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.
37. **California Law.** This Agreement is entered into in California and shall be governed by and the rights, duties and obligations of the Parties, and 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 the District's administrative offices are located. Contractor waives any claim or right to remove an action on this Agreement to federal court.
38. **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.
39. **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.

40. **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.
41. **Attorney 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.
42. **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.
43. **Calculation of Time.** For the purposes of this Agreement, "days" refers to calendar days unless otherwise specified.
44. **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.
45. **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.
46. **Incorporation of Recitals and Attachments.** The Recitals and each attachment attached hereto are hereby incorporated herein by reference.
47. **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 herein.
48. **Incorporation of RFQ/RFP & Proposal and Interpretation of Documents.** If the Parties enter into this Agreement as a result of a Request for Qualifications and/or a Request for Proposal ("RFQ/RFP"), the RFQ/RFP is incorporated into this Agreement, except that if there is any conflict between the RFQ/RFP and any provision of this Agreement, the Agreement shall prevail.

IN WITNESS WHEREOF, the Parties have accepted and agreed to this Agreement, as of the Effective Date, and have directed and authorized their respective officers to execute this Agreement:


Alameda Unified School District

Date: 10/19/2021

Signature: 
Robbie Lyng (Oct 19, 2021 14:36 PDT)

Print Name: Robbie Lyng
Print Title: Senior Director of Construction

Date: 10/19/2021

Signature: 
Shariq Khan (Oct 19, 2021 14:43 PDT)

Print Name: Shariq Khan
Print Title: Chief Business Officer

Date: _____

Signature: _____

Print Name: Jennifer Williams
Print Title: Board President

BHM Construction, Inc.

Date: 10/18/2021

Signature: 

Print Name: Jeffery Mazet

Print Title: President

Attachment A to Agreement for Preliminary Services

Scope of Services

1. **Scope of Contractor's Preliminary Services.** Contractor, as the District's development consultant and authorized representative as contemplated by Business and Professions Code 7040, agrees to perform the services described herein. Contractor shall perform management and coordination services, plan and specification constructability reviews, provide value-engineering reviews and recommendations and other reviews as necessary to verify that the drawings and specifications are clear and reasonably accurate to minimize the need for changes during the construction phase of the project, including but not limited to the following ("Preliminary Services"):
 - 1.1. **General Services.**
 - 1.1.1. Contractor shall attend regular meetings during Project development between the Architect, the District, District site personnel, and any other applicable consultants of the District as required to discuss the Project, including budget, scope and schedule.
 - 1.1.2. Contractor shall assist Architect with the making of a written record of all meetings, conferences, discussions and decisions made between or among the District, Architect and Contractor.
 - 1.1.3. Contractor shall assist the Architect with making formal presentations to the governing board of District.
 - 1.1.4. Contractor shall prepare and update the preliminary Project schedule.
 - 1.1.5. Contractor shall prepare and update the components of the Guaranteed Project Cost and shall be primarily in control of ensuring that the Project can and is constructed for no more than that amount.
 - 1.1.6. Contractor shall assist District with City land use issues;
 - 1.1.7. Contractor shall assist District with DSA review, input, and timeframe for same;
 - 1.1.8. Contractor shall provide review and comment upon geotechnical / soils investigation and report;
 - 1.1.9. Contractor shall provide review and comment upon survey of the Project site;
 - 1.1.10. Contractor shall provide review and comment upon any environmental impact report ("EIR") or other required California Environmental Quality Act ("CEQA") documents with District's CEQA consultant.
 - 1.2. **Review of Design Documents.**
 - 1.2.1. Contractor shall review Project design and budget with the District and the Architect **four (4)** times: during the Schematic Design Phase, the Design Development Phase, at 50% Construction Documents Phase, and at 100% Construction Documents Phase to:
 - 1.2.1.1. Contractor shall provide recommendations on site use and improvements, selection of materials, building systems and equipment and methods of Project delivery;

1.2.1.2. Contractor shall provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction of the Project and subparts thereof if requested, and factors relating to cost including, but not limited to, construction costs of alternate designs of materials, preliminary budgets and possible economics that could be achieved through alternate methods or substitutions;

1.2.1.3. Contractor shall provide interim design phase estimates to establish and maintain the Project budget and scheduled costs; and

1.2.1.4. Contractor shall provide plan review.

1.2.1.5. **Value-engineering.** Contractor shall prepare a value-engineering report for District review and approval that:

1.2.1.5.1. Details areas of cost saving (e.g. construction processes/procedures, specified materials and equipment, and equipment or other aspects of the design documents that can be modified to reduce costs and/or the time for achieving final completion of the Project and/or to extend life-cycle and/or to reduce maintenance/operations costs, without diminution in the quality of materials/equipment/workmanship, scope or intended purposes of the Project);

1.2.1.5.2. Provides detailed estimate for proposed value-engineering items;

1.2.1.5.3. Defines methodology or approaches that maximize value; and

1.2.1.5.4. Identifies design choices that can be more economically delivered.

1.2.1.6. **Constructability Review.** Contractor shall prepare detailed interdisciplinary constructability review within thirty (30) days of receipt of the plans from the District that:

1.2.1.6.1. Ensures construction documents are well coordinated and reviewed for errors;

1.2.1.6.2. Identifies to the extent known, construction deficiencies and areas of concern;

1.2.1.6.3. Back-checks design drawings for inclusion of modifications;

1.2.1.6.4. Provides the District with written confirmation that:

1.2.1.6.4.1. Requirements noted in the design documents prepared for the Project are consistent with and conform to the District's Project requirements and design standards; and

1.2.1.6.4.2. Various components have been coordinated and are consistent with each other so as to minimize conflicts within or between components of the design documents.

1.2.2. **Confirm Modifications to Design Drawings.** If the District accepts Contractor's comments, including the value-engineering and/or constructability review comments, Contractor shall review the design documents to confirm that those comments are properly incorporated into the final design documents.

1.3. Budget of Project Costs.

1.3.1. At each stage of plan review indicated above, Contractor shall update and refine the budget of the Guaranteed Project Cost based on the most recent set of design documents.

Contractor shall also advise the District and the Architect if it appears that the total construction costs may exceed the Guaranteed Project Cost established by the District and shall make recommendations for corrective action. Contractor will further provide input to the District and Architect relative to value of construction, means and methods for construction, duration of construction of various building methods and constructability.

- 1.3.2. In each budget of the Guaranteed Project Cost, Contractor shall include values of scopes of work subdivided into component parts in sufficient detail to serve as the basis for progress payments during construction. This budget of the Guaranteed Project Cost shall include, at a minimum, the following information divided into at least the following categories:

- 1.3.2.1. Overhead and profit;
- 1.3.2.2. Supervision;
- 1.3.2.3. General conditions;
- 1.3.2.4. Layout & Mobilization (not more than 1%);
- 1.3.2.5. Submittals, samples, shop drawings (not more than 3%);
- 1.3.2.6. Bonds and insurance (not more than 2%);
- 1.3.2.7. Close-out documentation (not less than 3%);
- 1.3.2.8. Demolition;
- 1.3.2.9. Installation;
- 1.3.2.10. Rough-in;
- 1.3.2.11. Finishes;
- 1.3.2.12. Testing;
- 1.3.2.13. Punchlist and acceptance.

Contractor shall indicate its willingness and ability to enter into the Contract Document to construct the Project for at or below that Guaranteed Project Cost, excluding unforeseen conditions or District-requested changes. This commitment will be a component of the Contract Documents.

1.4. Construction Schedule and Phasing Plan.

Contractor shall prepare a preconstruction schedule to guide the design team through to bid dates. That schedule shall show the multiphases and interrelations of design, constructability review, and estimating. Contractor shall also prepare a full construction schedule for the Project detailing the phasing and construction activities. Contractor shall further investigate, recommend and prepare a schedule for the District's purchase of materials and equipment requiring long lead time procurement, and coordinate the schedule with the early preparation of portions of the Contract Documents by the Architect.

1.5. Construction Planning and Bidding.

- 1.5.1. Contractor shall prepare and distribute specifications and drawings provided by District to facilitate bidding to Contractor's subcontractors.
- 1.5.2. Contractor shall review the drawings and specifications to eliminate areas of conflict and overlapping in the work to be performed by various subcontractors, and with a view to eliminating change order requests by the Architect or subcontractors.
- 1.5.3. Contractor shall conduct pre-bid conferences. Contractor shall coordinate with District and the Architect in responding to subcontractor questions or providing clarification to all subcontractors.
- 1.5.4. Contractor shall prepare appropriate subcontractor bid packages.

- 1.6. **Bidding for Subcontractor Work.** CONTRACTOR SHALL SOLICIT AND PROCURE SUBCONTRACTORS PURSUANT TO THE SUBCONTRACTOR PROCUREMENT PROCESS ATTACHED TO THE FACILITIES LEASE AS EXHIBIT H.
2. **Limited Authority.** The duties, responsibilities and limitations of authority of Contractor shall not be restricted, modified or extended without written agreement between the District and Contractor.
3. **District's Responsibilities.** The District has and shall continue to provide to Contractor information regarding requirements for the Project, including information regarding the District's objectives, schedule, constraints and criteria.

EXHIBIT M
TO FACILITIES LEASE

PROJECT LABOR AGREEMENT

Form Agreement

**EXHIBIT N
TO FACILITIES LEASE**

FEDERAL CONTRACTING REQUIREMENTS

The following are contract provisions mandated by federal law. To the extent that any provision in this Exhibit N conflicts with any other portion of the Contract, the provisions of this Exhibit N shall control over any other conflicting provision.

- 1. Federal Equal Opportunity Employment.** Because this is a "federally assisted construction contract" as defined in 41 C.F.R. Part 60-1.3, the following contract clause is inserted into this Contract and must be complied with by Contractor:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and sub contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract,

loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. Compliance with Davis-Bacon Act.

- 2.1. All transactions related to this Contract shall be done comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- 2.2. Contractor and Subcontractor are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- 2.3. Additionally, Contractor and Subcontractor are required to pay wages not less than once a week.
- 2.4. By entering into the Contract, Contractor has accepted the wage determination(s) applicable to the Work, and agrees to comply with the wage determination(s).

3. Copeland "Anti-Kickback" Act.

- 3.1. Contractor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 USC 874 and 40 USC 3145), as supplemented by Department of Labor regulation 29 CFR part 3. Contractor and Subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Contractor and each Subcontractor must submit to the District, a weekly statement on the wages paid to each employee performing on covered work during the prior week.
- 3.2. Contractor and Subcontractors shall insert in any subcontracts the clause above, and also a clause requiring Subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any Subcontractor or lower tier subcontractor with all of these clauses.
- 3.3. A breach of this "Copeland 'Anti-Kickback' Act" or any of the above-referenced clauses shall be, in the District discretion, grounds for termination for cause of the Contract, and for debarment as a contractor or subcontractor as provided in 29 C.F.R. § 5.12.

4. Contract Work Hours and Safety Standards. Consistent with 29 C.F.R. § 5.5(b), the following contract clause is inserted into this Contract and must be complied with by Contractor:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at

the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated

in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. *The District and/or appropriate federal agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the District and/or appropriate federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.*

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the appropriate federal agency if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the appropriate federal agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the appropriate federal agency, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the appropriate federal agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees –

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training

Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the appropriate federal agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or § 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with

respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The District or appropriate federal agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. **Rights to Inventions.** To the extent applicable to this Contract, contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR §401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.
6. **Clean Air Act/Federal Water Pollution Control Act.**
 - 6.1. Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 7401 et seq.), and) and the Federal Water Pollution Control Act (33 USC § 1251 et seq.), as each may be amended from time to time.
 - 6.2. The Contractor agrees to report any violation to the District and upon discovery, or upon the occurrence of an event that demonstrates that Contractor should have discovered such violation, and understands

that and agrees that the District will report each violation as required to the appropriate federal agency(ies), including, without limitation, the Environmental Protection Agency Regional Office.

6.3. Contractor must include this requirement in all subcontracts that exceeds \$150,000.

7. Debarment and Suspension.

7.1. This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

7.2. Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

7.3. This certification is a material representation of fact relied upon by the District. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the District, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

7.4. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8. Byrd Anti-Lobbying Amendment. Contractor certifies to the District that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Contractor also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Contractor shall require that each Subcontractor and lower tier subcontractor below it require this certification and the certification executed by the Contractor in the Contract Documents, be included in its contract(s), and to make the required disclosures. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the District.

9. Procurement of Recovered Materials. Contractor and Subcontractor agree to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 C.F.R Part 247. In the performance of this Contract, and to the extent practicable, the Contractor and Subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

9.1. The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or

9.2. The contractor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

The list of EPA-designated items is available at www.epa.gov/smm/comprehensive-procurement-guidelines-construction-products.

Section 6002(c) establishes exceptions to the preference for recovery of EPA-designated products if the contractor can demonstrate the item is:

- 9.3. Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
 - 9.4. Fails to meet reasonable contract performance requirements; or
 - 9.5. Is only available at an unreasonable price.
- 10. Domestic Preference for Procurements.** Contractor shall comply with the following requirements as required by 2 C.F.R. § 200.322:
- 10.1. Contractor, as appropriate and constituent with the law, and the greatest extent practicable, shall prefer the purchase, acquisition, or use of goods, products or materials, produced in the United States, including, without limitation: iron, aluminum, steel, cement, and other manufactured products.
 - 10.2. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - 10.3. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
 - 10.4. Contractor shall bind its Subcontractors to this clause, and shall require that this clause be placed in Subcontractors' contracts with lower tier subcontractors.