

the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.) Include a “fragnet” analysis for the portion of the schedule and the activities the Contractor contends are impacted by the delay and a detailed time impact analysis in compliance with the provisions of the “**Construction Schedule – Network Analysis**” provisions indicated in **Exhibit I**.

16.1.4.3. Updated Construction Schedule. A recovery or updated Construction Schedule must be submitted.

16.1.5. District shall review the facts and extent of any noticed delay and may grant Contract Time extension(s) of time for completing Work when, in the District’s judgment, the findings of fact justify an extension.

16.1.6. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected.

16.1.7. An extension of time may only be granted if Contractor has timely submitted the updated Construction Schedule as required herein.

16.1.8. Following submission of a notice of delay, the District may determine whether the delay is to be considered:

16.1.8.1. Excusable and Compensable, Excusable and Non-Compensable, or Unexcused;

16.1.8.2. How long the delay continues; and

16.1.8.3. To what extent the prosecution and Completion of the Work might be delayed thereby.

16.1.9. Contractor’s failure to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor’s waiver of its right to assert a claim for a delay.

16.1.10. Limitations Upon Adjustment of Contract Time on Account of Delays. Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. No adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless those delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated approved Construction Schedule as of the date on which a delay first occurs. The District shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the District shall deny a request by the Contractor for an adjustment of the Contract Time for any delay that does not actually and directly impact Work on the then current and updated approved Construction Schedule. In submitting a request for an adjustment of Contract Time, and as a condition precedent to the District’s review of that request, Contractor shall insert into the then current and updated approved Construction Schedule a “fragnet” analysis and a detailed time impact analysis representing the event that Contractor claims to result in delay to the critical path as depicted in the updated approved Construction Schedule. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay that ends last. If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcused Delay.

16.2. Excusable and Compensable Delay(s)

16.2.1. Contractor is **not** entitled to additional compensation for any delay, even a delay caused by Adverse Weather or an Excusable Delay, unless **all** of the following conditions are met:

16.2.1.1. The District is responsible for the delay;

16.2.1.2. The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the most current Contract Completion date;

16.2.1.3. The delay was not within the contemplation of District and Contractor;

16.2.1.4. Contractor complies with the Change Order procedures, and if necessary, the Claims procedures of the Contract Documents;

16.2.1.5. The delay could not have been avoided or mitigated by the Contractor's care, prudence, foresight, and diligence;

16.2.1.6. The delay extends the most current Contract Completion date; and

16.2.1.7. The Delay is not concurrent with a Contractor-caused delay or other type of Excusable Delay.

16.2.2. In accordance with California Public Contract Code section 7102, if the Contractor's progress is delayed by the events described in the preceding subsection, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom. In that event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or construction equipment directly resulting from that delay, and shall exclude special, indirect or consequential damages. In no event shall Contractor seek costs or damages for delays, interruptions, hindrances or disruptions to the Work for on-Site or off-Site costs or damages based upon formulas, e.g. Eichleay or other formula. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents, including without limitation, the "**Changes in the Work**" section and the percentages in the "**Format for Proposed Change**" section of these General Construction Provisions.

16.3. Excusable and Non-Compensable Delay(s)

16.3.1. An "Excusable Delay" shall mean an interruption of the Work beyond the reasonable control of the Contractor and that:

16.3.1.1. Could have not been avoided by the Contractor exercising care, prudence, foresight, and diligence, and

16.3.1.2. Actually extended the most current Project Completion date.

16.3.2. The Contractor may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but the Contractor shall not be entitled to additional compensation for an Excusable Delay.

16.3.3. Excusable Delays are limited to interruptions that satisfy the above requirements and that are Force Majeure Events as indicated in the Facilities Lease.

16.3.4. Contractor is aware that governmental agencies and utilities, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, cities, counties and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. Contractor shall include in its bid, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Contractor is not entitled to make a claim for damages or delays or an Excusable Delay arising from the review of Contractor's drawings or other approvals from the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies.

16.3.5. Neither the financial resources of the Contractor or any person or entity directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time directly and adversely impacted the critical path of the Work as indicated in the approved Construction Schedule or the most recent updated approved Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay.

16.3.6. Computation of Time / Adverse Weather

16.3.6.1. The Contractor will only be allowed a time extension for Adverse Weather conditions if requested by Contractor within five (5) calendar days of the Adverse Weather event, and only if all of the following conditions are met – thereby making the resulting delay an Excusable Delay.

16.3.6.1.1. The weather conditions constitute Adverse Weather, as defined herein and further specified in **Exhibit K**;

16.3.6.1.2. Contractor can verify that the Adverse Weather caused delays in excess of five (5) hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

16.3.6.1.3. The Contractor's crew is dismissed as a result of the Adverse Weather; and

16.3.6.1.4. The number of days of delay for the month exceed those indicated in the **Exhibit K**.

16.3.6.2. A day-for-day extension will only be allowed for those days in excess of those indicated in the **Exhibit K**.

16.3.6.3. The Contractor shall work seven (7) days per week, if necessary, irrespective of inclement weather, to maintain access and the Construction Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the District.

16.4. Unexcused Delay(s) – Liquidated Damages

16.4.1. Unexcused Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in the "Excusable and Compensable Delay(s)" or the "Excusable and Non-Compensable Delay(s)" sections above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcused Delays.

16.4.2. Contractor and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Contractor shall forfeit and pay to District as fixed and liquidated damages, and not as a penalty, the amount set forth in the Contract Documents for each calendar day of delay in Completion. Contractor and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

16.4.3. Contractor shall not forfeit or pay liquidated damages for an Excusable Delay or an Excusable and Compensable Delay.

16.5. Float or Slack in the Schedule

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either the District or the Contractor, however it shall be used as necessary to accommodate delays in the progress of the Work which may occur during the course of construction, as determined by the District. Contractor shall not be entitled to an extension of time for any claimed delays to the extent that such delays may be covered by the float.

17. CHANGES IN THE WORK

17.1. No Changes Without Authorization

17.1.1. There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order authorized by the District as herein provided. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the District's governing board has authorized the same and the cost thereof has been approved in writing by Change Order. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

17.1.2. Verbal Order of Change in the Work. Any verbal order, direction, instruction, interpretation, or determination from the District, the Project Inspector or the Architect which in the opinion of the Contractor causes any change to the scope of the Work, or otherwise requires an adjustment to the Contract Price or the Contract Time, shall be treated as a Change only if the Contractor gives the District written notice within three (3) Business Days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address the order, direction, instruction, interpretation or determination giving rise to Contractor's notice. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice within three (3) Business Days of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of that verbal order, direction, instruction, interpretation or determination shall constitute a waiver of its right to make that claim. The written notice shall state the date, circumstances, extent of adjustment to the Contract Price or the Contract Time, if any, requested, and the source of the verbal order, directions, instructions, interpretation or determination that the Contractor regards as a Change. Unless the Contractor acts in strict accordance with this procedure, any verbal order, direction, instruction, interpretation or

determination shall not be treated as a Change and the Contractor hereby waives any claim for any adjustment to the Contract Price or the Contract Time on account thereof.

17.1.3. Contractor shall perform immediately all work that has been authorized by a fully executed Change Order, Unilateral Change Order, or Force Account Directive. Contractor shall be fully responsible for any and all delays and/or expenses caused by Contractor's failure to expeditiously perform this Work and Contractor's failure or refusal to proceed with that Work may be deemed to be Contractor's default of a material obligation of the Contractor under the Contract Documents.

17.1.4. Should any Change Order result in an increase in the Guaranteed Project Cost, the cost of that Change Order shall be agreed to, in writing, in advance by Contractor and District. In the event that Contractor proceeds with any change in Work without a Change Order executed by the District, Contractor waives any claim of additional compensation or time for that additional work.

17.1.5. Contractor understands, acknowledges, and agrees that the reason for District authorization is so that District may have an opportunity to analyze the Work and decide whether the District shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

17.1.6. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization, shall act, at its discretion, to prevent all threatened loss or injury. Any compensation or time claimed by Contractor on account of emergency work shall be determined as indicated herein as a PCO.

17.2. Architect Authority

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Guaranteed Project Cost, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Change Order, Unilateral Change Order, or by Architect's response(s) to RFI(s).

17.3. Change Orders

17.3.1. A Change Order is a written instrument prepared and issued by the District and signed by the District (as authorized by the District's governing board), the Contractor, the Architect, and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following. If a Change Order is required to be approved by DSA, the District may call it a "*Construction Change Document*":

17.3.1.1. A description of a change in the Work;

17.3.1.2. The amount of the adjustment in the Guaranteed Project Cost, if any; and

17.3.1.3. The extent of the adjustment in the Contract Time, if any.

17.4. Unilateral Change Orders

17.4.1. A Unilateral Change Order is a written order prepared and issued by the District, the Construction Manager, and/or the Architect and signed by the District, directing a change in the Work. The District may as provided by law, by Unilateral Change Order and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. If all or a portion of the Project is being funded by funds requiring approval by the State Allocation Board (SAB), these revisions may be subject to compensation once approval of same is received and funded by the SAB, and funds are

released by the Office of Public School Construction (OPSC). Any dispute as to the sum of the Unilateral Change Order or timing of payment shall be resolved pursuant to the Payment and Claims and Disputes provisions herein. **A Unilateral Change Order is NOT a "Construction Change Document" (which is defined above as a Change Order that DSA must approve).**

17.4.2. The District may issue a Unilateral Change Order in the absence of agreement on the terms of a Change Order.

17.5. Force Account Directives

17.5.1. When work, for which a definite price has not been agreed upon in advance, is to be paid for on a time-and-material basis, all direct costs necessarily incurred and paid by the Contractor for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the District and compensation will be determined as set forth herein.

17.5.2. District will issue a Force Account Directive (which may also be called a "Construction Directive") to proceed with the Work on a force account (time-and-material) basis, and a not-to-exceed budget will be established by District.

17.5.3. All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to Force Account Directives. However, District will only pay for actual costs verified in the field by the District or its authorized representative(s) on a daily basis.

17.5.4. Contractor shall be responsible for all cost related to the administration of Force Account Directive. The markup for overhead and profit for Contractor modifications shall be full compensation to the Contractor to administer Force Account Directive.

17.5.5. Contractor shall notify District or its authorized representative(s) at least twenty-four (24) hours prior to proceeding with any of the Force Account Directive work. Furthermore, the Contractor shall notify the District when it has consumed eighty percent (80%) of the budget, and shall not exceed the budget unless specifically authorized in writing by the District. Contractor will not be compensated for force account work in the event that Contractor fails to timely notify the District regarding the commencement of Force Account Directive work, or to the extent exceeding the Force Account Directive budget.

17.5.6. Contractor shall diligently proceed with the work, and on a daily basis, submit a daily time-and-material report on a form supplied by the District no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the time-and-material work only. The names of the individuals performing the force account work shall be included on the daily time-and-material reports. The type and model of equipment shall be identified and listed. District will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to Contractor for its records. District will not sign, nor will Contractor receive compensation for work District cannot verify. Contractor will provide a weekly Force Account Directive summary indicating the status of each Force Account Directive in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work.

17.5.7. In the event Contractor and District reach a written agreement on a set cost for the work while the work is proceeding based on a Force Account Directive, the Contractor's signed daily time-and-material reports shall be discontinued and all previously signed reports shall be invalid.

17.6. Price Request

17.6.1. Definition of Price Request. A Price Request ("PR") is a written request prepared by the District requesting the Contractor to submit to the District an estimate of the effect of a proposed change in the Work on the Guaranteed Project Cost and the Contract Time.

17.6.2. Scope of Price Request. A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable Contractor to provide the cost breakdowns required herein. The Contractor shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

17.6.3. Do not consider Price Requests to be instructions either to stop work in progress or to execute the proposed change.

17.6.4. Within the time specified in Price Request after receipt of Price Request, submit a quotation estimating cost adjustments to the Contract Price and the Contract Time necessary to execute the change.

17.6.4.1. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.

17.6.4.2. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.

17.6.4.3. Include costs of labor and supervision directly attributable to the change.

17.6.4.4. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationship. Use available total float before requesting an extension of the Contract Time.

17.7. Proposed Change Order

17.7.1. Definition of Proposed Change Order. A Proposed Change Order ("PCO") is a written request prepared by the Contractor requesting that the District and the Architect issue a Change Order based upon a proposed change to the Work.

17.7.2. Changes in Guaranteed Project Cost. A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Guaranteed Project Cost.

17.7.3. Changes in Time. A PCO shall also include any changes in time required to complete the Project. Include an updated Contractor's Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationships. Use available total float before requesting an extension of the Contract Time. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If Contractor fails to request a time extension in a PCO, then the Contractor is thereafter precluded from requesting time and/or claiming a delay. If the Contractor is requesting additional time and believes that time is both Excusable and Compensable, then the Contractor must provide detailed documentation that supports its position and that addresses all the components of the "Excusable and Compensable Delay(s)" section above.

17.7.4. Unknown and/or Unforeseen Conditions. If Contractor submits a PCO requesting an increase in Guaranteed Project Cost and/or Contract Time that is based at least partially on Contractor's assertion that Contractor has encountered unknown and/or unforeseen condition(s) on the Project, then Contractor shall base the PCO on provable information that demonstrates that the unknown and/or

unforeseen condition(s) were actually or reasonably unknown and/or unforeseen. If not, the District shall deny the PCO and the Contractor shall complete the Project without any increase in Guaranteed Project Cost and/or Contract Time based on that PCO.

17.7.5. Time to Submit PCO. Contractor shall submit its PCO within five (5) days of the date Contractor discovers, or reasonably should discover, the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by the District. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address the basis for the PCO. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with Supporting Documentation to permit the District's review and evaluation) within this time frame shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of the circumstances giving rise to the PCO.

17.7.6. COVID-19.

17.7.6.1. Contractor agrees that the Contract Price and the Contract Time are based on the Contractor's full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain at the time of Contract award. Therefore, any cost or delay associated with COVID-19, or any derivative or similar strain thereof, or any federal, state, or local order relating thereto, shall not be considered compensable unless:

17.7.6.1.1. It occurred after the date of the award of the Contract to Contractor;

17.7.6.1.2. It materially increases the Contract Price or the Contract Time; and

17.7.6.1.3. Contractor notifies the District within 10 days of notice of any new derivative, strain, or new public health order(s), including the anticipated increase to the Contract Price or Contract Time due to the new derivative, strain, or new public health order(s), and Contractor substantiates those costs with detailed supporting documentation as required for a PCO.

17.7.6.2. If, during the construction of the Project, the applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain, are changed or rescinded (e.g., by the reduction of potential exposure or risk due to vaccinations), the Parties agree to reduce the Contract Price and the Contract Time due to the removal of the required efforts. If the Parties cannot mutually agree on the appropriate reduction, the District may issue a Unilateral Change Order for an amount of time and money it determines to be both reasonable and appropriate. The Parties agree that any dispute related to this provision will be resolved pursuant to the Claims Resolution Process herein.

17.8. Format for Proposed Change Order

The following format(s) on the following two (2) pages shall be used as applicable by the District and the Contractor (e.g. Change Orders, PCO's) to communicate proposed additions and deductions to the Contract, supported by attached documentation

FORMAT FOR PROPOSED CHANGE FOR SUBCONTRACTOR PERFORMED WORK

	<u>SUBCONTRACTOR PERFORMED WORK</u>	<i>ADD</i>	<i>DEDUCT</i>
(A)	<u>Labor Charge</u> 1. Hours. Attach total itemized hours. 2. Rate. This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations ("DIR") for the applicable local labor category.		
(B)	<u>Labor Burden & Worker's Compensation Charge</u> 1. This shall be no more than twenty percent (20%) of item (A), the Labor Charge. 2. This shall be the total cumulative charge permitted for all Subcontractors or all labor performed by the Subcontractor or Subcontractor's Subcontractor(s) (i.e., all "lower-tier" Subcontractor(s)).		
(C)	<u>Subtotal (A+B)</u>		
(D)	<u>Material Charge</u> Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s)		
(E)	<u>Equipment Charge</u> Attach invoice(s) from supplier(s).		
(F)	<u>Subtotal (C+D+E)</u>		
(G)	<u>Subcontractor's Overhead and Profit Charge</u> 1. This shall be no more than eight percent (8%) of item (F). 2. This shall be the total cumulative mark-up permitted for the Subcontractor and Subcontractor's Subcontractor(s) (i.e., all "lower-tier" Subcontractor(s)).		
(H)	<u>Subtotal (F+G)</u>		
(I)	<u>General Contractor's "Mark-Up" and "Fee/Overhead & Profit"</u> At or below those amounts indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(J)	<u>General Contractor's Bond Cost</u> At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(K)	<u>General Contractor's Insurance Cost</u> At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(L)	<u>TOTAL (H+I+J+K)</u>		
(M)	<u>Time</u>	_____ Days	

FORMAT FOR PROPOSED CHANGE FOR CONTRACTOR PERFORMED WORK

	GENERAL CONTRACTOR PERFORMED WORK	<i>ADD</i>	<i>DEDUCT</i>
(A)	<u>Labor Charge</u> 1. Hours. Attach total itemized hours. 2. Rate. This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations ("DIR") for the applicable local labor category.		
(B)	<u>Labor Burden & Worker's Compensation Charge</u> 1. This shall be no more than twenty percent (20%) of item (A) , the Labor Charge. 2. This shall be the total cumulative charge permitted for all labor performed by Contractor.		
(C)	<u>Subtotal (A+B)</u>		
(D)	<u>Material Charge</u> Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s).		
(E)	<u>Equipment Charge</u> Attach invoice(s) from supplier(s).		
(F)	<u>Subtotal (C+D+E)</u>		
(G)	<u>General Contractor's "Mark-Up" and "Fee/Overhead & Profit"</u> At or below those amounts indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(H)	<u>General Contractor's Bond Cost</u> At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(I)	<u>General Contractor's Insurance Cost</u> At or below the amount indicated in the Contractor's response to the RFQ and/or RFP for this Project.		
(J)	<u>TOTAL (F+G+H+I)</u>		
(K)	<u>Time</u>	_____ Days	

17.8.1. All Proposed Change Order requests by Contractor for a change shall include a complete itemized breakdown with the following detail:

17.8.1.1.Labor. Labor breakdown by trade classification, wage rates, and estimated hours. Labor costs shall only include fringe benefits indicated by governing trade organizations. Wages shall not exceed current prevailing wages in the locality for performance of the changes.

17.8.1.1.1. The Contractor's or Subcontractors' labor burden and Workers' Compensation premium shall only be charged as indicated herein. In no event shall Contractor include any other charges than as indicated herein without the prior written approval of the District.

17.8.1.2.Material. Material quantities, and types of products, and transportation costs, if applicable.

17.8.1.3. Equipment. Equipment breakdown by make, type, size, rental rates, equipment hours and transportation costs, if applicable.

17.8.1.3.1. The equipment costs shall not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates or Caltrans rates, whichever is less. Hourly, daily, weekly, or monthly rates shall be used, whichever is lower. Hourly rates including operator shall not be used.

17.8.1.3.2. The actual time to be paid for equipment shall be the time that the equipment is in productive operation on the Work or idled as a result of the event or circumstance giving rise to the Proposed Change Order. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half (1/2) hour. No payment will be made for time while equipment is inoperative due to breakdown, or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to and from the Project Site(s). No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project Site(s) in any other way than upon the work directly related to the event or circumstance giving rise to the Proposed Change Order.

17.8.1.3.3. Individual pieces of equipment having a replacement value of one thousand dollars (\$1,000) or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the markup for overhead and profit defined herein.

17.8.1.3.4. Payment to the Contractor for the use of equipment as set forth above shall constitute full compensation to the Contractor for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to the Contractor incidental to the use of the equipment.

17.8.1.3.5. Should Contractor, or any of its owners, officers, directors or agents, hold any ownership interest in any company, organization, association or corporation from whom rental equipment is secured. Contractor shall immediately notify District of such and the price set for any such rental shall be agreed upon in advance by the Contractor and the District.

17.8.1.4. Mark-Up, Fee / Overhead and Profit. Markup for overhead and profit, which shall be used to compensate Contractor for all costs for all administration, general conditions, and supervision, including, without limitation:

17.8.1.4.1. All home office overhead, field office overhead, field office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftsmen, schedulers, consultants, watchmen, payroll clerks, administrative assistants, labor compliance costs and secretaries.

17.8.1.4.2. All field and field office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service and long distance telephone calls, computers, fax machines, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under \$1000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to regulatory requirements including compliance to safety regulations, safety programs and meetings, cartage, warranties, As-Built Drawings, as well as any related maintenance costs.

17.8.1.4.3. Administrative functions such as, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, expediting, engineering, drawing, detailing, revising shop drawings, carting, cleaning, protecting the work, and other incidental Work related to the change.

17.8.1.4.4. All other costs and taxes required to be paid, but not included under direct costs as defined above including, without limitation, payroll taxes, social security, etc.

17.8.1.4.5. All costs for Contractor's bonds and insurance.

17.8.1.4.6. Taxes: Federal excise tax shall not be included. District will issue an exemption on request.

17.8.1.5. **Contract Time.** Justification for any adjustment in Contract Time including a schedule analysis identifying critical schedule activities delayed by the request. Contract Time shall be extended or reduced by Change Orders, Unilateral Change Orders, or Force Account Directives for a period of time commensurate with the time reasonably necessary to perform a Change. This time must be requested in writing by the Contractor with the Price Request, PCO, or expressly in writing as part of its documentation for Unilateral Change Orders, or Force Account Directives. The Contractor shall justify any Contract Time extension by submittal of a schedule analysis as required in this Changes section of these General Construction Provisions accurately portraying the impact of the change on the critical path of the Construction Schedule. Changes performed within available float shall not justify an extension to the Contract Time. The District shall make the final determination of the amount of Contract Time to allocate to any Change.

17.8.1.6. **Supporting Documentation.** Contractor shall include with each PCO, along with the itemized breakdown as required herein, reasonable documentation substantiating the requested change in the Contract Price and Contract Time. If the District deems Contractor's supporting documentation incomplete or inadequate to substantiate the requested change to the Contract Price and Contract Time, the District may request that Contractor supplement the PCO with additional, reasonable supporting documentation.

17.9. Change Order Certification

17.9.1. All Change Orders and PCOs shall include the following certification by the Contractor. The Parties acknowledged that if a Change Order is approved that does not include this language, that Change Order shall be deemed to include this certification language:

The undersigned Contractor approves the foregoing as to the changes, if any, and the Guaranteed Project Cost specified for each item and as to the extension of time allowed, if any, for Project Completion, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums that have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. It is understood that the changes herein to the Contract shall only be effective when approved by the governing board of the District. It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

17.10. Determination of Change Order Cost

17.10.1. The amount of the increase or decrease in the Guaranteed Project Cost from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the District's discretion:

17.10.1.1. District acceptance of a PCO;

17.10.1.2. By agreement between District and Contractor.

17.10.1.3. By amounts contained in Contractor's schedule of values, if applicable;

17.10.1.4. By the District, based upon actual and necessary costs incurred by the Contractor as determined by the District on the basis of the Contractor's records. Promptly upon determining the extent of adjustment to the Contract Price, the District shall notify the Contractor in writing of the same; the Contractor shall be deemed to have accepted the District's determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor shall notify the District, in writing, not more than fifteen (15) days from the date of the District's written notice, of any objection to the District's determination. Failure of the Contractor to timely notify the District of Contractor's objections to the District's determination of the extent of adjustment to the Contract Price shall be deemed Contractor's acceptance of the District's determination and a waiver of any right or basis of the Contractor to thereafter protest or otherwise object to the District's determination. Notwithstanding any objection of the Contractor to the District's determination of the extent of any adjustment to the Contract Price pursuant to this provision, Contractor shall diligently proceed to perform and complete any such Change.

17.10.2. If the District has put in contingency(s) and/or allowance(s) in **Exhibit C** to the Facilities Lease, then approved Change Order(s) may be paid out of those contingency(s) and/or allowance(s), pursuant to **Exhibit C** and if agreed to by the District.

17.11. Deductive Change Orders

All deductive Change Order(s) must be prepared pursuant to the provisions herein. If Contractor offers a proposed amount for a deductive Change Order(s), Contractor shall include a minimum of five percent (5%) total overhead, profit & general conditions to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall also include a minimum of five percent (5%) total overhead, profit & general conditions to be deducted with the amount of its deducted work. Any deviation from this provision shall only be permitted with the District's prior written approval.

17.12. Discounts, Rebates, and Refunds

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein. Such discounts and rebates generated as a result of early payments shall only be credited to the District, provided that the District provides Contractor with early payment in order to secure such discounts and rebates.

17.13. Accounting Records

With respect to portions of the Work performed by Change Orders, Unilateral Change Orders, or Force Account Directives, Contractor shall keep and maintain cost-accounting records satisfactory to the District, which shall be available to the District on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

17.14. Notice Required

If the Contractor desires to make a claim for an increase in the Guaranteed Project Cost, or any extension in the Contract Time for Project Completion, it shall notify the District pursuant to the provisions herein. No claim shall be considered unless made in accordance with the provisions herein. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Guaranteed Project Cost or extension of the Contract Time resulting from such claim shall be authorized by a Change Order.

17.15. Applicability to Subcontractors

Any requirements under this Article shall be equally applicable to Change Orders, Unilateral Change Orders, or Force Account Directives issued to Subcontractors by the Contractor to the extent as required by the Contract Documents.

17.16. Alteration to Change Order Language

Contractor shall not alter Change Orders or reserve time in Change Orders. Contractor shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

17.17. Failure of Contractor to Execute Change Order

Contractor shall be in default of the Contract if Contractor fails to execute a Change Order when the Contractor agrees with the addition and/or deletion of the Work in that Change Order.

18. REQUESTS FOR INFORMATION

18.1. Any Request for Information ("RFI") shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. The Contractor shall make suggestions and interpretations of the issue raised by each Request for Information. A Request for Information cannot modify the Guaranteed Project Cost, Contract Time, or the Contract Documents.

18.2. The Contractor shall be responsible for any costs incurred for professional services that District may deduct from any amounts owing to the Contractor, if Contractor makes multiple Requests for Information that request interpretation(s) or decision(s) of a matter where the information sought is equally available to the Contractor. District, at its sole discretion, shall deduct from and/or invoice Contractor for all the professional services arising herein.

18.3. Requests for Information shall comply with all requirements of the Contract Documents.

18.4. Prior to submitting the RFI, Contractor shall diligently review the Contract Documents for information responsive to the RFI, including information incorporated by reference. Contractor should not issue an RFI regarding information contained in or inferable from the Contract Documents, including information incorporated by reference. An RFI is invalid if the RFI response is contained in or inferable from the Contract Documents.

18.5. Contractor shall be responsible for preparing and submitting each RFI so as to not cause delay to the progress of the Work nor to cause any impact to the Contractor's labor productivity. An RFI may be considered untimely if not submitted within **Forty-Eight (48) hours** of receipt from a Contractor's subcontractor. Untimely submission of any RFI will preclude Contractor from asserting any claims for delay or for labor impact against the District.

18.6. If the Contractor fails to timely notify the District and the Architect in writing of any Conditions encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Conditions the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Price. In requesting information of the District to address and resolve any conditions, the Contractor shall act with promptness in submitting any written request so as to allow the District a reasonable period of time to review, evaluate and respond to any request, taking into account the then current status of the progress and completion of the Work and the actual or potential impact of any conditions upon the completion of the Work within the Contract Time. The Contract Time shall not be subject to adjustment in the event that the Contractor shall fail to timely request information from the District.

19. PAYMENTS

19.1. Guaranteed Project Cost

As compensation for Contractor's construction of the Project, the District shall pay Contractor pursuant to the terms of **Exhibit C** to the Facilities Lease.

19.2. Applications for Tenant Improvement Payments

19.2.1. Procedure for Applications for Tenant Improvement Payments

19.2.1.1. Not before the fifth (5th) day of each calendar month during the progress of the Work, Contractor shall submit to the District and the Architect an itemized Application for Payment for operations completed in accordance with the Schedule of Values. The Contractor shall include in the Application for Tenant Improvement Payments an itemized list of equipment and materials that are stored off-site and are in the Contractor's possession. Each Application for Tenant Improvement Payment shall be notarized, if required, and supported by the following or each portion thereof unless waived by the District in writing:

19.2.1.1.1. The amount paid to the date of the Application for Tenant Improvement Payment to the Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;

19.2.1.1.2. The amount being requested under the Application for Tenant Improvement Payment by the Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;

19.2.1.1.3. The balance that will be due to each of such entities after said payment is made;

19.2.1.1.4. A certification that the As-Built Drawings and annotated Specifications are current;

19.2.1.1.5. Itemized breakdown of work done for the purpose of requesting partial payment;

19.2.1.1.6. An updated and acceptable construction schedule in conformance with the

provisions herein;

19.2.1.1.7. The additions to and subtractions from the Guaranteed Project Cost and Contract Time;

19.2.1.1.8. A total of the cumulative Retention withheld prior to the current Application for Payment, and that to be withheld under the current Application for Payment (5% of the current Application for Payment);

19.2.1.1.9. Verified material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the District may require from time to time;

19.2.1.1.10. The percentage of completion of the Contractor's Work by line item;

19.2.1.1.11. Schedule of Values updated from the preceding Application for Tenant Improvement Payment;

19.2.1.1.12. If Contractor includes in the Application for Tenant Improvement Payments an itemized list of equipment and materials that are stored off-site and are in the Contractor's possession, the Contractor's Application for Tenant Improvement Payment shall be supported by the following:

19.2.1.1.12.1. Itemized breakdown of equipment and materials that are stored off-site and are in the Contractor's possession for the purpose of requesting partial payment, identifying the serial numbers and exact storage location of each piece of equipment and material;

19.2.1.1.12.2. Verified invoices for equipment and materials that are stored off-site and are in the Contractor's possession;

19.2.1.1.12.3. Original copy of Property of Others Insurance, Employee Theft Protection Insurance Policy or an Employee Theft Protection Bond. These documents shall include for the itemized equipment and materials that are stored off-site and are in the Contractor's possession, certificates and endorsements stating the coverage and stating that the District is a loss payee or obligee, as appropriate;

19.2.1.1.13. A duly completed and executed "Conditional Waiver and Release on Progress Payment" compliant with Civil Code section 8132 from each subcontractor of any tier and supplier to be paid from the current Tenant Improvement Payment;

19.2.1.1.14. A duly completed and executed "Unconditional Waiver and Release on Progress Payment" compliant with Civil Code section 8134 from each subcontractor of any tier and supplier that was paid from the Tenant Improvement Payment from sixty (60) days prior; and

19.2.1.1.15. A certification by the Contractor of the following:

19.2.1.1.15.1.1. The Contractor warrants title to all Work performed as of the date of this payment application. The Contractor further warrants that all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided

labor, materials, and equipment relating to the Work, except those of which the District has been informed.

19.2.1.1.16. If requested by the District, a third party, or as required by the California Department of Industrial Relations, all requested or required certified payroll record ("CPR(s)") for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment.

19.2.1.2. Except as expressly provided for herein, no payments shall be made by the District on account of any item of the Work, including without limitation, materials or equipment that, at the time of the Contractor's submittal of an Application for Tenant Improvement Payments, has/have not been incorporated into and made a part of the Work.

19.2.2. Prerequisites for Tenant Improvement Payments

19.2.2.1. First Payment Request: The following items, if applicable, must be completed before the District will accept and/or process the Contractor's first payment request:

- 19.2.2.1.1. Schedule of unit prices, if applicable;
- 19.2.2.1.2. Receipt by Architect of all submittals due as of the date of the payment application;
- 19.2.2.1.3. Copies of authorizations and licenses from governing authorities;
- 19.2.2.1.4. Initial progress report;
- 19.2.2.1.5. Surveyor qualifications;
- 19.2.2.1.6. Written acceptance of District's survey of rough grading, if applicable;
- 19.2.2.1.7. List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;
- 19.2.2.1.8. All bonds and insurance endorsements; and

19.2.2.2. No Waiver of Criteria. Any payments made to Contractor where criteria set forth herein have not been met shall not constitute a waiver of said criteria by District. The approval of any Application for Progress Payment or the disbursement of any Tenant Improvement Payment to the Contractor shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents. Instead, such payment shall be construed as a good faith effort by District to resolve differences so Contractor may pay its Subcontractors and suppliers. Contractor agrees that failure to submit such items may constitute a breach of contract by Contractor and may subject Contractor to termination.

19.3. District's Approval of Application for Tenant Improvement Payment

19.3.1. Upon receipt of an Application for Tenant Improvement Payment, The District shall act in accordance with both of the following:

- 19.3.1.1. Each Application for Tenant Improvement Payment shall be reviewed by the District as soon as practicable after receipt for the purpose of determining that the Application for Tenant Improvement Payment is a proper Application for Tenant Improvement Payment.

19.3.1.2. Any Application for Tenant Improvement Payment determined not to be a proper Application for Tenant Improvement Payment suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. An Application for Tenant Improvement Payment returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the Application for Tenant Improvement Payment is not proper. The number of days available to the District to make a payment without incurring interest pursuant to this section shall be reduced by the number of days by which the District exceeds this seven-day return requirement.

19.3.1.3. An Application for Tenant Improvement Payment shall be considered properly executed if funds are available for each payment request from a Schedule of Value line item in the Application for Tenant Improvement Payment, and payment is not delayed due to an audit inquiry by a financial officer or auditor of the District, the County, or the State.

19.3.1.3.1. An Application for Tenant Improvement Payment shall be considered improperly executed and returned, if payment is requested from a Schedule of Value line item that exceeds the percentage of work performed in that pay period for that scope of work, or that does not have funds available or that have been exhausted for that Schedule of Value line item, or if an Application for Tenant Improvement Payment includes line items not shown in the Schedules of Values of **Exhibit G**.

19.3.2. The District's review of the Contractor's Application for Tenant Improvement Payment will be based on the District's and the Architect's observations at the Site and the data comprising the Application for Tenant Improvement Payment that the Work has progressed to the point indicated and that, to the best of the District's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

19.3.2.1. Observation of the Work for general conformance with the Contract Documents,

19.3.2.2. Results of subsequent tests and inspections,

19.3.2.3. Minor deviations from the Contract Documents correctable prior to Project Completion, and

19.3.2.4. Specific qualifications expressed by the Architect.

19.3.3. District's approval of the certified Application for Tenant Improvement Payment shall be based on Contractor complying with all requirements for a fully complete and valid certified Application for Tenant Improvement Payment.

19.3.4. If Contractor includes in its Application for Tenant Improvement Payments an itemized list of equipment and materials that are stored off-site and are in the Contractor's possession, Contractor shall provide all required supporting documentation.

19.3.5. Payments to Contractor

19.3.5.1. Within thirty (30) days after District approval of the Application for Tenant Improvement Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and other amounts statutorily or contractually necessary to be withheld, including, without limitation, any item listed as "Reasons to Withhold Payment" herein below. Contractor shall continue to perform and shall complete the

Project.

19.3.5.2. As the amount of the GPC that remains with the District approaches the total amount of the Lease Payments, the District shall ensure it maintains sufficient funds for the total Lease Payments and all other amounts statutorily or contractually necessary, including, without limitation, any item listed as "Reasons to Withhold Payment" herein below. Contractor shall continue to perform and shall complete the Project.

19.3.5.3. The value of the Work completed shall be Contractor's best estimate. No inaccuracy or error in said estimate shall operate to release the Contractor, or any Surety upon any bond, from damages arising from such Work, or from the District's right to enforce each and every provision of this Contract, and the District shall have the right subsequently to correct any error made in any estimate for payment.

19.3.6. No Waiver

No payment by District hereunder shall be interpreted so as to imply that District has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, the District may enforce each and every provision of this Contract. The District may correct or require correction of any error subsequent to any payment.

19.3.7. Warranty of Title

19.3.7.1. If a lien or a claim based on a stop payment notice of any nature should at any time be filed against the Work or any District property, by any entity that has supplied material or services at the request of the Contractor, Contractor and Contractor's Surety shall promptly, on demand by District and at Contractor's and Surety's own expense, take any and all action necessary to cause any such lien or a claim based on a stop payment notice to be released or discharged immediately therefrom.

19.3.7.2. If the Contractor fails to furnish to the District within ten (10) calendar days after demand by the District, satisfactory evidence that a lien or a claim based on a stop payment notice has been so released, discharged, or secured, the District may discharge such indebtedness and deduct the amount required therefor, together with any and all losses, costs, damages, and attorney's fees and expense incurred or suffered by District from any sum payable to Contractor under the Contract.

19.3.8. Decisions to Withhold Payment

19.3.8.1. Reasons to Withhold Payment

The District may withhold payment to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required herein cannot be made. The District may withhold payment to such extent as may be necessary to protect the District from loss because of, but not limited to:

19.3.8.1.1. Defective Work not remedied within **FORTY-EIGHT (48)** hours of written notice to Contractor;

19.3.8.1.2. Stop payment notices or other liens served upon the District as a result of the Contract;

19.3.8.1.3. Liquidated damages assessed against the Contractor

- 19.3.8.1.4. The cost of Project Completion if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Guaranteed Project Cost or by the Contract Time;
- 19.3.8.1.5. Damage to the District or other contractor(s);
- 19.3.8.1.6. Unsatisfactory prosecution of the Work by the Contractor;
- 19.3.8.1.7. Failure to store and properly secure materials;
- 19.3.8.1.8. Failure of the Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Submittal Schedule, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;
- 19.3.8.1.9. Failure of the Contractor to submit As-Built Drawings;
- 19.3.8.1.10. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- 19.3.8.1.11. Unauthorized deviations from the Contract Documents;
- 19.3.8.1.12. Failure of the Contractor to prosecute the Work in a timely manner in compliance with the milestones within the Construction Schedule, established progress schedules, and/or completion dates;
- 19.3.8.1.13. The failure to provide certified payroll records acceptable to the District for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment;
- 19.3.8.1.14. Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., and/or failure to comply with any other Labor Code requirements;
- 19.3.8.1.15. Failure to properly maintain or clean up the Site;
- 19.3.8.1.16. Payments to indemnify, defend, or hold harmless the District;
- 19.3.8.1.17. Any payments due to the District, including but not limited to payments for failed tests, utilities changes, or permits;
- 19.3.8.1.18. Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents;
- 19.3.8.1.19. Contractor is otherwise in breach, default, or in substantial violation of any provision of this Contract.
- 19.3.8.1.20. Extra services for Architect.
- 19.3.8.1.21. Extra services for the Inspector including but not limited to overtime tests and inspection or reinspection required due to Contractor's failed tests or installation of unapproved or defective materials and Contractor's requests for inspection and Contractor's failure to attend the inspection.

19.3.8.1.22. Any other obligation(s) of the District which the District is authorized and/or compelled by law to perform.

19.3.8.2. Reallocation of Withheld Amounts. District may, in its reasonable discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, District shall make such payments on behalf of Contractor only after providing fourteen (14) days prior written notice to Contractor, requesting the Contractor provide information in response to same. District shall consider all information provided by Contractor in exercising its discretion to pay any such claim or obligation. These payments may be made without prior judicial determination of claim or obligation. District will render Contractor an accounting of funds disbursed on behalf of Contractor.

19.3.8.3. If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after **FORTY-EIGHT (48)** hours written notice to the Contractor and, without prejudice to any other remedy, make good such deficiencies. The District shall adjust the total Guaranteed Project Cost by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Guaranteed Project Cost (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) shall be made therefor.

19.3.9. Payment After Cure

When Contractor removes the grounds for declining approval, payment shall be made for amounts withheld because of them. No interest shall be paid on any amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

19.4. Subcontractor Payments

19.4.1. Payments to Subcontractors

No later than seven (7) days after receipt of each Tenant Improvement Payment, or pursuant to Business and Professions Code section 7108.5 and Public Contract Code section 7107, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

19.4.2. No Obligation of District for Subcontractor Payment

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

19.4.3. Joint Checks

Provided Contractor is in breach of its payment obligations to its subcontractors and after 14 days written notice, District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District.

20. COMPLETION OF THE WORK

20.1. Completion

20.1.1. Completion of the Project will be when the Work to construct the Project is 100% complete, including all punch list items. Final DSA approval of the Project is not required for Project Completion.

20.1.2. Acceptance. The Project may only be accepted by action of the governing board of the District, or it's Designee. District, at its sole option, may accept the Project when the Project is not yet at Completion, except for minor corrective items, as distinguished from incomplete items. If Contractor fails to complete all minor corrective items within thirty (30) days after the date of the District's acceptance of the Project, the District shall withhold from the final Tenant Improvement Payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by District, until the item(s) are completed.

20.1.2.1. At the end of the thirty (30) day period, if there are any items remaining to be corrected, District may elect to proceed as provided herein related to adjustments to Guaranteed Project Cost, and/or District's right to perform the Work of the Contractor.

20.2. Closeout Procedures

20.2.1. In addition to the closeout procedures indicated herein, Contractor shall comply with all the closeout requirements, procedures, and actions as indicated in all Contract Documents.

20.2.2. Punch List

The Contractor shall notify the Architect when Contractor considers the Work complete. Upon notification, Architect will prepare a list of minor items to be completed or corrected ("Punch List"). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

20.2.3. Closeout Requirements

20.2.3.1. Utility Connections

Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.

20.2.3.2. As-Built Drawings

20.2.3.2.1. Contractor shall provide exact "as-built" of the Work upon Project Completion as indicated in the Contract Documents ("As-Built Drawings").

20.2.3.2.2. Contractor is liable and responsible for any and all inaccuracies in As-Built Drawings, even if inaccuracies become evident at a future date.

20.2.3.2.3. Upon Project Completion and as a condition precedent to approval of final payment, Contractor shall obtain the Inspector and the Architect's approval of the corrected prints and provide to the District the As-Built Drawings and information on disk. When completed, Contractor shall deliver corrected drawings and diskette/CD/other data storage

device acceptable to District with AutoCAD file to the District.

20.2.3.3. Maintenance Manuals: Contractor shall prepare all operation and maintenance manuals and date as indicated in the Contract Documents.

20.2.3.4. Closeout Documentation: Contractor shall provide all Closeout Documentation, which shall include the following, without limitation:

- 20.2.3.4.1. A full set of final As-Built Drawings, as further defined herein.
- 20.2.3.4.2. All Operations & Maintenance Manuals and information, as further defined herein.
- 20.2.3.4.3. All Warranties, as further defined herein.
- 20.2.3.4.4. Verified report(s) for all scope(s) of work (most recent revision of DSA 6-C,).

20.3. Final Inspection

20.3.1. Contractor shall comply with Punch List procedures as provided herein and in all the Contract Documents and maintain the presence of its District-approved project superintendent and project manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances shall Contractor demobilize its forces prior to completion of the Punch List. Upon receipt of Contractor's written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and shall submit to Contractor and District a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

20.3.2. Upon Contractor's completion of all items on the Punch List and any other uncompleted portions of the Work, the Contractor shall notify the District, the Architect and the Project Inspector, who shall again inspect such Work. If the Architect and the Project Inspector find the Work complete and acceptable under the Contract Documents, the Architect will notify Contractor, who shall then jointly submit to the Architect and the District its final Application for Payment.

20.3.3. Final Inspection Requirements

20.3.3.1. Before calling for final inspection, Contractor shall determine that the following have been performed:

- 20.3.3.1.1. The Work has been completed.
- 20.3.3.1.2. All life safety items are completed and in working order.
- 20.3.3.1.3. Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.
- 20.3.3.1.4. Electrical circuits scheduled in panels and disconnect switches labeled.
- 20.3.3.1.5. Painting and special finishes complete.
- 20.3.3.1.6. Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.
- 20.3.3.1.7. Tops and bottoms of doors sealed.

20.3.3.1.8. Floors waxed and polished as specified.

20.3.3.1.9. Broken glass replaced and glass cleaned.

20.3.3.1.10. Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site.

20.3.3.1.11. Work cleaned, free of stains, scratches, and other foreign matter, of damaged and broken material replaced.

20.3.3.1.12. Finished and decorative work shall have marks, dirt, and superfluous labels removed.

20.3.3.1.13. Final cleanup, as provided herein.

20.4. Costs of Multiple Inspections

More than two (2) requests of the District to make a final inspection shall be considered an additional service of District, Architect, Construction Manager, and/or Project Inspector, and all subsequent costs will be invoiced to Contractor and if funds are available, withheld from remaining payments.

20.5. Beneficial Occupancy or Use Prior to Project Completion

20.5.1. District's Rights to Beneficial Occupancy or Use

The District may, at its sole discretion, have Beneficial Occupancy or use of any completed or partially completed portion of the Project at any stage. Neither the District's Final Acceptance, the making of Final Payment, nor the Beneficial Occupancy or use of the Project, in whole or in part, by District shall constitute acceptance of the Project not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. The District and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities shall be resolved pursuant to the Disputes and Claims provisions herein, with the added provision that during the dispute process, the District shall have the right to Beneficial Occupancy or use any portion of the Project that it needs or desires to use.

20.5.2. Inspection Prior to Beneficial Occupancy or Use

Immediately prior to partial Beneficial Occupancy or use of the Project, the District, the Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Project to be used in order to determine and record the condition of the Work.

20.5.3. No Waiver

Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Project shall not in and of itself constitute an acceptance of the Project not complying with the requirements of the Contract Documents.

21. FINAL PAYMENT AND RETENTION

21.1. Final Payment

Upon receipt and approval of a valid and final Application for Tenant Improvement Payment, the Architect may issue a final Certificate of Tenant Improvement Payment. The District shall thereupon jointly inspect the Work and either accept the Project as complete or notify the Architect and the Contractor in writing of reasons why the Project is not complete. Upon acceptance of the Project, the District may record a Notice of Completion with the County Recorder, and the Contractor shall, upon receipt of final Tenant Improvement Payment from the District, pay the amount due Subcontractors. The amount of the final Tenant Improvement Payment shall be equal to the remaining value of the work performed, less the total amount to be paid as Lease Payments pursuant to Exhibit C.

21.2. Prerequisites for Final Tenant Improvement Payment

The following conditions must be fulfilled prior to Final Tenant Improvement Payment:

21.2.1. A full and final waiver or release of all Stop payment notices in connection with the Work shall be submitted by Contractor, including a release of Stop payment notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all Stop payment notice rights.

21.2.2. A duly completed and executed "**Conditional Waiver and Release on Final Payment**" compliant with Civil Code section 8136 from each subcontractor of any tier and supplier to be paid from the **current** Tenant Improvement Payment;

21.2.3. A duly completed and executed "**Unconditional Waiver and Release upon Final Payment**" compliant with Civil Code section 8138 from each subcontractor of any tier and supplier that was paid from the **previous** Tenant Improvement Payment; and

21.2.4. The Contractor shall have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of District required under the Contract Documents.

21.2.5. Each Subcontractor shall have delivered to the Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.

21.2.6. Contractor must have completed all requirements set forth under "Closeout Procedures," Including, without limitation, an approved set of complete As-Built Drawings.

21.2.7. Architect shall have issued its written approval that final payment can be made.

21.2.8. The Contractor shall have delivered to the District all manuals and materials required by the Contract Documents.

21.2.9. The Contractor shall have completed final clean up as provided herein.

21.3. Retention

21.3.1. The retention (5% of the total Contract Price; "**Retention**"), **less** the total Lease Payments and less any amounts disputed by the District or that the District has the right to withhold pursuant to provisions herein, shall be paid as follows:

21.3.1.1. After approval by the District of the Architect's Certificate of Payment,

21.3.1.2. After the satisfaction of the conditions set forth herein, and

21.3.1.3. Within sixty (60) days following Project Completion pursuant to Public Contract Code section 7107.

21.3.1.4. No earlier than thirty-five (35) days of the recording of the Notice of Completion by District, if a Notice of Completion is recorded by the District.

21.3.2. No interest shall be paid on any amounts withheld due to a failure of the Contractor to perform, in accordance with the terms and conditions of the Contract Documents.

21.3.3. District and Contractor acknowledge that the District's protections, restrictions and requirements outlined in the "retention" provisions of applicable California law (including, without limitation, Public Contract Code sections 7201 and 9203) are satisfied by the amount(s) the District will withhold as Retention under this Contract, including the amounts that the District will pay as Lease Payments under this Contract.

21.4. Claims Asserted After Final Tenant Improvement Payment.

Any lien, stop payment notice or other claim filed or asserted after the Contractor's acceptance of the Final Payment by any Subcontractor, of any tier, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Contractor pursuant to the indemnification obligations of the Contract Documents. In the event any lien, stop payment notice or other claim of any Subcontractor, Laborer, Material Supplier or others performing Work under the Contract Documents remain unsatisfied after Final Tenant Improvement Payment is made, Contractor shall refund to District all monies that the District may pay or be compelled to pay in discharging any lien, stop payment notice or other claim, including, without limitation all costs and reasonable attorneys' fees incurred by District in connection therewith.

22. UNCOVERING WORK, CORRECTION OF WORK AND RIGHT TO TAKEOVER WORK

22.1. Uncovering Work.

If a portion of the Work is covered without Inspector or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by the District, the Project Inspector, or the Architect, be uncovered for the Project Inspector's or the Architect's observation and be replaced at the Contractor's expense without change in the Guaranteed Project Cost or Contract Time.

22.2. Rejection of Work.

Prior to the District's Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work that is defective or not in conformity with the Contract Documents may be rejected by the District, the Architect or the Project Inspector and the Contractor shall correct all rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Architect or the Project Inspector or even if they failed to observe the defective or non-conforming Work, materials or equipment.

22.3. Nonconforming Work

22.3.1. Contractor shall promptly remove from Premises all Work identified by District as failing to conform to the Contract Documents whether incorporated or not. Contractor shall promptly replace and

re-execute its own Work to comply with the Contract Documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to the District or other contractors caused thereby.

22.3.2. If Contractor does not remove or reasonably begin and diligently remove Work that District has identified as failing to conform to the Contract Documents within a reasonable time, not to exceed five (5) calendar days, District may remove it and may store any material at Contractor's expense. If Contractor does not pay expense(s) of that removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell any material at auction or at private sale and shall deduct all costs and expenses incurred by the District and/or District may withhold those amounts from payment(s) to Contractor.

22.4. Correction of Work

22.4.1. Correction of Rejected Work

Pursuant to the notice provisions herein, the Contractor shall promptly correct the Work rejected by the District, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Project Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

22.4.2. One-Year Warranty Corrections

If, within one (1) year after the date of Project Completion or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the District to do so. This period of one (1) year shall be extended with respect to portions of the Work first performed after Project Completion by the period of time between Project Completion and the actual performance of the Work. This obligation hereunder shall survive acceptance of the Work under the Contract and termination of the Contract. The District shall give such notice promptly after discovery of the condition.

22.5. District's Right to Takeover Work

22.5.1. If the Contractor should neglect to prosecute or reasonably begin and diligently prosecute the Work properly or fail to perform any provisions of this contract, the District, after **five (5) calendar days** written notice to the Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.

22.5.2. If it is found at any time, before or after Project Completion, that Contractor has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, District may require at its option:

22.5.2.1. That all such improper Work be removed, remade or replaced, and all work disturbed by these changes be made good by Contractor at no additional cost to the District;

22.5.2.2. That the District deduct from any amount due Contractor the sum of money equivalent to the difference in value between the work performed and that called for by the Drawings and

Specifications; or

22.5.2.3. That the District exercise any other remedy it may have at law or under the Contract Documents, including but not limited to the District hiring its own forces or another contractor to replace the Contractor's nonconforming Work, in which case the District shall either issue a deductive Change Order, a Unilateral Change Order, or invoice the Contractor for the cost of that work. Contractor shall pay any invoices within thirty (30) days of receipt of same or District may withhold those amounts from payment(s) to Contractor.

22.5.3. Acceptance of Defective or Non-Conforming Work. The District may, in its sole and exclusive discretion, elect to accept Work that is defective or that is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable.

23. TERMINATION AND SUSPENSION AND SCOPE REDUCTION

The Parties' rights to terminate the Project are as indicated in the Facilities Lease. In the event of a termination of the Facilities Lease and notwithstanding any other provision in the Contract Documents, the Surety shall remain liable to all obligees under the Payment Bond and to the District under the Performance Bond for any claim related to the Project.

23.1. Emergency Termination of Public Contracts Act of 1949

23.1.1. In addition to the Parties' right to termination under the Facilities Lease, this Contract is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

23.1.1.1. Section 4410 of the Government Code states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

23.1.1.2. Section 4411 of the Government Code states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either party shall pay to the other or any other person, under the facts and circumstances in the case.

23.1.1.3. Compensation to the Contractor shall be determined on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at the District's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted schedule of values, that price shall control. The District, at its sole discretion, may adopt the Guaranteed Project Cost as the reasonable value of the work done or any portion thereof.

23.2. Suspension of Work

23.2.1. District may, without cause, order Contractor in writing to suspend, delay or interrupt the Project

in whole or in part for such period of time as District may determine. When the District resumes the Project, the Parties will attempt to negotiate an adjustment in the GPC for increases or decreases in the cost of performance of the Project caused by suspense, delay or interruption. If the parties cannot agree on an adjusted GPC, the District may terminate the leases as permitted herein.

23.2.2. In the event the District shall order suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by the District; provided however that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any adjustment of the Contract Price shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit, all of which will remain as reflected in the Schedule of Values submitted by the Contractor pursuant to the Contract Documents. In the event of the District's suspension of the Work, the Contract Time shall be equitably adjusted.

23.3. Scope Reduction.

In cases of suspension, partial or complete termination, or at the discretion of the District, the District reserves the right to unilaterally approve a deductive Change Order to reduce scope of work or perform work with other forces or its own forces.

24. CLAIMS RESOLUTION

24.1. Exclusive Remedy.

24.1.1. Compliance with the claim resolution process and timelines described in this Claims Resolution section as well as the notice provisions of the Contract are express conditions precedent to Contractor's right to commence litigation or arbitration, file a claim under the California Government Code, or commence any other legal action related to the Project ("Claims Resolution Process").

24.1.2. Contractor acknowledges that its failure, for any reason, to provide written notice and all required supporting documentation to permit the District's review and evaluation within the time frame required by this Claims Resolution Process, shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert, request, or demand any entitlement to an adjustment of the Contract Time or the contract Price on account of any instruction, request, drawings, specifications, action, condition, omission, default or other situation.

24.1.3. To the extent any provision(s) of this Claims Resolution Process conflict with or otherwise impair the timeframes and procedures of Public Contract Code section 9204, the provisions of Section 9204 shall control. If provisions of this Claims Resolution Process are supplementary and/or in addition to the requirements of Section 9204, but do not conflict with or otherwise impair the timeframes and procedures of Section 9204, the provisions of this Claims Resolution Process and the Contract shall control.

24.2. Performance during Claim Resolution Process.

The Contractor shall diligently proceed with Work on the Project at the same time that Claims are addressed under the Claims Resolution Process. It is the intent of District to resolve Claims with the Contractor as close to the events giving rise to the Claims as possible, and to avoid stale or late Claims and the late documenting of Claims. Contractor's failure to diligently proceed in accordance with the District's instructions or the

Contract terms will be considered a material breach of the Contract and a waiver of Contractor's rights under this Contract.

24.3. Waiver.

If Contractor fails to timely submit any written notices required under the terms of the Contract or in this Claims Resolution section, Contractor waives and releases its rights regarding further review of its Claim, unless Contractor and District mutually agree in writing to other time limits.

24.4. Intention.

The Claims Resolution Process required herein is intended to provide a concise mechanism for resolving Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Claims that are not contemporaneously resolved.

24.5. Other Provisions.

If portions of the Contract, other than this Claims Resolution Process, establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Claims Resolution Process shall control the resolution of all Claims.

24.6. Claim Presentation

24.6.1. Claim: A claim is a written demand by Contractor (or by Contractor on behalf of a Subcontractor) that the Contractor must submit by **registered mail or certified mail return receipt requested** for:

24.6.1.1. An extension to the Contract Time, including relief from damages or penalties assessed by the District for delay;

24.6.1.2. Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or the Contractor is not otherwise entitled; or

24.6.1.3. Payment that is disputed by the District.

24.6.2. A PCO may be a Claim, but the Parties agree that a PCO shall only be a Claim if:

24.6.2.1. The District states in writing that it disagrees with the terms of a PCO and directs the Contractor to utilize the Claim Resolution Process, or

24.6.2.2. The District rejects in whole or in part a PCO and the Contractor states in writing that it is utilizing the Claim Resolution Process for the portion of the PCO that the District rejected.

24.6.3. Subcontractors.

24.6.3.1. Public Contract Code section 9204(d)(5) states that the Contractor may present to the District a Claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that the Contractor present a claim for Work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim. Within 45

days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the claim to the District and, if the Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.

24.6.3.2. Contractor is responsible for providing this Claims Resolution Process to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor are informed of this Claims Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Claims Resolution Process will be considered. Contractor shall indemnify, keep and hold harmless the District and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Claims Resolution Process to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor.

24.6.4. Contractor Must Timely Identify, Present and Document Any Claim

24.6.4.1. Every Claim shall be stated with specificity in writing and signed by Contractor under penalty of perjury and presented to the District within ten (10) calendar days from the date Contractor discovers or reasonably should discover, that an act, error or omission of District, its agents or employees, or action, condition or other situation has occurred that may entitle Contractor to make a Claim. This shall include the Contractor's actual or constructive knowledge of any instruction, request, drawings, specifications, action, condition, omission, default or other situation for which the contractor believes there should an adjustment of the Contract Price or Contract Time. Contractor shall provide this writing even if Contractor has not yet been damaged, delayed, or incurred extra cost when Contractor discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Claim. The writing shall:

24.6.4.1.1. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Claim;

24.6.4.1.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or Contract Time adjustments; and

24.6.4.1.3. Identify in detail line-item costs if the Claim seeks money.

24.6.4.1.4. If the Claim involves extra work, a detailed cost breakdown of the amounts the Contractor is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within seven (7) days of the date the cost reflected in the record is incurred. At the request of District, extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).

24.6.4.1.5. If the Claim involves an error or omission in the Contract Documents:

24.6.4.1.5.1. An affirmative representation under penalty of perjury by Contractor and any affected Subcontractors and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and

24.6.4.1.5.2. A detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Contractor, its Subcontractors and suppliers, prior to submitting a proposal for the Work.

24.6.4.1.6. If the Claim involves a request for additional compensation for escalation of materials costs, then this provision exclusively governs those request(s) by Contractor and the following are **all** conditions precedent to Contractor's submission of a Proposed Change Order or Claim for additional compensation for escalation of materials costs.

24.6.4.1.6.1. Contractor shall not be entitled to submit a request for compensation for escalation of materials unless the actual cost of materials exceeds ten percent (10%) of the **total** material costs on the Project.

24.6.4.1.6.2. The cost escalation is the result of unusual and unforeseeable market conditions not reasonably foreseeable at the time of award of the Contract and was not an escalated cost resulting from any action or inaction of the Contractor.

24.6.4.1.6.3. Contractor timely ordered and/or purchased the materials at issue.

24.6.4.1.6.4. Contractor's material costs were reasonable at the time of District's approval of the Contractor's GPC for the Project.

24.6.4.1.6.5. Contractor demonstrates an actual increase in the cost of materials in its Contract Price at the time of District's approval of the Contractor's GPC and/or as reflected in Contractor's actual material payment cost paid either at time of purchase or delivery, whichever is earlier.

24.6.4.1.6.6. An actual year-to-date price increase has occurred and can be substantiated by the E.N.R. 20-City Average Material Cost Index for the material at issue that demonstrates the claim for an increase in price of the material at the time of delivery of the higher priced material to the Project.

24.6.4.2. The writing shall be accompanied by all documents substantiating Contractor's position regarding the Claim.

24.6.4.3. A Claim that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.

24.6.4.4. Contractor agrees that it shall not base its damages, its calculations or its Claim on a "total cost" approach, a "modified total cost" approach or a "jury verdict method" approach.

24.6.5. Certification. Each copy of the Claim Documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of the Contract Documents. This certification shall be under penalty of perjury and must include the following language immediately above or before the Contractor's signature: ***"I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit."*** The Contractor acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit. Should Contractor fail to submit the foregoing written statement signed under penalty of perjury, Contractor waives and releases its Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of the Claim from Subcontractor(s) or others who are asserting Claims by and through Subcontractors and/or the Contractor

24.6.6. District's Written Statement/Decision on Claim. The District shall issue a written statement/decision regarding the Claim to the Contractor within forty-five (45) days of receipt of the written Claim from the Contractor, or three (3) days after the District's first regular governing board meeting after that 45-day period if the District's governing board does not meet within that first 45-day period. If the District fails to timely provide a written statement/decision regarding the Claim, the Claim shall be deemed rejected in its entirety.

24.6.7. Contractor Must Demand an Informal Meet and Confer Conference if Contractor Pursues Any Claim

24.6.7.1. FAILURE OF A CONTRACTOR TO TIMELY DEMAND A MEET AND CONFER CONFERENCE IS A WAIVER OF ITS RIGHT TO PURSUE ALL OR A PORTION OF ITS CLAIM.

24.6.7.2. Where There Is No Agreement: If there is no agreement between Contractor and the District on a Claim, then within ten (10) calendar days of the date of the District's written statement/decision in response to a Claim or PCO, if Contractor pursues that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff. A meet and confer conference with District staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below.

24.6.7.3. Where There Is Partial Agreement: If Contractor and the District partially agree on a Claim but do not reach complete agreement, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, if Contractor pursues those issues from that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff regarding those issues. A meet and confer conference with District staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below, in connection with the District's rejection.

24.6.7.4. Meet and Confer Conference. District and Contractor shall schedule the meet and confer conference as soon as reasonably possible after Contractor's written demand for a meet and confer conference, but in no case later than thirty (30) days after Contractor's demand.

24.6.7.5. District's Written Decision. Within ten (10) **business** days of the meet and confer conference, the District shall issue a written decision. If the District fails to timely provide a written statement/decision after the meet and confer conference, all Claim issues that were part of the meet and confer conference shall be deemed rejected in their entirety.

24.6.7.5.1. If the District's decision completely resolves the Claim, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to.

24.6.7.5.2. If the District rejects the Contractor's Claim in whole or in part or does not issue a timely written response, then the parties shall mediate the remaining issues of the Claim.

24.6.7.5.3. Contractor's costs incurred in seeking relief for Claims are not recoverable from District.

24.6.8. Mediation.

24.6.8.1. At the District's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Inspector, and/or other District consultants.

24.6.8.2. The District and Contractor shall mutually agree to a mediator within ten (10) **business** days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon

a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

24.6.9. Contractor's Obligation to File a Government Code Claim. Nothing in this Contract, including this Claims Resolution Process, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code section 910, et seq. Therefore, in addition to complying with this Claims Resolution Process, the Contractor is required to present claims to the District pursuant to Government Code section 910, et seq. If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by the District, the Contractor may proceed under the post-mediation provisions of this Claims Resolution Process.

24.6.10. Post Mediation Provisions

24.6.10.1. Claims of \$375,000 or Less: The provisions of Public Contract Code § 20104.4 shall apply. Pursuant to Public Contract Code § 20104.4(a), within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. Pursuant to Public Contract Code § 9204(d)(2)(D), a mediation conducted pursuant to this Claims Resolution Process shall excuse the obligation under Public Contract Code § 20104.4(a) to mediate after litigation has been commenced unless otherwise agreed to by the parties in writing.

24.6.10.2. Litigation of Claims in Excess of \$375,000. If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.

24.6.11. The District shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, made to the District by the Contractor or any Subcontractor under the standards set forth in Government Code section 12650 *et seq.* Any Contractor or Subcontractor who submits a false claim shall be liable to the District for three times the amount of damages that the District sustains because of the false claim. A Contractor or Subcontractor who submits a false claim shall also be liable to the District for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$11,000 for each false claim. In addition, Contractor may be subject to criminal prosecution under California Penal Code §72 and/or civil liability under False Claims Act. If so, the District may be entitled to recover its costs incurred to investigate any False Claim, including but not limited to attorneys' fees and expert fees incurred in connection with that investigation.

24.7. Documentation of Resolution.

If a Claim is resolved, the District shall determine if that resolution shall be documented in a settlement agreement or release or other document, as appropriate.

24.8. Claim Resolution Process – Non-Applicability.

The procedures and provisions in this Claims Resolution section shall **not** apply to:

24.8.1. District's determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;

24.8.2. District's rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a contractor from District contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107 of the Public Contract Code, shall be subject to the mandatory dispute resolution provisions of this Claims Resolution section and the Contract;

24.8.3. Personal injury, wrongful death or property damage claims;

24.8.4. Latent defect or breach of warranty or guarantee to repair;

24.8.5. Stop notices or stop payment notices; or

24.8.6. Any other District rights as set forth herein.

24.9. The District's failure to respond to a Claim from the Contractor within the time periods described herein or to otherwise meet the time requirements of Public Contract Code section 9204 shall automatically result in the Claim being deemed rejected in its entirety, with no admission by the District as to the merits of the Claim.

24.10. If District fails to timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, the Contractor is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with California Public Contract Code §7107, the District is entitled to withhold up to 150% of disputed amounts and the District shall not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.

25. LABOR, WAGE & HOUR, APPRENTICE AND RELATED PROVISIONS

25.1. Compliance Monitoring and Enforcement by the DIR

25.1.1. 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. 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 pursuant to Section 1725.5 at the time the contract is awarded."

25.1.2. Contractor acknowledges that, for purposes of Labor Code section 1725.5, this work is a public work to which Labor Code section 1771 applies. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all "subcontractors" (as defined by Labor Code section 1722.1) shall comply with Labor Code section 1725.5 to 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 the Work. Contractor represents to the District that all "subcontractors" (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.

25.1.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. 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.

25.2. Wage Rates, Travel and Subsistence

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

25.2.2. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the District, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

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

25.2.4. If during the period this bid is required to remain open, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, such change shall not alter the wage rates in the Notice to Bidders or the Contract subsequently awarded.

25.2.5. Pursuant to Labor Code section 1775, Contractor shall, as a penalty to District, forfeit the statutory amount, (currently not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Contractor or by any Subcontractor under it.

25.2.5.1. The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day, or portion thereof, unless the failure of Contractor was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of Contractor.

25.2.5.2. The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if Contractor has been assessed penalties within the previous three (3) years for failing to meet Contractor's prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

25.2.5.3. The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the Contractor willfully violated Labor Code section 1775.

25.2.5.4. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.

25.2.6. Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification. Prevailing wage rates are on file with the District and are available to any interested party on request or at www.dir.ca.gov/oprl/statistics_and_databases.html.

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

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

25.3. Hours of Work

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

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

25.3.3. Pursuant to Labor Code section 1813, Contractor shall as a penalty to the District forfeit the statutory amount (believed by the District to be currently one hundred dollars (\$100)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

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

25.4. Payroll Records

25.4.1. Pursuant to the provisions of section 1776 of the Labor Code, notice is hereby given that Contractor shall prepare and provide to the California Department of Industrial Relations and shall cause each Subcontractor performing any portion of the Work under this Contract to prepare and provide to the California Department of Industrial Relations, accurate and certified payroll record ("CPR(s)"), showing the name, address, social security number, work classification, straight time, and overtime hours worked each

day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work.

25.4.1.1. In addition to any other requirements under Labor Code section 1770, et seq., the CPRs enumerated hereunder shall be certified and shall be provided as required by the California Department of Industrial Relations.

25.4.2. In addition, all CPRs shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

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

25.4.2.2. CPRs shall be made available for inspection or furnished upon request to a representative of District, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

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

25.4.3. The form of certification for the CPRs shall be as follows:

I, _____ (Name-Print), the undersigned, am the _____ (Position in business) with the authority to act for and on behalf of _____ (Name of business and/or Contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.

Date: _____ Signature: _____
(Section 16401 of Title 8 of the California Code of Regulations)

25.4.4. Each Contractor shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.

25.4.5. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by District, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded Contract or performing Contract shall not be marked or obliterated.

25.4.6. Contractor shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) Business days, provide a notice of change of location and address.

25.4.7. In the event of noncompliance with the requirements of this section, Contractor shall have ten

(10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after the ten (10) day period, Contractor shall, as a penalty to District, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from Tenant Improvement Payment and/or Lease Payments then due.

25.4.8. It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

25.5. Apprentices

25.5.1. Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Contractor to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

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

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

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

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

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

25.5.7. If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

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

25.5.7.2. Forfeit as a penalty to District the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

25.5.8. Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

25.5.9. Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

25.5.10. Contractor shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code section 108, et seq.

25.6. Non-Discrimination

25.6.1. Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, age, or physical handicap in the performance of this Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to Contractor and Subcontractor.

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

25.7. Labor First Aid

Contractor shall maintain emergency first aid treatment for Contractor's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the California Occupational Safety and Health Act of 1973, and all related regulations, including without limitation sections 330 et seq. of Title 8 of the California Code of Regulations.

25.8. Skilled and Trained Workforce Requirement

25.8.1. Contractor is familiar with the hiring requirements set forth in Education Code section 17407.5, and as a condition of entering into this Facilities Lease, Contractor understands and agrees that Contractor and its Subcontractors at every tier will use a skilled and trained workforce, as defined in Education Code section 17407.5, to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades.

25.8.2. Monthly Workforce Report. The Contractor will provide to the District on a monthly basis while the Project is being performed, a report demonstrating compliance by Contractor and its Subcontractors at every tier with the skilled workforce requirements described in Public Contract Code section 2602 ("Workforce Report(s)").

25.8.2.1. Content of Workforce Report(s). The Workforce Reports will state the following:

25.8.2.1.1. Each Subcontractor's name and license number, or list the Contractor if the Contractor is self-performing the applicable scope of Work;

25.8.2.1.2. That each worker is either a registered apprentice in an apprenticeship program

approved by the State or a skilled journeyperson;

25.8.2.1.3. Of the skilled journeypersons for each Subcontractor and the Contractor, which are graduates of an approved apprenticeship program. It shall be sufficient for the Contractor to state the number of workers in each applicable category. The Contractor is not required to identify each individual worker who performed work on the Project in the Contractor's monthly report;

25.8.2.1.4. The monthly and cumulative percentages that entity has achieved of those graduates. If a Subcontractor (or the Contractor) is meeting the percentage cumulatively, the District may utilize that information when it determines whether the report is sufficient.

25.8.2.2. Time Frame. Each monthly Workforce Report must include all work performed during the preceding month and must be submitted to the District no later than thirty (30) days after the end of the preceding month. (i.e., the monthly Workforce Report for activity during March must be submitted no later than April 30.)

25.8.2.3. No Report or Incomplete Report of Contractor.

25.8.2.3.1. If the Contractor fails to provide a Workforce Report or provides a Workforce Report that is incomplete, the District shall withhold further payments from the Contractor until the Contractor provides a complete Workforce Report for that month. The District shall withhold from the Contractor an amount equal to one hundred and fifty percent (150%) of the value of the monthly billing for the relevant Subcontractor(s), which the Contractor shall be entitled to withhold from the Subcontractor(s).

25.8.2.3.2. **Plan.** If the Contractor submits to the District a plan to achieve substantial compliance with Public Contract Code section 2601, et seq, the District shall resume making payments to the Contractor, including all previously withheld payments, unless, within a reasonable time, the District rejects the plan as insufficient. In the event that the District rejects the Contractor's plan as insufficient, the District shall provide an explanation in writing of the basis of for the District's rejection of the Contractor's plan.

25.8.2.4. No Report or Incomplete Report of Subcontractor(s).

25.8.2.4.1. If a monthly report by the Contractor is incomplete due to the failure of a Subcontractor(s) to timely or completely submit the information to the Contractor or District, the District shall only withhold an amount equal to one hundred and fifty percent (150%) of the value of the monthly billing for the non-compliant Subcontractor(s).

25.8.2.4.2. If the Contractor substitutes Subcontractor(s) for failure to provide a complete or timely report, and the Contractor replaces the Subcontractor(s) with one that provides an enforceable commitment that a skilled and trained workforce as defined in Public Contracts Code 2601, et seq. will be used to complete the Project, the District shall resume making payments to the Contractor.

25.8.2.5. District Reporting Requirements. The District shall forward to the Labor Commissioner a copy of a Contractor's monthly report submitted to the District that fails to comply with Public Contract Code section 2602, et seq. In the event that the Contractor submits a plan to the District to achieve substantial compliance with Public Contract Code 2601 et. seq., the District shall forward a copy of that plan to the Labor Commissioner.

25.8.3. End-of-Project Reconciliation.

25.8.3.1. At the end of the Project, if the Contractor cannot demonstrate that it has met the applicable participation level for all work that falls within an apprenticeable occupation as defined in Public Contract Code section 2600, et seq., Contractor may remedy its failure by paying to the appropriate trade apprenticeship fund(s), an amount equal to the number of additional hours required to meet the percentage, multiplied by the "Training" amount for that trade, at the Basic Hourly Rate. The Contractor must provide documentation to the District reasonably sufficient to demonstrate this payment and the trade apprenticeship funds' acceptance of payment(s).

25.8.3.2. If payment(s) to the applicable trade apprenticeship fund(s) are not made or accepted, then the District shall have the right to permanently retain ten percent (10%) of the price for the out of compliance apprenticeable occupation's Work, per month, as reflected in the Project's schedule of values, not to exceed the monthly amounts for first-time violations indicated in Public Contract Code 2603(a). The District shall withhold those funds until the Labor Commissioner makes its determination of violations pursuant to Public Contract Code section 2603. At that time, the District will distribute those funds as directed by the Labor Commissioner or, if the Labor Commissioner determines that no violation was made or the penalty(ies) are less than the amount the District is withholding, the District shall pay the applicable withheld amounts to the Contractor, with no interest or penalty.

25.8.3.3. The Parties agree that these end-of-Project remedies are reasonable and sufficient, subject to a determination made by Department of Industrial Relations or a court of competent jurisdiction that one or both of these remedies is insufficient.

25.8.4. Any payments the District withholds from the Contractor for noncompliance will be reflective only of the trade(s) or Subcontractor(s) out of compliance and will be paid once the subcontractor(s) and/or trade(s) are cumulatively compliant, subject to the End-of-Project Reconciliation process indicated herein above.

26. MISCELLANEOUS

26.1. Assignment of Antitrust Actions

Although this project may not have been formally bid, the following provisions may apply:

26.1.1. Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the Parties.

26.1.2. Section 4552 of the Government Code states:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions

Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

26.1.3. Section 4553 of the Government Code states:

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

26.1.4. Section 4554 of the Government Code states:

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

26.1.5. Under this Article, "public purchasing body" is District and "bidder" is Contractor.

26.2. **Excise Taxes**

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a State or Local Government for its exclusive use, District, upon request, will execute documents necessary to show (1) that District is a political subdivision of the State for the purposes of such exemption, and (2) that the sale is for the exclusive use of District. No Federal Excise Tax for such materials shall be included in any Guaranteed Project Cost.

26.3. **Taxes**

Guaranteed Project Cost is to include any and all applicable sales taxes or other taxes that may be due in accordance with section 7051 of the Revenue and Taxation Code; Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

26.4. **Shipments**

All shipments must be F.O.B. destination to Site or sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Guaranteed Project Cost shall be all inclusive (including sales tax) and no additional costs of any type will be considered.

**EXHIBIT E
TO
FACILITIES LEASE**

MEMORANDUM OF COMMENCEMENT DATE

**[TO BE ENTERED INTO AFTER CONSTRUCTION IS COMPLETE TO
COMMENCE DISTRICT OCCUPANCY OF THE FACILITIES AND TO START
THE LEASE TERM.]**

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 20____, and is made by and between **Lathrop Construction Associates, Inc.** ("Contractor"), as Lessor, and the **Alameda Unified School District** ("District"), as Lessee.

1. Contractor and District have previously entered into a Facilities Lease dated as of _____, 20____, (the "Lease") for the leasing by Contractor to District of the Project Site(s) and Project in _____, CA, referenced in the Lease.

2. District hereby confirms the following:

A. That all construction of the Project required to be performed pursuant to the Facilities Lease has been completed by Contractor in all respects;

B. That District has accepted and entered into possession of the Project and now occupies same; and

C. That the term of the leaseback period in the Facilities Lease commenced on _____, 20____, and will expire at 11:59 P.M. on _____, 20____.

IN WITNESS WHEREOF, the Parties have accepted and agreed to this Memorandum of Commencement Date, as of the date indicated above, and have directed and authorized their respective officers to execute this Memorandum of Commencement Date:

Alameda Unified School District

Date: _____

Signature: _____

Print Name: Robbie Lyng

Print Title: Senior Director of Construction

Date: _____

Signature: _____

Print Name: Shariq Khan

Print Title: Chief Business Officer

Date: _____

Signature: _____

Print Name: Jennifer Williams

Print Title: Board President

Lathrop Construction Associates, Inc.

Date: _____

Signature: _____

Print Name: _____

Print Title: _____

**EXHIBIT F
TO
FACILITIES LEASE**

CONSTRUCTION SCHEDULE

[INCLUDE THIS FIRST PARAGRAPH IF CONTRACTOR PERFORMS PRELIMINARY SERVICES AND PARTIES AMEND FOR GPC]: IF THE PARTIES AGREE TO A GUARANTEED PROJECT COST AND AMEND THE CONTRACT, THE PARTIES SHALL ALSO AMEND THIS EXHIBIT AND INCLUDE THE CONSTRUCTION SCHEDULE PREPARED BY THE CONTRACTOR AND AGREED TO BY THE DISTRICT PURSUANT TO THE CONTRACT.

Preliminary Services. The schedule for the Preliminary Services is as follows:

- Contractor shall commence the Preliminary Services on or before **October 27, 2021**, and
- Contractor shall complete the Preliminary Services on or before **November 30, 2021**

Construction Schedule. The Construction Schedule is as follows:

- It is hereby understood and agreed that assuming the District issues a Notice to Proceed for the Project on or before **[TBD]**, then:
 - District shall have Beneficial Occupancy of the Project on or before **[TBD]**, and
 - Project Completion shall be on or before **[TBD]**.
- In addition to the general parameters above for the Construction Schedule, attached is a detailed Project Construction Schedule with a duration no longer than the Contract Time, and with specific milestones that Contractor shall meet.

**EXHIBIT G
TO
FACILITIES LEASE**

SCHEDULE OF VALUES

Attached is a detailed Schedule of Values that complies with the requirements of the Construction Provisions (Exhibit D) and that has been approved by the District.

[INSERT SCHEDULE VALUES IF GPC AND SCHEDULE OF VALUES ARE AGREED TO]

OR

[INCLUDE THIS PARAGRAPH IF CONTRACTOR PERFORMS PRELIMINARY SERVICES AND PARTIES AMEND FOR GPC]: IF THE PARTIES AGREE TO A GUARANTEED PROJECT COST AND AMEND THE CONTRACT, THE PARTIES SHALL ALSO AMEND THIS EXHIBIT AND INCLUDE THE SCHEDULE OF VALUES PREPARED BY THE CONTRACTOR AND AGREED TO BY THE DISTRICT PURSUANT TO THE CONTRACT.

**EXHIBIT H
TO
FACILITIES LEASE**

SUBCONTRACTOR PROCUREMENT PROCESS

If the District issues an RFP or RFQ/P and requires the Contractors to submit a **final** price for this Project at the time it is competing against other Contractors, the Contractor shall comply with the subcontractor prequalification requirements of Education Code section 17406 (a)(1)(C) and may otherwise select subcontractors based on their own reasonable and non-discriminatory process.

If the District issues an RFQ or RFQ/P and selects one Contractor who will **later** provide a final price for this Project, that Contractor shall, in addition to all legal requirements, including without limitation Education Code section 17406, take the following steps when the District directs the Contractor to procure Subcontractors so that Contractor can provide a final lump sum Guaranteed Project Cost ("**GPC**") for construction of the Project.

1. **Subcontractor Bid Packages.** Contractor shall prepare separate and specific Subcontractor bid packages that include all scope(s) of construction Work included in the Plans and Specifications.
2. **Public Notice.** Contractor shall provide notice of bidding for Subcontractors "in accordance with the publication requirements applicable to the District's competitive selection process" to solicit Subcontractors in compliance with statutory requirements and the District's process. (Education Code §17406.)
3. **District Review of Bid Packages and Notice.** At least fourteen (14) days prior to the bidding of Subcontractor bid packages, Contractor shall provide the District with a copy of the written notice it will publish (including newspaper advertising) to solicit Subcontractors. The District reserves the right to request that Contractor reasonably revise its published notice.
4. **Three Bona Fide Bids.** Contractor is required to receive **at least** three (3) bona fide bids from Subcontractors for all scopes of Work on the Project that constitute more than three percent (3%) of the total Project scope of Work. Prior to the Contractor seeking bids, the District may, in its sole discretion, and upon Contractor's written request, authorize Contractor to utilize a different minimum number of bona fide bids from Subcontractors.
5. **Prequalification.** Contractor's Subcontractors performing work valued in excess of ½ of 1% of the GPC must comply with the following:
 - a. **MEP Prequalification.** If the Project has electrical, mechanical, and plumbing components that will be performed by subcontractors performing under the following license classification(s) (C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43, and/or C-46; "**MEP Subcontractor(s)**"), and those MEP Subcontractors will be first-tier Subcontractors to the Contractor, those MEP Subcontractors must be prequalified with the District to be eligible to be included in a Contractor's proposal. MEP Subcontractors shall prequalify with the District utilizing the District's Prequalification Questionnaire. **The District highly recommends that the Contractor informs all of its potential MEP Subcontractors that must be prequalified to immediately complete the prequalification process to ensure their eligibility to be included as MEP Subcontractors for the Project.**
 - b. **Non-MEP Subcontractor Prequalification Criteria and Standards.** For this Project, Contractor may **NOT** prequalify non-MEP subcontractors solicited for work on this Project, unless the Contractor provides any prequalification or qualification criteria, process or questionnaire to the District for approval at least fourteen (14) days prior to the bidding of Subcontractor bid packages.

- c. **LIMIT ON "BEST VALUE" SELECTION.** CONTRACTOR ACKNOWLEDGES THAT THIS PROCESS – THE PREQUALIFICATION OR ANY ASSOCIATED QUALIFICATION PROCESS – IS THE ONLY "BEST VALUE" SELECTION PROCESS AS IDENTIFIED IN EDUCATION CODE SECTION 17406 THAT THE DISTRICT HAS APPROVED FOR THIS PROJECT. THE CONTRACTOR MAY REQUEST, AT LEAST FOURTEEN (14) DAYS PRIOR TO THE BIDDING OF SUBCONTRACTOR BID PACKAGES, THAT THE DISTRICT APPROVE OTHER SELECTION PROCESS(ES) OR CRITERIA THAT THE CONTRACTOR DESIRES TO IMPLEMENT ON THIS PROJECT. CONTRACTOR CAN ONLY IMPLEMENT THOSE IF THE DISTRICT PRE-APPROVES THEM.
6. **Open-Book / Bid Opening.** Contractor shall invite the District to attend all bid opening(s) for the Project and shall within 48 hours of the bid opening(s) provide copies or access to all bid documents provided by all Subcontractors.
7. **Missing Scopes of Work in Subcontractor Bids ("Bid Levelling").** When Contractor has received all Subcontractor bids, Contractor shall identify all scope(s) of construction Work for which Contractor did not receive a bid and provide a written justification as to why the scope(s) of construction Work was either not included in a Subcontractor bid or was not bid on ("**Unbid Work**"). The District expects very little if any Unbid Work, far less than 1% of the GPC. After the District reviews the Contractor's justification, the Parties shall meet and confer and the District shall reasonably determine, in its sole discretion, whether to:
- a. Direct the Contractor to rebid the Unbid Work; or
 - b. If Contractor requests, allow the Contractor to self-perform the Unbid Work. If Contractor self-performs the Unbid Work, Contractor shall provide substantiation for the pricing for the Unbid Work that Contractor intends to self-perform. The Parties shall negotiate in good faith to determine a reasonable price for the Unbid Work that Contractor intends to self-perform. The District reserves the right to seek its own pricing of that Work to verify the value of Contractor's proposed pricing.
8. **Low Bid.** Because the "best value" process was implemented as part of the Subcontractor procurement process, once the Contractor receives Subcontractor bids, the Contractor shall award subcontracts to subcontractors with the **lowest responsive, responsible bid** that have satisfied the above prequalification and/or qualification steps, as applicable.
9. **Self-Performing Construction Work.** If Contractor intends to propose to self-perform portion(s) of the construction Work, it must
- a. Receive the District's prior written approval.
 - b. Provide its pricing (its bid) to the District 48 hours prior to Contractor's receipt of Subcontractor bids for those portion(s) of the Work.
 - c. Receive a minimum number of two (2) bona fide bids from Subcontractors for scope(s) of Work that the Contractor is bidding to self-perform, not including the Contractor's pricing/bid.

**EXHIBIT I
TO
FACILITIES LEASE**

**CERTIFICATES AND BONDS TO LEASE-LEASEBACK DOCUMENTS
AND
DIVISION 1 DOCUMENTS TO LEASE-LEASEBACK DOCUMENTS**

**ACLC/NEA Mechanical Modernization & Perimeter Fencing
Bay Farm School New Classroom Building & Site Work
Earhart Elementary School Modernization**

**Alameda Unified School District
and
Lathrop Construction Associates, Inc.**

NONCOLLUSION DECLARATION
Public Contract Code § 7106

TO BE EXECUTED BY CONTRACTOR

The undersigned declares:

I am the _____ **[PRINT YOUR TITLE]**

of _____ **[PRINT FIRM NAME]**

the party making the foregoing Contract.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on the following date:

Date: _____

Proper Name of Contractor: _____

City, State: _____

Signature: _____

Print Name: _____

Title: _____

(ATTACH NOTARIAL ACKNOWLEDGMENT FOR THE ABOVE SIGNATURE)

CERTIFICATIONS TO BE COMPLETED BY CONTRACTOR

THE UNDERSIGNED MUST CHECK EACH BOX AND EXECUTE THIS FORM AND HEREBY CERTIFIES TO THE GOVERNING BOARD OF THE DISTRICT THAT:

- He/she is a representative of the Contractor,
- He/she is familiar with the facts herein certified and acknowledged,
- He/she is authorized and qualified to execute this Agreement and these certifications on behalf of Contractor and that by executing this Agreement he/she is certifying the following items.

☐ **Labor Code Sections 1860-1861 (Workers' Compensation).** In accordance with Labor Code section 3700, every contractor will be required to secure the payment of compensation to his or her employees. I acknowledge and certify under penalty of perjury that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

☐ **Government Code Sections 8355-8357 (Drug-Free Workplace).** I acknowledge and certify under penalty of perjury that I will provide a drug-free workplace by doing all of the following:

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

I also acknowledge that this Contract may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of the above-referenced statute, if the contracting or granting agency determines that any of the following has occurred:

- (1) The contractor or grantee has made a false certification under Section 8355.
- (2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

I also acknowledge that the Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with the above-referenced statute. This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with the above-referenced statute.

☐ **Tobacco-Free Environment.** Pursuant to, without limitation, 20 U.S.C. section 6083, Labor Code section 6400 et seq., Health & Safety Code section 104350 et seq. and District Board Policies, all District sites, including the Project site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property.

I acknowledge and certify under penalty of perjury that I am aware of the District's policy regarding tobacco-free environments at District sites, including the Project site and acknowledge and certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the Project site. The District also prohibits electronic cigarettes, "vaping" or similar product uses on District sites.

☐ **No Hazardous Materials.** I acknowledge and certify under penalty of perjury that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations ("New Hazardous Material"), shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District. I have instructed our employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

- (i) Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material. Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.
- (ii) All Work or materials found to be New Hazardous Material or Work or material installed with equipment containing "New Hazardous Material," will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

The Contractor must immediately notify the District within two (2) Business Days, if the Contractor finds and before it disturbs, any material that the Contractor believes may be hazardous waste, as defined in section 25117 of the Health and Safety Code, and requires removal to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law

I acknowledge and certify under penalty of perjury that this certification provides notice to the Contractor that:

- (1) The Contractor's work may disturb lead-containing building materials.
- (2) The Contractor must notify the District if any work may result in the disturbance of lead-containing building materials.

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

from ordinary wear and tear of windows and doors, or from friction on other surfaces.

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

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, **Contractor is hereby notified** of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

(i) **Overview of California Law**

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

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

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

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

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

Because it is assumed by the District that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and

adequately comply with all applicable laws, rules and regulations governing lead-based materials (including title 8, California Code of Regulations, section 1532. 1).

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

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

In 2008, the U.S. Environmental Protection Agency, issued a rule pursuant to the authority of Section 402(c)(3) of the Toxic Substances Control Act, requiring lead safe work practices to reduce exposure to lead hazards created by renovation, repair and painting activities that disturb lead-based paint (Renovation, Repair and Painting Rule). Renovations in homes, childcare facilities, and schools built prior to 1978 must be conducted by certified renovations firms, using renovators with accredited training, and following the work practice requirements to reduce human exposures to lead.

Contractor, its workers and subcontractors must fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials, including those rules and regulations appearing within title 40 of the Code of Federal Regulations as part 745 (40 CFR 745).

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

(iii) **Contractor's Liability**

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

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

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

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

I acknowledge and certify under penalty of perjury, that:

1. I have received notification of potential lead-based materials on the District's property;
2. I am knowledgeable regarding and will comply with all applicable laws, rules, and regulations governing work with, and disposal of, lead.

☐ **Imported Materials.** All soils, aggregate, or related materials ("Fill") that Contractor, a Subcontractor, agent or supplier, in any way, provides or delivers and/or supplies to the Project Site shall be free of any and all hazardous material as defined in section 25260 of the Health and Safety Code, shall satisfy the requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, sections 21000 et seq. of the Public Resources Code ("CEQA"), and shall comply with the requirements of sections 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control. I acknowledge that, to the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

☐ **Roofing Contract Financial Interest Certification (Public Contract Code § 3006)**

I, _____ [Your Name], _____ [Firm Name]
certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with a roof project contract or subcontract on the Project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

I, _____ [Your Name], _____ [Firm Name]
certify that I do not have, and throughout the duration of the Contract, I will not have, any financial relationship in connection with the performance of the Contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____ [Your Name], _____ [Firm Name]
have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): _____
Mailing address: _____
Address of branch office used for this Project: _____
If subsidiary, name and address of parent company: _____

For Projects without substantive roofing components, check the following box and execute this certification:

☐ The Work on the Contract (1) does not include the replacement or repair of a roof or (2) is a repair of twenty five percent (25%) or less of the roof, (3) or is a repair project that has a total cost of twenty one thousand dollars (\$21,000) or less.

I acknowledge and certify under penalty of perjury that I am duly authorized to legally bind the Contractor to all provisions and items included in these certifications, that the contents of these certifications are true, and that these certifications are made under the laws of the State of California.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name:

Title:

DISABLED VETERAN BUSINESS ENTERPRISE
PARTICIPATION CERTIFICATION

Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program ("Program") for the construction and/or modernization of school buildings to have a participation goal for disabled veteran business enterprises ("DVBE") of at least three percent (3%), per year, of the overall dollar amount expended each year by the school district on projects that receive state funding.

1. **Disabled Veteran Business Enterprise.** A DVBE is a business enterprise certified by the California Office of Small Business as a DVBE.
2. **DVBE Participation Policy.** The District is committed to achieving this DVBE participation goal. The District encourages Contractor to ensure maximum opportunities for the participation of DVBEs in the Work of the Contract.
3. **DVBE Participation Goal.** The three percent (3%) participation goal is not a quota, set-aside or rigid proportion.
4. **Certification of Participation.** At the time of execution of the Contract, the Contractor will provide a statement to the District of anticipated participation of DVBEs in the contract.
5. **Submission of Report.** During performance of the Contract, Contractor shall monitor the Work of the Contract, award of subcontracts and contracts for materials, equipment and supplies for the purpose of determining DVBE participation in the Work of the Contract.
 - a) Contractor shall report on a monthly basis all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.
 - b) Upon completion of the Work of the Contract, Contractor shall submit a report to the District in the form attached hereto identifying all DVBEs utilized in the performance of the Work, the type or classification of the Work performed by each DVBE, and the dollar value of the Work performed by each DVBE.
 - i) The submission to the District of this report is a condition precedent to the District's obligation to make payment of the Final Payment under the Contract Documents. The submission of this report shall be in addition to, and not in lieu of, any other conditions precedent set forth in the Contract Documents for the District's obligation to make payment of the Final Payment.
 - ii) The District reserves the right to request additional information or documentation from the Contractor evidencing efforts to comply with the three percent (3%) DVBE participation goal.

DVBE PARTICIPATION REPORT

Contractor Name: _____ **Date:** _____

Project Name: _____ **Project Number:** _____

DVBE Firm Name	Trade / Portion of Work	Subcontract/ Contract Value
Add more sheets as needed to include all information for each DVBE		

Does the cumulative dollar value of these DVBE contracts meet or exceed the participation goal of three percent (3%) of the final Contract Price, as adjusted by all change orders?

YES _____ **NO** _____

If your response is "NO", please attach to this report a detailed description of the reasons for your firm did not achieve the participation goal of three percent (3%) of the final Contract Price.

I certify and declare under penalty of perjury under the laws of the State of California that all the foregoing information is complete, true, and correct.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the governing board of the District that he/she is a representative of the Contractor, is familiar with the facts herein certified, is authorized and qualified to execute this certificate on behalf of Contractor; and that the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Contractor has taken at least one of the following actions with respect to the Project (check all that apply):

☐ The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice ("DOJ") has determined (per the DOJ process for Applicant Agencies described more fully on its website, located at:) that none of those employees have been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

☐ Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between Contractor's employees and District pupils at all times; and/or

☐ Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is:

Name: _____ **Title:** _____

☐ The Work on the Contract is at an unoccupied school site and no employee and/or subcontractor or supplier of any tier of Contract shall come in contact with the District pupils.

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

Contractor's responsibility for background clearance extends to all of its employees, subcontractors, and employees of subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

PERFORMANCE BOND (100% of Contract Price)

(Note: Contractor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("**Board**") of the **Alameda Unified School District** (or "**District**") and **@Contractor**, ("**Principal**") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

@Project Name ("Project" or "Contract")

which Contract dated _____, 20_____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

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

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

_____ DOLLARS

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

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

In the event the Principal is declared by the District to be in breach or default in the performance of the Contract, then, after written notice from the District to the Surety, as provided for herein, the Surety shall either remedy the default or breach of the Principal or shall take charge of the Work of the Contract and complete the Contract with a Contractor other than the Principal at its own expense; provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the District.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the District, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair, replace, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor's or Surety's obligations under the Contract, law or equity,

including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Contractor's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:

Attention: _____

Telephone No.: (_____) _____ - _____

Fax No.: (_____) _____ - _____

E-mail Address: _____

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

Principal

Surety

(Name of Principal)

(Name of Surety)

(Signature of Person with Authority)

(Signature of Person with Authority)

(Print Name)

(Print Name)

(Name of California Agent of Surety)

(Address of California Agent of Surety)

(Telephone Number of California Agent of Surety)

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

PAYMENT BOND -- Contractor's Labor & Material Bond (100% of Contract Price)
(Note: Contractor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("**Board**") of the **Alameda Unified School District** (or "**District**") and **@Contractor**, ("**Principal**") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

@Project Name ("Project" or "Contract")

which Contract dated _____, 20_____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in the Civil Code of California, including section 9100, and the Labor Code of California, including section 1741.

NOW, THEREFORE, the Principal and _____, ("**Surety**") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the penal sum of:

_____ DOLLARS

(\$ _____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

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

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 9000 through 9566 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

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

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Contract Documents or to the Work.

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

Principal

Surety

(Name of Principal)

(Name of Surety)

(Signature of Person with Authority)

(Signature of Person with Authority)

(Print Name)

(Print Name)

(Name of California Agent of Surety)

(Address of California Agent of Surety)

(Telephone Number of California Agent of Surety)

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

**Division 1 Documents
to
Lease-Leaseback Documents**

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COORDINATION AND PROJECT MEETINGS

1. GENERAL

1.1. SECTION INCLUDES

- 1.1.1. Coordination Responsibilities of the Contractor
- 1.1.2. Field Engineering Responsibilities of the Contractor
- 1.1.3. Preconstruction Conference.
- 1.1.4. Progress Meetings.
- 1.1.5. Pre-Installation Conferences.
- 1.1.6. Post Construction Dedication.

1.2. COORDINATION RESPONSIBILITIES OF THE CONTRACTOR

- 1.2.1. Coordinate scheduling, submittals, and Work of the Specifications to assure efficient and orderly sequence of installation of interdependent construction elements, with provisions for accommodating items installed later.
- 1.2.2. Prior to commencement of a particular type or kind of work examine relevant information, contract documents, and subsequent data issued to the Project.
- 1.2.3. Verify that utility requirement characteristics of operating equipment are compatible with building utilities. Coordinate work of various sections having interdependent responsibilities for installing, connecting to, and placing in service, such equipment.
- 1.2.4. Closing up of holes, backfilling, and other covering up operations shall not proceed until all enclosed or covered work and inspections have been completed. Verify before proceeding.
- 1.2.5. Coordinate space requirements and installation of mechanical and electrical work which are indicated diagrammatically on Drawings. Follow routing shown for pipes, ducts, and conduit as closely as practicable; place runs parallel with line of building. Utilize spaces efficiently to maximize accessibility for other installations, for maintenance, and for repairs.
- 1.2.6. In finished areas except as otherwise indicated, conceal pipes, ducts, and wiring within the construction. Coordinate locations of fixtures and outlets with finish elements.
- 1.2.7. In locations where several elements of mechanical and electrical work must be sequenced and positioned with precision in order to fit into available space, prepare coordination drawings showing the actual conditions required for the installation. Prepare coordination drawings prior to purchasing, fabricating, or installing any of the elements required to be coordinated.
- 1.2.8. Closing up of walls, partitions or furred spaces, backfilling, and other covering up operations shall not proceed until all enclosed or covered work and inspections have been completed. Verify before proceeding.
- 1.2.9. Coordinate completion and clean up of Work of separate sections in preparation for completion and for portions of work designated for District's occupancy.
- 1.2.10. After District occupancy of Project, coordinate access to Site for correction of defective Work and Work not in accordance with Contract Documents, to minimize disruption of District's activities.
- 1.2.11. Coordinate all utility company work in accordance with the Contract Documents.

1.3. FIELD ENGINEERING RESPONSIBILITIES OF THE CONTRACTOR

- 1.3.1. Contractor shall employ a Land Surveyor registered in the State of California and acceptable to the Construction Manager.
- 1.3.2. Control datum for survey is that established by District provided survey. Contractor to locate and protect survey control and reference points.
- 1.3.3. Replace dislocated survey control points based on original survey control.
- 1.3.4. Provide field engineering services. Establish elevations, lines, and levels utilizing recognized engineering survey practices.
- 1.3.5. Upon completion of Work, submit certificate signed by the Land Surveyor, that

elevations and locations of Work are in conformance with Contract Documents. Record deviations on Record Drawings.

1.4. PRECONSTRUCTION CONFERENCE

- 1.4.1. Construction Manager or Project Engineer will schedule a conference immediately after receipt of fully executed Contract Documents prior to Project mobilization.
- 1.4.2. Mandatory Attendance: Construction Manager, Project Engineer, Inspector of Record, Architect of Record, Contractor, Contractor's Project Manager, and Contractor's Job/Project Superintendent.
- 1.4.3. Optional Attendance: Architect's consultants, subcontractors, and utility company representatives.
- 1.4.4. Construction Manager shall preside at conference and shall prepare and record minutes and distribute copies.
- 1.4.5. Agenda:
 - 1.4.5.1. Execution of the Contract Documents.
 - 1.4.5.2. Issue Notice to Proceed.
 - 1.4.5.3. Submission of executed bonds and insurance certificates.
 - 1.4.5.4. Distribution of Contract Documents.
 - 1.4.5.5. Submission of list of Subcontractors, list of Products, Schedule of Values, and Progress Schedule.
 - 1.4.5.6. Designation of responsible personnel representing the parties.
 - 1.4.5.7. Procedures for processing Force Account Directives and Change Orders.
 - 1.4.5.8. Procedures for Request for Information.
 - 1.4.5.9. Procedures for testing and inspecting.
 - 1.4.5.10. Procedures for processing applications for payment.
 - 1.4.5.11. Procedures for Project closeout.
 - 1.4.5.12. Use of Premises.
 - 1.4.5.13. Work restrictions.
 - 1.4.5.14. District's occupancy requirements or options.
 - 1.4.5.15. Responsibility for temporary facilities and controls.
 - 1.4.5.16. Construction waste management and recycling.
 - 1.4.5.17. Parking availability.
 - 1.4.5.18. Office, work and storage areas.
 - 1.4.5.19. Equipment deliveries and priority.
 - 1.4.5.20. Security.
 - 1.4.5.21. Progress cleaning.

1.5. PROGRESS MEETINGS

- 1.5.1. Construction Manager shall schedule and administer meetings throughout progress of the Work at a minimum of every week.
- 1.5.2. Construction Manager or Project Engineer will make arrangements for meetings, prepare agenda, and preside at meetings. Construction Manager shall record minutes (Field Reports), and distribute copies.
- 1.5.3. Attendance Required: Project Manager, Job Superintendent, Construction Manager, Project Engineer, Project Inspector (Inspector of Record), Architect of Record, Subcontractors, and suppliers as appropriate to agenda topics for each meeting.
- 1.5.4. Agenda:
 - 1.5.4.1. Review minutes of previous meetings. (Field Reports)
 - 1.5.4.2. Safety, and jobsite visits
 - 1.5.4.3. Review of Work progress.
 - 1.5.4.4. Field observations, problems, and decisions.
 - 1.5.4.5. Identification of problems which impede planned progress.
 - 1.5.4.6. Review of submittals schedule and status of submittals.
 - 1.5.4.7. Review of off-site fabrication and delivery schedules.

- 1.5.4.8. Maintenance of construction schedule.
 - 1.5.4.9. Corrective measures to regain projected schedules.
 - 1.5.4.10. Planned progress during succeeding work period.
 - 1.5.4.11. Coordination of projected progress.
 - 1.5.4.12. Maintenance of quality and work standards.
 - 1.5.4.13. Effect of proposed changes on progress schedule and coordination.
 - 1.5.4.14. Other business relating to Work.
 - 1.5.5. District has authority to schedule meetings other than those listed, as necessary.
- 1.6. PRE-INSTALLATION CONFERENCES**
- When required in individual specification section, or requested by the District Contractor shall convene a pre-installation conference prior to commencing work of the section. Refer to individual specification section for timing requirements of conference.
- 1.6.1. Contractor shall require his/her subcontractors and suppliers directly affecting, or affected by, work of the specific section to attend.
 - 1.6.2. Notify the Construction Manager, Project Engineer, Inspector of Record, and Architect of Record four (4) days in advance of meeting date.
 - 1.6.3. The pre-installation conference may coincide with a regularly scheduled progress meeting.
 - 1.6.4. Contractor shall prepare agenda, preside at conference, record minutes, and distribute copies within two (2) days after conference to participants.
 - 1.6.5. The purpose of the meeting will be to review Contract Documents, conditions of installation, preparation and installation procedures, and coordination with related work and manufacturer's recommendations.
 - 1.6.6. Pre-installation Schedule: As a minimum, Work being installed under the Contract Documents technical sections will require pre-installation conferences. Contractor shall review the technical specifications and add all additional requirements for pre-installation meetings contained in those sections.
- 1.7. POST CONSTRUCTION DEDICATION**
- 1.7.1. Attendance Required: Project Superintendent, Contractor, Project Manager, major subcontractors, Construction Manager, Project Engineer, Inspector of Record, and Architect of Record.
 - 1.7.2. Preparation prior to Dedication: Contractor and appropriate subcontractors and suppliers shall:
 - 1.7.3. Assist District in operation of mechanical devices and systems.
 - 1.7.3.1. Verify operation and adjust controls for communication systems.
 - 1.7.3.2. Assist District in operation of lighting systems.

PRODUCT OPTIONS AND SUBSTITUTIONS

1. Substitution for Specified Items.

The Project shall be based on products and systems specified in Contract Documents or listed by name in Addenda. Contractor shall only request substitutions as indicated herein.

1.1. Request for Substitution Prior to Proposal.

- 1.1.1. District must receive any request for substitution a minimum of FOURTEEN (14) calendar days prior to the date proposals are due.
- 1.1.2. The District's denial of a substitution request prior to the date proposals are due shall be conclusive, requiring Contractors to base proposals only on approved items. The District is not responsible and/or liable in any way for a Contractor's damages and/or claims related, in any way, to that Contractor's basing its proposal on any requested substitution that the District has not approved. Contractor's proposal may be deemed non-responsive if it identifies a product or manufacturer of a non-approved substitution.
- 1.1.3. Approved substitutions shall be listed in Addenda.
- 1.1.4. District reserves the right not to act upon submittals of substitutions until after the date proposals are due. If the District does not act on a substitution request prior to the date proposals are due, Contractors must propose only on products and systems specified in Contract Documents or listed by name in Addenda.

1.2. Request for Substitution After Contract Awarded. Requests for substitutions after award of the Contract shall be within **THIRTY-FIVE (35) days of the date of the Notice of Award or similar notice to Contractor.** This time period can be extended by the District only, in its sole discretion.

- 1.2.1. Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified.
- 1.2.2. If the material, process, or article offered by Contractor is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified in the Specifications without any additional compensation or change.
- 1.2.3. This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(b); therefore, Contractor shall not be entitled to request a substitution with respect to those materials, products or services.
- 1.2.4. The burden of proof as to equality of any material, process, or article shall rest with Contractor.

1.3. A request for a substitution shall be in writing and shall include the following information and /or assurances.

- 1.3.1. All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;
- 1.3.2. Available maintenance, repair or replacement services;
- 1.3.3. Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;
- 1.3.4. Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the District or others under contract with the District); and
- 1.3.5. The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.
- 1.3.6. The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the

- Contract Documents;
- 1.3.7. The Contractor provides the same warranties and guarantees for the substitute that would be provided for that specified;
 - 1.3.8. The Contractor shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time;
 - 1.3.9. The Contractor shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and
 - 1.3.10. The Contractor shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Contractor agrees to execute a deductive Change Order to reflect that credit.
- 1.4. In the event Contractor furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Contractor.
 - 1.5. In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.
 - 1.6. If the District approves a substitution after the award of the Contract, the District shall memorialize that approval in a Change Order or other applicable Contract modification process.

CONSTRUCTION SCHEDULE - NETWORK ANALYSIS

1. GENERAL

1.1. REFERENCES

- 1.1.1. Construction Planning and Scheduling Manual - A Manual for General Contractors and the Construction Industry, The Associated General Contractors of America (AGC).
- 1.1.2. CSI - Construction Specifications Institute MP-2-1 Master Format.
- 1.1.3. U.S. National Weather Service - Local Climatological Data.

1.2. PERFORMANCE REQUIREMENTS

- 1.2.1. All Contractor's schedules shall comply with the baseline and milestones as indicated in the draft "Program Schedule" the District provided as a draft **Exhibit F** to the Facilities Lease.
- 1.2.2. Ensure adequate scheduling during construction activities so Work may be prosecuted in an orderly and expeditious manner within stipulated Contract Time.
- 1.2.3. Ensure coordination of Contractor and subcontractors at all levels.
- 1.2.4. Ensure coordination of submittals, fabrication, delivery, erection, installation, and testing of Products, materials and equipment.
- 1.2.5. Ensure on-time delivery of District furnished Products, materials and equipment.
- 1.2.6. Ensure coordination of jurisdictional reviews.
- 1.2.7. Prepare applications for payment.
- 1.2.8. Monitor progress of Work.
- 1.2.9. Prepare proper requests for changes to Contract Time.
- 1.2.10. Prepare proper requests for changes to Construction Schedule.
- 1.2.11. Assist in detection of schedule delays and identification of corrective actions.

1.3. QUALITY ASSURANCE

- 1.3.1. Perform scheduling work in accordance with Construction Planning and Scheduling Manual published by the AGC.
- 1.3.2. Maintain one copy of Construction Planning and Scheduling Manual on Site.
- 1.3.3. In the event of discrepancy between the AGC publication and the Contract Documents, provisions of the Contract Documents shall govern.

1.4. QUALIFICATIONS

1.4.1. Scheduler:

- 1.4.1.1. Contractor shall retain a construction scheduler to work in enough capacity to perform all of the Contractor's requirements to prepare the Construction Schedule. The Scheduler shall plan, coordinate, execute, and monitor a cost/resource loaded critical path method (CPM) schedule as required for Project and have a minimum of five (5) years direct experience using CPM.
- 1.4.1.2. Scheduler will cooperate with District and shall be available on site for monitoring, maintaining and updating schedules in a timely manner.
- 1.4.1.3. District has the right to reject the Scheduler based upon a lack of experience as required by this Document or based on lack of performance and timeliness of schedule submittals/fragnets on past projects. Contractor shall within seven (7) calendar days of District's rejection, propose another scheduler who meets the experience requirements stated above.

- 1.4.2. **Administrative Personnel:** Five (5) years minimum experience in using and monitoring schedules on comparable projects.

1.5. SUBMITTALS

- 1.5.1. Submission of submittals pursuant to "Contractor's Submittals And Schedules" in Exhibit D. Adobe "PDF" files are not acceptable.
- 1.5.2. Submit Short Interval Schedule at each Construction Progress Meeting.

- 1.5.3. Submit Time Adjustment Schedule within five (5) days of commencement of a claimed delay.
- 1.5.4. Submit Recovery Schedules as required for timely completion of Work or when demanded by the District.
- 1.5.5. Submit job cost reports when demanded by the District.
- 1.5.6. Submit one (1) reproducible and two (2) copies of each schedule and cost report.
- 1.5.7. Submit large format plotted schedules monthly or at the request of the District or Construction Manager.

1.6. REVIEW AND EVALUATION

- 1.6.1. Contractor shall participate in joint review of Construction Schedule and Reports with District and Construction Manager.
- 1.6.2. Within seven (7) days of receipt of District and Construction Manager's comments provide satisfactory revision to Construction Schedule or adequate justification for activities in question.
- 1.6.3. In the event that an activity or element of Work is not detected by District or Construction Manager review, such omission or error shall be corrected by next scheduled update and shall not affect Contract Time.
- 1.6.4. Acceptance by District of corrected Construction Schedule shall be a condition precedent to making any Tenant Improvement Payment.
- 1.6.5. Cost-loaded values of Construction Schedule shall be basis for determining Tenant Improvement Payment unless waived by the District in writing.
- 1.6.6. Review and acceptance by District and Construction Manager of Preliminary Work Schedule or Construction Schedule does not constitute responsibility whatsoever for accuracy or feasibility of schedules nor does such acceptance expressly or impliedly warrant, acknowledge or admit reasonableness of activities, logic, duration, manpower, cost or equipment loading stated or implied on schedules.

1.7. FORMAT

- 1.7.1. Prepare diagrams and supporting mathematical analyses using Precedence Diagramming Method, under concepts and methods outlined in AGC Construction Planning and Scheduling Manual.
- 1.7.2. **Listings:** Reading from left to right, in ascending order for each activity.
- 1.7.3. **Diagram Size:** 42 inches maximum height x width required.
- 1.7.4. **Scale and Spacing:** To allow for legible notations and revisions.
- 1.7.5. Illustrate order and interdependence of activities and sequence of Work.
- 1.7.6. Illustrate complete sequence of construction by activity.
- 1.7.7. Provide legend of symbols and abbreviations used.

1.8. COST AND SCHEDULE REPORTS

- 1.8.1. **Activity Analysis:** Tabulate each activity of network diagram and identify for each activity:
 - 1.8.1.1. Description.
 - 1.8.1.2. Interface with outside contractors or agencies.
 - 1.8.1.3. Number.
 - 1.8.1.4. Preceding and following number.
 - 1.8.1.5. Duration.
 - 1.8.1.6. Earliest start date, earliest finish date.
 - 1.8.1.7. Actual start date, actual finish date.
 - 1.8.1.8. Latest start date, latest finish date.
 - 1.8.1.9. Total and free float.
 - 1.8.1.10. Identification of critical path activity.
 - 1.8.1.11. Monetary value keyed to Schedule of Values.
 - 1.8.1.12. Manpower requirements.
 - 1.8.1.13. Responsibility.

- 1.8.1.14. Percentage complete.
- 1.8.1.15. Variance positive or negative.
- 1.8.2. **Cost Report:** Tabulate each activity of network diagram and identify for each activity, unless waived by the District in writing:
 - 1.8.2.1. Description.
 - 1.8.2.2. Number.
 - 1.8.2.3. Total cost.
 - 1.8.2.4. Percentage complete.
 - 1.8.2.5. Value prior to current period.
 - 1.8.2.6. Value this period.
 - 1.8.2.7. Value to date.
- 1.8.3. **Required Sorts:** List activities in sorts or groups:
 - 1.8.3.1. By activity number.
 - 1.8.3.2. By amount of float time in order of early start.
 - 1.8.3.3. By responsibility in order of earliest start date.
 - 1.8.3.4. In order of latest start dates.
 - 1.8.3.5. In order of latest finish dates.
 - 1.8.3.6. Application for payment sorted by Schedule of Values.
 - 1.8.3.7. Listing of activities on critical path.
- 1.8.4. Listing of basic input data which generates schedule.
- 1.9. **CONSTRUCTION SCHEDULE**
 - 1.9.1. Contractor shall develop and submit a preliminary schedule of construction (or Preliminary Construction Schedule) during the procurement process or, if not then, and only with the District's written approval, within thirty (30) days after award of the Contract. That document shall comply with this Document and the Contract Documents. It shall be submitted in computer generated network format and shall be organized by Activity Codes representing the Contractor's intended sequencing of the Work, and with time scaled network diagrams of activities. The Preliminary Construction Schedule shall include activities such as mobilization, preparation of submittals, specified review periods, procurement items, fabrication items, milestones, and all detailed construction activities.
 - 1.9.2. Upon District's acceptance of the Preliminary Construction Schedule, Contractor shall update the accepted Preliminary Construction Schedule until Contractor's Construction Schedule is fully developed and accepted within the first thirty (30) calendar days. Once approved by District, this shall become the Construction Schedule (or "Baseline Schedule"). This schedule shall include and identify all tasks that are on the Project's critical path with a specific determination of the start and completion of each critical path task, all contract milestones and each milestone's completion date(s) as may be required by the District, and the date of Project Completion. Since updates to the Construction Schedule are the basis for payment to Contractor, submittal and acceptance of the Construction Schedule and updates shall be a condition precedent to making of monthly payments, as indicated in the General Construction Provisions (Exhibit D to the Facilities Lease).
 - 1.9.3. Failure to submit an adequate or accurate Preliminary Construction Schedule, Construction Schedule, updates thereto or failure to submit on established dates, will be considered a breach of Contract.
 - 1.9.4. Failure to include any activity shall not be an excuse for completing all Work by required Completion Date.
 - 1.9.5. Activities of long intervals shall be broken into increments no longer than fourteen (14) days or a value over \$20,000.00 unless approved by the District or it is non-construction activity for procurement and delivery.
 - 1.9.6. The Construction Schedule shall comply with the following and include the following:

- 1.9.6.1. Provide a written narrative describing Contractor's approach to mobilization, procurement, and construction during the first thirty (30) calendar days including crew sizes, equipment and material delivery, Site access, submittals, and permits.
- 1.9.6.2. Shall designate critical path or paths.
- 1.9.6.3. Procurement activities to include mobilization, shop drawings and sample submittals.
- 1.9.6.4. Identification of key and long-lead elements and realistic delivery dates.
- 1.9.6.5. Construction activities in units of whole days limited to fourteen (14) days for each activity except non-construction, procurement and delivery.
- 1.9.6.6. Approximate cost and duration of each activity.
- 1.9.6.7. Shall contain seasonal weather considerations.
- 1.9.6.8. Indicate a date for Project Completion that is no later than Completion Date subject to any time extensions processed as part of a Change Order.
- 1.9.6.9. Conform to mandatory dates specified in the Contract Documents.
- 1.9.6.10. Contractor shall allow for inclement weather in the Proposed Baseline Schedule by incorporating an activity titled "Rain Day Impact Allowance" as the last activity prior to the Completion Milestone. No other activities may be concurrent with it. The duration of the Rain Day Impact Allowance activity will in accordance with the Contract Documents, including "Computation of Time / Adverse Weather" in Exhibit D , and will be calculated from the Notice to Proceed until the Completion.
- 1.9.6.11. Level of detail shall correspond to complexity of work involved.
- 1.9.6.12. Indicate procurement activities, delivery, and installation of District furnished material and equipment.
- 1.9.6.13. Designate critical path or paths.
- 1.9.6.14. Subcontractor work at all levels shall be included in schedule.
- 1.9.6.15. As developed shall show sequence and interdependence of activities required for complete performance of Work.
- 1.9.6.16. Shall be logical and show a coordinated plan of Work.
- 1.9.6.17. Show order of activities and major points of interface, including specific dates of completion.
- 1.9.6.18. Duration of activities shall be coordinated with subcontractors and suppliers and shall be best estimate of time required.
- 1.9.6.19. Shall show description, duration and float for each activity.
- 1.9.7. **Activity.** An activity shall meet the following criteria:
 - 1.9.7.1. Any portion or element of Work or action that is precisely described, readily identifiable, and is a function of a logical sequential process.
 - 1.9.7.2. Descriptions shall be clear and concise. Beginning and end shall be readily verifiable. Starts and finishes shall be scheduled by logical restraints.
 - 1.9.7.3. Responsibility shall be identified with a single performing entity.
 - 1.9.7.4. Additional codes shall identify building, floor, and CSI classification.
 - 1.9.7.5. Assigned dollar value (cost-loading) of each activity shall cumulatively equal total contract amount. Mobilization, bond and insurance costs shall be separate. General requirement costs, overhead, profit, shall be prorated throughout all activities. Activity costs shall correlate with Schedule of Values.
 - 1.9.7.6. Assigned manpower requirement (resource loading) of each activity.
 - 1.9.7.7. Major construction equipment shall be assigned to each activity.
 - 1.9.7.8. Activities labeled start, continue or completion are not allowed.
- 1.9.8. **Equipment and Materials.** For major equipment and materials show a sequence of

activities including:

- 1.9.8.1. Preparation of shop drawings and sample submissions.
- 1.9.8.2. Review of shop drawings and samples.
- 1.9.8.3. Finish and color selection.
- 1.9.8.4. Fabrication and delivery.
- 1.9.8.5. Erection or installation.
- 1.9.8.6. Testing.
- 1.9.9. Include a minimum of fifteen (15) days prior to Completion Date for punch lists and clean up. No other activities shall be scheduled during this period.

1.10. SHORT INTERVAL SCHEDULE

- 1.10.1. The Four-Week Rolling Schedule shall be based on the most recent District Accepted Construction Schedule or Update. It shall include weekly updates to all construction, submittal, fabrication/procurement, and separate Work Contract activities. Contractor shall ensure that it accurately reflects the current progress of the Work.
- 1.10.2. Shall be fully developed horizontal bar-chart-type schedule directly derived from Construction Schedule.
- 1.10.3. Prepare schedule on sheet of sufficient width to clearly show data.
- 1.10.4. Provide continuous heavy vertical line identifying first day of week.
- 1.10.5. Provide continuous subordinate vertical line identifying each day of week.
- 1.10.6. Identify activities by same activity number and description as Construction Schedule.
- 1.10.7. Show each activity in proper sequence.
- 1.10.8. Indicate graphically sequences necessary for related activities.
- 1.10.9. Indicate activities completed or in progress for previous two (2) week period.
- 1.10.10. Indicate activities scheduled for succeeding two (2) week period.
- 1.10.11. Further detail may be added if necessary to monitor schedule.

1.11. REQUESTED TIME ADJUSTMENT SCHEDULE

- 1.11.1. Updated Construction Schedule shall not show a Completion Date later than the Contract Time, subject to any time extensions processed as part of a Change Order.
- 1.11.2. If an extension of time is requested, a separate schedule entitled "Requested Time Adjustment Schedule" shall be submitted to District and Architect.
- 1.11.3. Indicate requested adjustments in Contract Time which are due to changes or delays in completion of Work.
- 1.11.4. Extension request shall include forecast of Project Completion date and actual achievement of any dates listed in Contract Documents.
- 1.11.5. To the extent that any requests are pending at time of any Construction Schedule update, Time Adjustment Schedule shall also be updated.
- 1.11.6. Schedule shall be a time-scaled network analysis.
- 1.11.7. Accompany schedule with formal written time extension request and detailed impact analysis justifying extension.
- 1.11.8. Time impact analysis shall demonstrate time impact based upon date of delay, and status of construction at that time and event time computation of all affected activities. Event times shall be those as shown in latest Construction Schedule.
- 1.11.9. Activity delays shall not automatically constitute an extension of Contract Time.
- 1.11.10. Failure of subcontractors shall not be justification for an extension of time.
- 1.11.11. Float is not for the exclusive use or benefit of any single party. Float time shall be apportioned according to needs of project, as determined by the District.
- 1.11.12. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall **not** be allowed without the prior written permission of the District.
- 1.11.13. Extensions will be granted only to extent that time adjustments to activities exceed total positive float of the critical path and extends Completion date.
- 1.11.14. District shall not have an obligation to consider any time extension request unless

requirements of Contract Documents, and specifically, but not limited to these requirements are complied with.

1.11.15. District shall not be responsible or liable for any construction acceleration due to failure of District to grant time extensions under Contract Documents should requested adjustments in Contract Time not substantially comply with submission and justification requirements of Contract for time extension requests.

1.11.16. In the event a Requested Time Adjustment Schedule and Time Impact Analysis are not submitted within ten (10) days after commencement of a delay it is mutually agreed that delay does not require a Contract Time extension.

1.12. RECOVERY SCHEDULE

1.12.1. When activities are behind Construction Schedule a supplementary Recovery Schedule shall be submitted.

1.12.2. Contractor shall prepare and submit to the District a Recovery Schedule at any time requested by the District, at no cost to the District.

1.12.3. Form and detail shall be sufficient to explain and display how activities will be rescheduled to regain compliance with Construction Schedule and to complete the Work by the Completion Date.

1.12.4. Maximum duration shall be one (1) month and shall coincide with payment period.

1.12.5. Ten (10) days prior to expiration of Recovery Schedule, Contractor shall have to show verification to determine if activities have regained compliance with Construction Schedule. Based upon this verification the following will occur:

1.12.5.1. Supplemental Recovery Schedule will be submitted to address subsequent payment period

1.12.5.2. Construction Schedule will be resumed.

1.13. UPDATING SCHEDULES

1.13.1. Review and update schedule at least ten (10) days prior to submitting an Application for Payment.

1.13.2. Maintain schedule to record actual prosecution and progress.

1.13.3. Identify approved Change Orders which affect schedule as separate new activities.

1.13.4. No other revisions shall be made to schedule unless authorized by District.

1.13.5. **Written Narrative Report:** Contractor shall include a written report to explain the Monthly Schedule Update. The narrative shall, at a minimum include the following headings with appropriate discussions of each topic:

1.13.5.1. Activities or portions of activities completed during previous reporting period.

1.13.5.2. Actual start dates for activities currently in progress.

1.13.5.3. Deviations from critical path in days ahead or behind.

1.13.5.4. List of major construction equipment used and any equipment idle.

1.13.5.5. Number of personnel by craft engaged on Work during reporting period.

1.13.5.6. Progress analysis describing problem areas.

1.13.5.7. Current and anticipated delay factors and their impact.

1.13.5.8. Proposed corrective actions and logic revisions for Recovery Schedule.

1.13.5.9. Proposed modifications, additions, deletions and changes in logic of Construction Schedule.

1.13.5.10. In updating the Schedule, Contractor shall not modify Activity ID numbers, schedule calculation rules/criteria, or the Activity Coding Structure required.

1.13.6. Schedule update will form basis upon which Tenant Improvement Payments will be made.

1.13.7. District will not be obligated to review or process Application for Payment until schedule and Progress Report have been submitted.

1.14. DISTRIBUTION

- 1.14.1. Following joint review and acceptance of updated schedules distribute copies to District, Architect, and all other concerned parties.
- 1.14.2. Instruct recipients to promptly report in writing any problem anticipated by projections shown in schedule.

2. PRODUCTS

2.1. SCHEDULING SOFTWARE

Contractor shall utilize District approved software for scheduling software and shall employ the Critical Path Method (CPM) in the development and maintenance of the Construction Schedule. The scheduling software shall be capable of being resource loaded with manpower, costs and materials. It shall also be capable of generating time-scaled logic diagrams, resource histograms and profiles, bar charts, layouts and reports with any and/or all activity detail.

2.2. ELECTRONIC DATA

Provide compact disk(s) that contain a back-up of the Proposed Baseline Schedule data on it. The electronic P6 files shall be saved in ".XER" type format.

SUBMITTALS

1. GENERAL

1.1. SUBMITTAL PROCEDURES – USE OF SOFTWARE

1.1.1. CONTRACTOR SHALL UTILIZE DISTRICT APPROVED SOFTWARE FOR THE SUBMITTAL PROCESS

- 1.1.2. Contractor shall transmit each submittal in conformance with requirements of this Document. For each submittal, Contractor shall:
 - 1.1.2.1. Sequentially number the transmittal forms. Resubmitted submittals must have the original number with an alphabetic suffix;
 - 1.1.2.2. Identify Project and Architect's project number, Contractor, Subcontractor or supplier; pertinent Drawing sheet and detail number(s), and specification Section number, as appropriate;
 - 1.1.2.3. Apply Contractor's stamp, signed or initialed certifying that review, verification of Products required, field dimensions, adjacent construction work, and coordination of information is in accordance with the requirements of the Work and Contract Documents. Submittals without Contractor's stamp and signature will be returned without review.
- 1.1.3. Coordinate preparation and processing of submittals with performance of Work. Transmit each submittal sufficiently in advance of performance of Work to avoid delay.
 - 1.1.3.1. Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related activities that require sequential activity.
 - 1.1.3.2. Coordinate transmittal of different types of submittals for related parts of Work so processing will not be delayed because of the need to review submittals concurrently for coordination.
 - 1.1.3.3. Architect reserves the right to withhold action on a submittal requiring coordination with other submittals until related submittals are received.
- 1.1.4. Comply with Contract Documents for list of submittals and time requirements for scheduled performance of Work.
- 1.1.5. No extension of Contract Time will be authorized because of failure to transmit submittals to the Architect sufficiently in advance of the Work to permit processing.
- 1.1.6. Identify variations from Contract Documents and Product or system limitations which may be detrimental to successful performance of the completed Work.
- 1.1.7. Provide space for Contractor and Architect review stamps.
- 1.1.8. Revise and resubmit submittals as required, identify all changes made since previous submittal.
- 1.1.9. Distribute copies of reviewed submittals to concerned parties. Instruct parties to promptly report any inability to comply with provisions.
- 1.1.10. Submittals not requested will not be recognized or processed. Submittals not requested will be returned without review.

1.2. SHOP DRAWINGS

- 1.2.1. Do not reproduce Contract Documents or copy standard information as the basis of shop drawings. Standard information prepared without specific reference to the Project is not a shop drawing.
- 1.2.2. Do not use or allow others to use Shop Drawings which have been submitted and have been rejected.

1.3. ELECTRONIC SUBMITTAL PROCESS

1.3.1. Submittal Procedure for Large Format shop drawings.

- 1.3.1.1. Contractor shall provide six (6) paper copies and of the large format Shop Drawings directly to the District and the Construction Manager (CM) and Contractor will provide an electronic transmittal (with a detailed description of the submittal including the subject, specification number and number of

drawings) using the District approved software/program.

- 1.3.1.2. Contractor shall verify that the Submittal Schedule and all submittal log(s) are accurate and up to date.
- 1.3.1.3. The District and Architect will review and markup each Submittal and provide changes to Contractor for Contractor's incorporation into the Submittal.
- 1.3.1.4. This process will continue until the Contractor has provided a Submittal that is acceptable to the District and the Architect.
- 1.3.1.5. Once a Submittal is accepted, the District will provide a final accepted Submittal to the Contractor and the Contractor will closeout that one Submittal.
- 1.3.1.6. Contractor shall send one (1) copy of the completed record submittal of the large format documents to a vendor (Ford Graphics is suggested) and using the District approved software/program.

1.3.2. Product Data, Calculations and Small Format Drawings

- 1.3.2.1. Contractor shall upload/post one (1) electronic copy (from manufacturer's website or pre-scanned) of the product literature, data, calculations, and/or small format shop drawings using the District approved software/program with a Transmittal (with a detailed description of the submittal) directly to the CM.
- 1.3.2.2. The District and Architect will review and markup each Submittal and provide changes to Contractor for Contractor's incorporation into the Submittal.
- 1.3.2.3. This process will continue until the Contractor has provided a Submittal that is acceptable to the District and the Architect.
- 1.3.2.4. Once a Submittal is accepted, the District will provide a final accepted Submittal to the Contractor and the Contractor will closeout that one Submittal.
- 1.3.2.5. Contractor shall send one (1) copy of the completed record submittal of the large format documents to a vendor for scanning and posting using the District approved software/program.

1.3.3. Sample Submittal Procedure – (Product / Assembly Samples)

- 1.3.3.1. Contractor shall provide four (4) physical samples directly to the District and the CM and Contractor will provide an electronic transmittal (with a detailed description of the submittal including the subject, specification number and number of drawings) using the District approved software/program.
- 1.3.3.2. The District and Architect will review and markup each Submittal and provide changes to Contractor for Contractor's incorporation into the Submittal.
- 1.3.3.3. This process will continue until the Contractor has provided a Submittal that is acceptable to the District and the Architect.
- 1.3.3.4. Once a Submittal is accepted, the District will provide a final accepted Submittal to the Contractor and the Contractor will closeout that one Submittal.
- 1.3.3.5. Contractor shall send one (1) copy of the completed record submittal of the large format documents to a vendor (Ford Graphics is suggested) for using the District approved software/program.

1.4. PRODUCT DATA

In addition to the above requirements, mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information unique to this Project.

1.5. SAMPLES

- 1.5.1. In addition to the above requirements, submit samples to illustrate functional and aesthetic characteristics of the Product in accordance with this Document, with integral parts and attachment devices. Coordinate sample submittals for interfacing work.
- 1.5.2. Where specific colors or patterns are not indicated, provide materials and products specified in the full range of color, texture and pattern for selection by District. Range

- shall include standard stocked color/texture/pattern, standard color/texture/pattern not stocked, but available from manufacturer, and special color/ texture/pattern available from manufacturer as advertised in product data and brochures. Unless otherwise indicated in individual specification sections, District may select from any range at no additional cost to District.
- 1.5.3. Include identification on each sample, with full Project information.
 - 1.5.4. Submit the number of samples that Contractor requires, plus one that will be retained by Architect and one by District.
 - 1.5.5. Reviewed samples which may be used in the Work are indicated in individual specification Sections.
- 1.6. MANUFACTURER'S INSTRUCTION**
- 1.6.1. When specified in individual specification Sections, submit manufacturers' printed instructions for delivery, storage, assembly, installation, start-up, adjusting, and finishing, in quantities specified for Product Data.
 - 1.6.2. Identify conflicts between manufacturers' instructions and Contract Documents.
- 1.7. MANUFACTURER'S CERTIFICATES**
- 1.7.1. When specified in individual specification Sections, submit manufacturers' certificate to Architect for review, in quantities specified for Product Data.
 - 1.7.2. Indicate material or Product conforms to or exceeds specified requirements. Submit supporting reference date, affidavits, and certifications as appropriate.
 - 1.7.3. Certificates may be recent or previous test results on material or Product, but must be acceptable to District.
- 1.8. MOCK-UP**
- 1.8.1. Where indicated, provide mock-ups as required. Mock-ups shall be prepared per the specifications and shall accurately and reasonably represent the quality of construction the Contractor will provide. If the mock-up or portions thereof do not adequately represent the quality of the work specified, the Contractor shall modify it as needed.
 - 1.8.2. Once completed to the District's satisfaction, the mock-up shall serve as the standard of quality for the work.
 - 1.8.3. All mock-ups, at District's option, shall remain the property of the District. If not required by the District, Contractor shall remove and dispose of the mock-up.
 - 1.8.4. Where indicated, on-site mock-ups, if accepted, may be integrated into the Work.
- 1.9. DEFERRED APPROVAL REQUIREMENTS**
- 1.9.1. Installation of deferred approval items shall not be started until detailed plans, specifications, and engineering calculations have been accepted and signed by the Architect or Engineer in general responsible charge of design and signed by a California registered Architect or professional engineer who has been delegated responsibility covering the work shown on a particular plan or specification and approved by the Division of the State Architect (DSA). Deferred approval items for this Project are as indicated in the Contract Documents.
 - 1.9.2. Deferred approval drawings and specifications become part of the approved documents for the Project when they are submitted to and approved by DSA.
 - 1.9.3. Submit material using electronic submittal process as defined above.
 - 1.9.4. Identify and specify all supports, fasteners, spacing, penetrations, etc., for each of the deferred approval items, including calculations for each and all fasteners.
 - 1.9.5. Submit documents to Architect for review prior to requesting that the Architect forward it to the DSA.
 - 1.9.6. Documents shall bear the stamp and signature of the Structural, Mechanical, or Electrical Engineer licensed in California who is responsible for that work.
 - 1.9.7. Architect and its subconsultants will review the documents only for conformance with design concept. The Architect will then forward the Submittal to DSA for approval.
 - 1.9.8. Contractor shall respond to review comments made by DSA and revise and resubmit