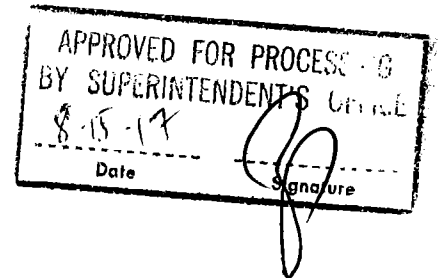


**TITLE: APPROVAL OF AMENDMENT NO. 1 TO AGREEMENT NO. A17.286 BETWEEN SIMI VALLEY UNIFIED SCHOOL DISTRICT AND TRANE U.S., INC. AND REVISION TO FUNDING SOURCE**

Business & Facilities  
Consent #13

August 15, 2017  
Page 1 of 1

Prepared by: Ron Todo, Associate Superintendent  
Business & Facilities



**Background Information**

On February 21, 2017 the Board of Education approved Agreement A17.286 with Trane U.S. Inc. for design-build services under Proposition 39 for design and construction of energy conservation projects at Simi Valley High School, Santa Susana High School, Hillside Middle School, and Sinaloa Middle School. Revisions to Agreement A17.286 are needed to incorporate design, insurance, and DSA closeout provisions. Revising the funding source from C4 Bond to Measure X Bond is also needed.

**Fiscal Analysis**

The February 21, 2017 Board authorization identified \$1,400,000 of Proposition 39 funds, and \$1,485,125 of C4 Bond funds, which totals \$2,885,125 for the design-build project. The \$1,485,125 portion needs to be funded with Measure X funds, rather than C4 Bond funds.

Additional information is available at the Bond Management Office.

**Recommendation**

It is recommended that the Board of Education approve Amendment No. 1 to Agreement 17.286 (Exhibit "A") for incorporation of design, insurance, and DSA closeout provisions, and to approve revising the funding source to Measure X for the \$1,485,125 portion of the project.

On a motion # 27 by Trustee Blough, seconded by Trustee White and carried by a vote of 7-0, the Board of Education approved, by roll-call-vote, Amendment No. 1 to Agreement A17.286 with Trane U.S., Inc. and revising the funding source from C4 Bond to Measure X.

Motion # 27 Ayes: Blough, LaBelle,  
Smollen, White, Daniels  
Noes: 0; Absent: 0; Abstain: 0

Absent:    Abstained:

**AMENDMENT NO. 1  
TO AGREEMENT A17.286 BETWEEN  
SIMI VALLEY UNIFIED SCHOOL DISTRICT AND TRANE US INC. dba TRANE**

This Amendment No. 1 is executed by and between SIMI VALLEY UNIFIED SCHOOL DISTRICT ("District") and TRANE US INC. dba TRANE ("Contractor") (herein collectively referred to as "the Parties") pursuant to the Agreement by and between SIMI VALLEY UNIFIED SCHOOL DISTRICT and TRANE US INC. dba TRANE dated March 23, 2017 ("Agreement"). By this reference, the Agreement is incorporated herein in its entirety.

- 1. Proposition 39 Project.** The Parties acknowledge and agree that the Agreement for the Proposition 39 Phase 2, Projects at Simi Valley High School, Santa Susana High School, Hillside Middle School and Sinaloa Middle School ("Project") was awarded to Contractor by the District's Board of Education as a Proposition 39 design-build project pursuant to Government Code § 4217.10, et seq., following a Request for Qualifications and Proposals competitive process.
  
- 2. Design and Engineering Services.** In addition to the Construction services, the terms and conditions of which are set forth in the Agreement and General Conditions (collectively referred to as "Agreement"), Contractor shall also be obligated to perform all requisite design and engineering services necessary to complete Project Design Services and secure approval by the Division of the State Architect ("DSA"). The Design Services shall be provided by or under the direction and control of a California registered Engineer who has completed at least three projects similar in size, scope and value to this project that were subject to the jurisdiction and approval of the DSA ("Project Engineer") The Project Engineer shall stamp and sign all plans and submittals..
  
- 3. Design and Engineering Scope of Work.**
  - 3.1. Basic Services; Preliminary Plans Phase**
    - 3.1.1. Preliminary Plans.** Based upon the scope, Project Construction Budget, schedule and other requirements or constraints mutually agreed upon and understood between the District and Contractor, the Contractor shall retain a Project Engineer for the Project. The Project Engineer shall prepare Preliminary Plans consisting of Drawings and other documents illustrating scale and other relationships of the various components of the Work and an outline of Specifications. Upon completion of the Preliminary Plans, or at such other intervals during Project Engineer's development of Initial Preliminary Plans as may be agreed upon by the District and the Project Engineer, the Project Engineer shall submit the same to the District for information, review and comments.
    - 3.1.2. Final Preliminary Plans.** The District and Project Engineer will confer and consult with each other to arrive at mutual understandings and agreements as to which of the District's comments to the Preliminary Plans are to be incorporated into the Construction Documents. The Project Engineer shall prepare Construction Documents which consist of the Preliminary Plans revised to incorporate therein the mutually agreed upon changes and other comments of the District. If mutual agreement is not reached as to the incorporation of the District's comments and changes in the Construction Documents, the Project Engineer shall incorporate such comments and/or changes as directed or authorized by the District.

### **3.2. Basic Services; Construction Documents Phase**

**3.2.1. Construction Documents.** Based upon the District reviewed Final Preliminary Plans, the Project Engineer shall prepare Construction Documents consisting of all Drawings, Specifications and other Design Documents necessary or appropriate for setting forth in detail the requirements for the Work of the Project with sufficient clarity, coordination and consistency to permit construction of the Work depicted therein for the Project Construction Budget.

**3.2.2. Review of Construction Documents Status.** At intervals mutually agreed upon by the District and the Project Engineer, or in the absence of such mutual agreement at such intervals as reasonably determined by the District, the Project Engineer shall provide to the District, for review and information, the Drawings, Specifications and other documents depicting the then current status of the Project Engineer's preparation of Construction Documents. If upon such review, the District reasonably determines that the progress of completion of the Construction Documents is behind that indicated in this Agreement, without adjustment of the Contract Price due the Project Engineer for the Project, the Project Engineer shall implement all necessary measures to conform the actual progress of completion of the Construction Documents with the schedule for the Project.

**3.2.3. Constructability and Value Engineering Reviews.** The District reserves the right to conduct, or cause to be conducted, constructability and/or value engineering reviews of the Construction Documents. If the District elects to conduct either constructability or value engineering reviews, the District shall notify the Contractor and Project Engineer of the same and the Project Engineer shall submit Construction Documents to the District for such constructability and/or value engineering reviews. The District, Contractor and Project Engineer will confer and consult with each other to arrive at mutual understandings and agreements as to which of the constructability and/or value engineering review comments are to be incorporated into the Construction Documents. If mutual agreement is not reached, the Project Engineer shall incorporate such constructability and/or value engineering review comments as directed or authorized by the District. Project Engineer shall revise the Construction Documents as necessary to obtain the District's reasonable acceptance thereof. The Project Engineer's revision of the Construction Documents to conform to the constructability/value engineering review comments accepted or directed by the District shall be without adjustment to the Contract Price due the Project Engineer under this Agreement.

**3.2.4. Detailed Construction Cost Estimate.** Based upon the Work of the Project depicted in the fifty percent completed Construction Documents ("the 50% Drawings"), the Project Engineer shall prepare a detailed Construction Cost Estimate for the Work depicted in the Construction Documents. If the detailed Construction Cost Estimate exceeds the Project Construction Budget, the Project Engineer shall revise the Construction Documents as necessary so that the detailed Construction Cost Estimate for the Work depicted therein conforms to the Project Construction Budget. Revisions of the Construction Documents to conform to the Project Construction Budget shall be without adjustment to the Contract Price due the Contractor for the Project unless the District shall have directed modifications or inclusions to the scope of the Project or component parts thereof which cause the Project Construction Budget to be exceeded. If the District obtains a Construction Cost Estimate on the 50% Drawings which is prepared by others and such other Construction Cost Estimate varies from the Project Engineer's Construction Cost Estimate by three percent (3%) or more, the Basic Services of the Project Engineer shall include all meetings, conferences and discussions as necessary to reconcile such Construction Cost Estimates.

**3.2.5. Approvals of Construction Documents.** The Project Engineer shall assist the District in obtaining all necessary approvals or permits for the Construction Documents for the Project from governmental agencies with jurisdiction over any portion of the Project as necessary for construction of the Project including without limitation, approvals by DSA. The foregoing includes without limitation: (i) submittal of the Design Documents to DSA and other governmental agencies with jurisdiction over any portion of the Project for review, comment and approval to construct the Project, discussions; and (ii) discussions and other communications with the District, DSA and other governmental agencies with jurisdiction over the Project relating to comments, modifications and other similar matters arising out of reviews of the Design Documents. Without adjustment of the Contract Price for the Project, Project Engineer shall revise Construction Documents as required by DSA or other governmental agencies with jurisdiction over the Project, or portions thereof, to obtain their respective approval(s) or permit issuance.

**3.2.6. Project Engineer Provision of Construction Documents.** The Project Engineer shall provide the District with one clear background, reproducible copy of the Drawings included in the final approved Construction Documents for construction purposes of the Project. Reproduction of these sets of Design Documents for the Project is at the cost of the Contractor, except to the extent that reproduction is required by revisions or corrections arising out of errors or omissions of the District, in which case, the District shall bear all costs of preparing revisions or corrections and reproduction of Construction Documents.

**4. Contractor Responsibility for Design Documents.** Notwithstanding references to the Project Engineer or AOR and the Project Engineer or AOR's Design Consultants in the Agreement and General Conditions, the Contractor and its Project Engineer shall be jointly and severally liable and responsible to the District for the performance and completion of all design and engineering documents, securing DSA approval of the Construction Documents and Construction Administration of the Project by a California registered Engineer in accordance with the obligations of the Project Engineer and/or Design Consultants under the Agreement and any and all Amendments thereto.

**4.1. Work in Accordance With Contract Documents.** The Contractor shall perform all of the Work in strict conformity with the Contract Documents, including without limitation the DSA permitted Design Documents.

**4.1.1. No Commencement of Work Without DSA Permitted Design Documents.** The Contractor shall not commence any Work of the Project unless DSA has issued a construction permit for the Work and the Contractor has obtained all other approvals, reviews and/or authorizations of any public or quasi-public agency with jurisdiction over any portion of the Work (collectively "Permits"). Prior to commencement of construction activities at the Site, the Contractor shall compile and present to the District, Project Manager and/or District Representative all of the Permits for review and confirmation that all necessary Permits have been obtained by the Contractor. Within three (3) days of the Contractor submittal of all Permits to the District and Project Manager, the District and/or Project Manager shall notify the Contractor of the District's acceptance of the Permits as being validly issued and that all Permits necessary for construction have been obtained ("District Permit Acceptance"). Notwithstanding the District's Permit Acceptance, the sole and exclusive responsibility for obtaining and maintaining Permits in a valid and good standing status is that of the Contractor without adjustment of the Contract Time or the Contract Price.

**4.1.2. Contractor Commencement of Construction.** Upon the Contractor's receipt of the

District's Permit Acceptance and the District's issuance of the Notice to Proceed with the Construction Services, the Contractor shall commence construction activities at the Site as of the commencement date indicated in such Notice to Proceed. Notwithstanding any failure or refusal of the Contractor to commence construction activities at the Site as of the commencement date set forth in the Notice to Proceed, neither the commencement date of, nor the Substantial Completion Date shall be extended on account of such failure or refusal of the Contractor.

- 4 **Project Engineer Review of Submittals.** Section 3.7.3 of the General Conditions shall be deleted and replaced with the following: "

**District's Review of Submittals.** The Contractor shall submit its Submittals to the District's Project Manager, if one is designated, or alternatively to the District Representative for review. The Project Manager's or Districts Representative's review of such Submittals shall be for limited purposes of: (i) verifying that the required Submittal has been prepared; (ii) that the Submittal appears to conform to the requirements of the Contract Documents relating thereto; and (iii) that the Contractor's Engineer has prepared and/or reviewed and accepted the Submittal as conforming to the requirements of the Contract Documents. Upon completion of such review of Submittals, the Project Manager or District, as applicable, shall return the Submittal to the Contractor noting confirmation of the matters described in (i), (ii) and (iii) above. If a Submittal is returned to the Contractor by the Project Manager or District with a notation that (i), (ii) or (iii) above have not been verified or confirmed, the Contractor shall provide the Project Manager or District with reasonably satisfactory evidence to verify or confirm that (i), (ii) or (iii) above have been complied with by the Contractor. No Work relating to a Submittal shall be commenced until after the applicable Submittal(s) has been reviewed and accepted by the Contractor's Engineer and the District's Project Manager or, if one is not designated, the District Representative."

5. **Prevailing Wages.** Section 3.18.3 shall be deleted and replaced with the following provision:

**Prevailing Rate Penalty.** The Contractor shall, as a penalty, forfeit not more than Two Hundred Dollars (\$200.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier, in connection with the Work. The amount of the penalty for failure to pay applicable prevailing wage rates shall be determined and assessed in accordance with the standards established pursuant to Labor Code §1775(a)(2). The amount of the penalty shall be determined based on consideration of both of the following: (i) whether the failure of the Contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the Contractor or Subcontractor; and (ii) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations. The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the Contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor. The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Contractor or Subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned. The penalty may not be less than one hundred twenty dollars

(\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1. When the penalty amount due hereunder is collected from the Contractor or Subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that Contractor or Subcontractor shall be satisfied before applying that amount to the penalty imposed on that Contractor or Subcontractor hereunder. The difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

**6. Payroll Records.** Section 3.18.4, Payroll Records, shall be deleted and replaced with the following provisions:

**3.18.4 Payroll Records.**

**3.18.4.1 Prevailing Wage Rate Monitoring and Enforcement.** During the Work and pursuant to Labor Code §1771.4(a)(4), the Department of Industrial Relations shall monitor and enforce the obligation of the Contractor and Subcontractors of every tier to pay laborers performing any portion of the Work the Prevailing Wage Rate established for the classification of work/labor performed.

**3.18.4.2 Certified Payroll Records.** Pursuant to California Labor Code §1776, the Contractor and each Subcontractor, of any tier, shall keep an accurate payroll record, 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 person employed for the Work.

**3.18.4.3 Certified Payroll Records Submittal to Labor Commissioner.** The Contractor and all Subcontractors shall prepare and submit Certified Payroll Records to the Labor Commissioner in compliance with requirements established in Labor Code §1771.4. The form and content of Certified Payroll Records shall be as established by the Labor Commissioner and the frequency of Certified Payroll Records submittal to the Labor Commissioner shall be pursuant to Labor Code §1771.4. Contractor shall submit to District, with each progress payment, a completed and executed Verification of Certified Payroll Records Submittal to Labor Commissioner in the form and format of the Verification attached hereto as Attachment 1.

**3.18.4.4 Inspection and Copies of Certified Payroll Records.** The payroll records shall be certified and available for inspection at all reasonable hours at the principal office of the Contractor on the following basis: (i) a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request; (ii) a certified copy of all payroll records shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement ("DLSE") and the Division of Apprenticeship Standards of the Department of Industrial Relations ("Apprenticeship Council"); (iii) a certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, DLSE and the Apprenticeship Council. If the requested payroll records have not been provided, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, Subcontractors and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor; (iv) the Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; (v) any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Apprenticeship Council or DLSE 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 the

Contractor or any Subcontractor, of any tier, performing a part of the Work shall not be marked or obliterated. The Contractor shall inform the District of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change or location and address. In the event of noncompliance with the foregoing requirements, the Contractor shall have ten (10) days in which to comply, subsequent to receipt of written notice specifying in what respects the Contractor must comply herewith. Should noncompliance still be evident after such ten (10) day period, the Contractor shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Apprenticeship Council or DLSE, such penalties shall be withheld from any portion of the Contract Price then or thereafter due the Contractor. The Contractor is solely responsible for compliance with the foregoing provisions.

**7. Labor Compliance Program ("LCP").** The provisions of Section 3.21 and all subparts shall be deleted in their entirety.

**8. DSA Construction Oversight.** Insert new Section 3.21 as follows:

**3.21 DSA Construction Oversight.** All of the Work is subject to DSA Construction Oversight processes and procedures; a material obligation of the Contractor hereunder is the Contractor's compliance with the processes and procedures established by DSA for the Work. As applicable, the foregoing shall include without limitation, the processes and procedures established under DSA PR 13-01 in effect at the time of performing the Work hereunder. The foregoing shall include:

- 3.2.1 DSA Approved Documents.** The Contractor shall carefully study the DSA approved documents and shall plan a schedule of operations well ahead of time.
- 3.2.2 Correction of Non-Conforming Work.** If at any time it is discovered that Work is not in accordance with the DSA approved construction documents, the Contractor shall correct the Work immediately.
- 3.2.3 Verification of DSA 152 Forms.** The Contractor shall verify that DSA 152 forms were issued for prior to the commencement of construction.
- 3.2.4 Test/Inspection Communications.** The Contractor shall meet with the Engineer, District's Project Manager, if any, or District Representative, the Laboratory of Record retained by the District for special tests/inspections and the Project Inspector to mutually communicate and understand the testing and inspection program, and the methods of communication appropriate for the Work.
- 3.2.5 DSA Form 156 Notifications to Project Inspector.** The Contractor shall notify the Project Inspector, in writing, of the commencement of construction of each and every aspect of the Work at least 48 hours in advance by submitting Commencement/Completion of Work Notification (form DSA 156), or other agreed upon written documents, to the Project Inspector. The Contractor shall notify the Project Inspector of the completion of construction of each and every aspect of the Work by submitting form DSA 156 (or other agreed upon written documents) to the Project Inspector.
- 3.2.6 Limitations on Contractor Work.** Until the Project Inspector has signed off applicable blocks and sections of the form DSA 152, the Contractor may be prohibited from proceeding with subsequent construction activities that cover up the unapproved Work. Any subsequent construction activities, that cover up the unapproved Work, will be subject to a "Stop Work Order" from DSA or the District, and are subject to removal and remediation if found to be in non-

compliance with the DSA approved construction documents.

3.2.7 **Final Verified Report.** The Contractor shall submit the final Contractor Verified Report. (form DSA 6-C) to DSA and the Project Inspector. The DSA 6-C reports are required to be submitted by the Contractor upon occurrence of any of the following events: (i) the Work is substantially complete (DSA considers the Work to be complete when the construction is sufficiently complete in accordance with the DSA approved construction documents so that the owner can occupy or utilize the Work); (ii) Work is suspended for a period of more than one (1) month; (iii) services of the Contractor are terminated for any reason prior to the completion of the Work; or (iv) DSA requests a verified report.

3.2.8 **Failure to Submit Final Verified Report.** Should Contractor fail or refuse to submit the final Contractor Verified Report (form DSA 6-C) to DSA and the Project Inspector, the Final Payment due the Contractor shall be reduced by Twenty-Five Thousand Dollars (\$25,000.00) until such time as the Contractor submits the final Contractor Verified Report (form DSA 6-C) to DSA and the Project Inspector.

**3.2.8.1 DSA Verified Reports**

3.2.8.1.1 **Contractor Actions.** The Contractor acknowledges and agrees that a material obligation of the Contractor under the Contract Documents is the completion by the Contractor of all actions and activities which by the Contract Documents or by the Laws are the responsibility of the Contractor relating to DSA reporting requirements pursuant to Education Code §81141 (including amendments thereto) and issuance of DSA's Certificate of Compliance for the Project pursuant to Education Code §81147 (including amendments thereto) upon completion of the Work. The foregoing shall include without limitation, the timely preparation, completion and filing of Verified Reports during Project construction and the filing of the Final Verified Report with DSA within thirty (30) days of the determination of Final Completion. The Contractor shall provide the District, the Project Inspector, Project Engineer, Construction Manager with copies of all Verified Reports completed by the Contractor and submitted to DSA; such copies shall be provided to the Project Inspector, Project Engineer, the Construction Manager and the District concurrently with the Contractor's submission thereof to DSA.

3.2.8.1.2 **District Withholdings From Final Payment.** Notwithstanding any provision of the Contract Documents to the contrary, the completion and filing of the Final Verified Report with DSA by the Contractor is an express condition precedent to the District's disbursement of the Final Payment. If the Contractor fails to prepare and file the Final Verified Report with DSA within thirty (30) days of the determination of Final Completion, the District may in the sole and exclusive discretion of the District retain and withhold ten percent (10%) of the Final Payment from disbursement to the Contractor as damages for the failure of the Contractor to have timely and completely discharged its obligations hereunder. The Contractor acknowledges and agrees that the foregoing withholdings by the District is a reasonable



estimate of the damages and other losses the District will sustain due to the failure of the Contractor to have timely and fully discharged its obligations hereunder.

**9. Subcontractor's Compliance with LCP.** The provisions of Section 4.4 shall be deleted and replaced with the following:

**4.4 Subcontractor DIR Contractor Registration.**

**4.4.1 No Subcontractor Performance of Work Without DIR Registration.** No portion of the Work is permitted to be performed by a Subcontractor unless the Subcontractor is a DIR Registered contractor. The foregoing DIR contractor registration requirement is applicable for all Subcontractors, including without limitation, lower tier Subcontractors and Subcontractors who are not identified in the Contractor's Subcontractors List.

**4.4.2 Contractor Obligation to Verify Subcontractor DIR Registration Status.** An affirmative and on-going obligation of the Contractor under the Contract Documents is the Contractor's verification that all Subcontractors are at all times during performance of the Work in full and strict compliance with DIR contractor registration requirements. A contractor that hires an unregistered subcontractor is subject to penalties of up to \$10,000. The Contractor shall not permit or allow any Subcontractor to perform any Work without the Contractor's verification that the Subcontractor is in full and strict compliance with DIR contractor registration requirements.

**4.4.3 Contractor Obligation to Request Substitution of Listed Subcontractor Who Is Not DIR Registered Contractor.** If any Subcontractor identified in the Contractor's Subcontractors List submitted with the Contractor's proposal for the Work is not a DIR registered contractor at the time of opening of proposals for the Work or if a Subcontractor's DIR contractor registration lapses prior to or during a Subcontractor's performance of Work, the Contractor shall request the District's consent to substitute the Subcontractor who is not a DIR registered contractor pursuant to Labor Code §1771.1(c)(3) and/or Labor Code §1771.1(d).

**10. Article 5: Insurance; Indemnity; Bonds.** This Article shall be amended to include the following required insurance:

**Professional Liability Insurance.** The Contractor shall obtain and maintain, at its sole cost and expense without adjustment of the Contract Price, Professional Liability insurance covering the Contractor's services which shall include prior acts coverage so that all such services provided pursuant to the Contract Documents are covered. The minimum coverage amount under the Professional Liability insurance policy is Two Million Dollars (\$2,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate, with a per claim deductible of no more than Ten Thousand Dollars (\$10,000). The Contractor shall maintain such Professional Liability insurance coverage for a period of ten (10) years following DSA's Acceptance of Final Completion of the Work, with the foregoing minimum coverage amount, so long as such insurance is reasonably available.

**11. Project Engineer's Final Completion and Project Close-out.** Add the following provisions at Article 6.2.7 of the General Conditions:

**6.2.7. Engineer's Determination Final Completion.** In conjunction with the District, the District's Project Manager, if any, and the Project Inspector, and upon request of the Contractor(s),

the Project Engineer shall inspect the Work of the Project to determine that Final Completion has been achieved and that the Work conforms and complies with the requirements of the Construction Contract(s), including completion of the Punch list prepared at Substantial Completion. The Project Engineer shall determine and certify the date of Final Completion of the Project or portions thereof.

**6.2.8. Close-Out Documents.**

**6.2.8.1. Assembly/Transmittal of Close-Out Documents.** The Contractor's Project Engineer shall compile and assemble the Contractor(s)' close-out documents for delivery to the District, including without limitation, Record As-Built Drawings, Operations and Maintenance manuals, key schedules and warranties.

**6.2.8.2. Governmental Agency Close-Out.** The Contractor's Project Engineer shall prepare and submit for processing such documentation as required by governmental agencies with jurisdiction over any portion of the Project, including DSA, in connection with completion of Project construction and obtain the requisite DSA Close-Out with Certification.

**6.2.8.3. As-Built Drawings.** The District shall require the Contractor and its Project Engineer to provide the District with As-Built Record Drawings indicating the location and size of all concealed, underground or imbedded construction not covered in the original Drawings, Change Orders, Supplemental Drawings or Submittals. The Contractor shall be required to record such work on reproducible drawings furnished to the Contractor by the District. The Contractor's As-Built Record Drawings shall be delivered by the Contractor to the Contractor's Project Engineer for the Engineer's review and delivery to the District. The Engineer shall review the Contractor's As-Built Record Drawings for the purpose of determining that the Contractor has complied with its obligations to prepare As-Built Record Drawings and that such As-Built Record Drawings are accurate and complete. The Project Engineer shall provide the Contractor(s) engaged in the mechanical, electrical, plumbing and structural portions of the Project with all Drawings Sheets of Building Backgrounds for the Contractor(s)' preparation of its As-Built Drawings.

**6.2.8.4. Contractor's Compliance with Close-Out.** Contractor's and/or Contractor's Project Engineer's failure to fully comply with its close-out obligations shall be deemed a material breach of the Agreement and the District may take any and all actions, available in the Agreement or as a matter of law, to enforce or implement measures to secure the Contractor(s)' and/or Project Engineer's compliance with close-out obligations, including without limitation, asserting a claim against Contractor's Performance Bond and/or against the Contractor's Professional Liability Insurance.

**12. Contract Price.** The Contract Price of Two Million Eight Hundred Eighty Five Thousand One Hundred Twenty Five Dollars and Zero Cents (\$2,885,125.00) set forth in Paragraph 3 of the Agreement and referenced in Article 7 of the General Conditions shall be allocated to Design and Construction as follows:

Basic Services	Allocated Amount
Design Services	
Construction Services	
Post Construction Services	
Total Contract Price	\$2,885,125.00

**12.1. Disbursement of Contract Price.**

**12.1.1. Disbursement of Design Services Contract Price.** The provisions of Article 7 of the General Conditions shall be applicable only to disbursement of the Construction Services Contract

Price. The Design Services Contract Price shall be disbursed in accordance with the following provisions.

**12.1.2. Allocation of Design Services Contract Price.** The Design Services Contract Price shall be allocated to completion of the Design Services as follows:

Design Services Completed	Portion of Design Services Contract Price to be Disbursed
100% Preliminary Plans	15%
100% Construction Documents	15%
DSA Approval and Permit Issuance	25%
Construction Administration	35%
Close-Out, including DSA Certification and Final Verified Report Retention	10%

**12.1.3. Reproduction.** Contractor shall do all reproduction and distribution of such reproducible prints of Design Documents, Contract Documents and Project Documents as are necessary for the complete development of design, complete pricing and performance of the Work, including, without limitation, all Changes. The costs of such reproduction shall be at the Contractor's Own Expense.

**12.2. Disbursement of the Design Services Contract Price.** The Contractor shall submit monthly billings for payment of portions of the Design Services Contract Price. During the Contractor's preparation of Design Documents, each monthly billing shall reflect the percentage completed of the Design Documents, as applicable. The Contractor's billings and the District's disbursement of the Design Services Contract Price on each monthly billing during development of Design Documents shall be limited by the portion of the Design Services Contract Price allocated to the phase of Design Services being completed by the Contractor. The portion of the Design Services Contract Price allocated for the DSA permit issuance may be billed by the Contractor only after DSA issues such permit. During the construction phase of the Project, the Contractor shall bill the District monthly for Design Services Contract Price. The amount due from the District on each monthly billing of the Design Services Contract Price during Project construction shall be the aggregate amount of the Design Services Contract Price divided by the number of months of the Contract Time for achieving Final Completion of the Construction of the Project. The Contractor may bill for the portion of the Design Services Contract Price allocated for close-out of the Project only upon Final Completion of the Project and the Contractor completing all close-out activities.

**12.3. Disbursement of Construction Services Contract Price.** The Contractor's submission of requests/applications for payment of the Construction and Post Construction Services Contract Price shall be in accordance with the applicable provisions set forth in Article 7 of the General Conditions.

**12.4. District's Review of Applications for Progress Payments.** Section 7.3.2 shall be deleted and replaced with the following:

**7.3.2 District's Review of Applications for Progress Payments.** In accordance with Public Contract Code §20104.50, upon receipt of an Application for Progress Payment, the District shall cause the same to be reviewed by the Project Inspector, the Project Manager, if one is designated by the District, or the District representative, as soon as is practicable after receipt of such Application for Progress Payment. Such review shall be for the purpose of determining that the Application for Progress Payment is a proper Progress Payment request. For purposes of this Article 7.3.2, an Application for Progress Payment shall be deemed "proper" only if it is submitted on the form approved by the District, with all of the requested information of such

form of Application for Progress Payment completely and accurately provided by the Contractor and such completed Application for Progress Payment is accompanied by: (i) the form of Verification of Certified Payroll Records Submittal to Labor Commissioner, executed under penalty of perjury by the Contractor's Superintendent and/or the Contractor PM; which verifies that all Certified Payroll Records for the Contractor and all Subcontractors for the period of time covered by the Application for Progress Payment have been completed and submitted in strict conformity with Labor Code §1771.4; (ii) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §8132 of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment requested; (iii) duly completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code §8134 of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment received by the Contractor under the prior Application for Progress Payment; (iv) if applicable, a current union statement reflecting that the Contractor and any Subcontractor of any tier, are current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining agreement to which the Contractor or any such Subcontractor is a party to or is otherwise bound by; (v) a certification by the Contractor that it has continuously maintained, or caused to maintained, the Record Drawings reflecting the actual as-built conditions of the Work performed be for which the Progress Payment is requested, it being understood that such certification is subject to verification by the District, Project Engineer or the Construction Manager prior to disbursement of the Progress Payment; and (vi) an updated Construction Schedule, reflecting Work actually completed and in progress. In accordance with Public Contract Code §20104.50, an Application for Progress Payment determined by the District not to be a proper Application for Progress Payment shall be returned by the District to the Contractor as soon as is practicable after receipt of the same from the Contractor, but in no event not more than 7 days after the District's receipt thereof. The District's return of any Application for Progress Payment pursuant to the preceding sentence shall be accompanied by a written document setting forth the reason(s) why the Application for Progress Payment is not proper."

**12.5. Limitations on Adjustment of Contract Price.**

**12.5.1. Design Services.** The Design Services Contract Price is not subject to adjustment unless the District directs material modifications to the scope or other requirements of the Project after the Contractor has achieved fifty percent (50%) completion of the Construction Documents phase of the Design Services. If the District directs material modifications to the Project scope/requirements after the Contractor has achieved fifty percent (50%) completion of the Construction Documents phase of the Design Services, the Design Services Contract Price shall be equitably adjusted to reflect the Design Services reasonably necessary to incorporate such modifications directed by the District.

**12.5.2. Construction/Post Construction Services.** The Construction/Post Construction Services Contract Price is not subject to adjustment, except in the event of: (i) District directed material modifications occurring after DSA permit issuance; or (ii) unforeseen field conditions which could not have been reasonably anticipated by the Contractor or which materially vary from information or data provided to the Contractor exclusively by the District. If either of the foregoing circumstances occur, adjustment of the Construction Services Contract Price shall be conditioned upon the Contractor's full and timely compliance with all applicable provisions of the Contract Documents relating to the Contractor's notice of and request to adjust the Contract Price. Failure or refusal of the

Contractor to timely and fully comply with such requirements shall be deemed the Contractor's waiver of any right to adjustment of the Contract Price on account of such circumstances.

**13. Permits, Fees and Notices; Compliance With Laws.**

- 13.1. Payment of Permits, Fees.** The Contractor shall secure and pay for the building permits, other permits, and other fees/charges imposed by governmental agencies for reviews, permits and other approvals necessary or required for the proper execution and completion of the Work. The District will reimburse the Contractor for the direct actual costs of fees or charges paid by the Contractor to secure the building permit, other permits, reviews and approvals through the Allowance Amount allocated for permits. The foregoing notwithstanding, the Contractor shall pay all fees, costs or other expenses associated with or arising in connection with Deferred Approval Items without adjustment of the Construction Services Contract Price.
- 13.2. Compliance With Laws.** The Contractor shall comply with and give notices required by the Laws and other orders of public authorities bearing on performance of the Work.
- 13.3. Notice of Variation From Laws.** If the Contractor knows, or has reason to believe, that any portion of the Contract Documents are at variance with the Laws, the Contractor shall promptly notify the Consulting Project Engineer, the Project Manager and the Project Inspector, in writing, of the same. The Contractor shall be solely responsible for correcting or taking other necessary action to eliminate any such variance between the Contract Documents and the Laws; such corrective or other action shall be completed by the Contractor without adjustment of the Contract Time or the Contract Price.

**14. Dispute Resolution; Arbitration.** Article 15.11 of the General Conditions and all subparts thereto shall be deleted and replaced with the following provisions to comply Public Contract Code § 9204:

**15.11 Dispute/Claims Resolution.**

**15.11.1 Contractor Continuation of Work.** Notwithstanding any claim, dispute, disagreement or other matter in controversy between the District and the Contractor relating to the Contract Documents and/or the Work, the Contractor shall continue to diligently prosecute and perform the Work in accordance with requirements of the Contract Documents, pending any final determination or decision regarding any such claim, dispute, disagreement or matter in controversy.

**15.11.2 Public Contract Code §9204 Claims Resolution Procedures.** Claims of the Contractor are subject to the non-binding dispute resolution procedures set forth in Public Contract Code §9204 ("Section 9204") provided, however, that the Contractor's initiation of Section 9204 procedures is expressly subject to the Contractor's prior full and timely compliance with requirements and procedures of the Contract Documents relating to procedures for resolution of claims, change orders, disputes and other matters in controversy under the Contract Documents.

**15.11.2.1 Claim Defined.** The term "Claim" shall be as defined in Section 9204.

**15.11.2.2 Claim Documentation.** The Contractor shall furnish reasonable documentation to support each Claim. "Reasonable documentation" includes, without limitation: (i) contractual and legal basis establishing Claim entitlement or merit; (ii) factual basis establishing District liability for the Claim; (iii) detailed breakdown of labor, materials, equipment and other costs included in the Claim; and (iv) detailed basis, including

Construction Schedule analysis and fragnets supporting any Contract Time adjustment or Liquidated Damages relief included in the scope of a Claim.

**15.11.2.3 District Claim Review Statement.** Within forty five (45) days (or such other time mutually agreed to by the District and the Contractor) after receipt of a properly submitted and properly documented Claim, the District will conduct a reasonable review of the Claim and provide the Contractor with a written statement identifying the disputed and undisputed portions of the Claim ("Claim Review Statement"). If the District does not provide the Contractor with the Claim Review Statement for any Claim within forty five (45) days (or other time mutually agreed to by the District and the Contractor) after receipt of a properly submitted and properly documented Claim, the Claim is deemed rejected in its entirety and thereupon, the Contractor may initiate the Meet and Confer process described below. A Claim deemed rejected pursuant to the foregoing does not constitute an adverse finding of Claim merit or the Contractor's responsibility or qualifications. If the Claim Review Statement identifies any undisputed portion of a Claim ("Undisputed Claim") and payment is due from the District on the Undisputed Claim, the District shall process and make payment on the Undisputed Claim within sixty (60) days after the issuance date of the Claim Review Statement.

**15.11.2.4 Meet and Confer.**

**15.11.2.4.1 Meet and Confer Demand.** If the Contractor disputes any portion of the Claim Review Statement, or if a Claim is deemed rejected by the District not providing the Contractor with the Claim Review Statement within the time permitted under Section 9204, the Contractor may demand an informal conference to meet and confer with the District for settlement of the issues in dispute ("Meet and Confer"). The Contractor's Meet and Confer request must be submitted to the District: (i) in writing; (ii) by registered mail or certified mail, return receipt requested; and (iii) within ten (10) days after the Claim Review Statement is submitted to the Contractor or within ten (10) days after the date the Claim is deemed rejected, as applicable. Failure of the Contractor to strictly comply with the foregoing is deemed a waiver of the Contractor's right to request the Meet and Confer and the Non-Binding Mediation procedures under Section 9204. If the Contractor strictly complies with the foregoing, the District will schedule the Meet and Confer conference within thirty (30) days of the Contractor's Meet and Confer request for settlement of disputed portions of the Claim Review Statement.

**15.11.2.4.2 Meet and Confer Statement.** Within ten (10) business days after conclusion of the Meet and Confer conference, if any portion of a Claim remains disputed, the District shall provide the Contractor a written statement identifying the disputed

and undisputed portions of the Claim ("Meet and Confer Statement"). If the Meet and Confer Statement identifies any Undisputed Claim and payment is due from the District on the Undisputed Claim, the District shall process and make payment on the Undisputed Claim within sixty (60) days after date the Meet and Confer Statement is issued.

**15.11.2.5 Non-Binding Mediation.**

**15.11.2.5.1 Contractor Initiation.** The Contractor may request nonbinding mediation ("Mediation") of disputed portions of a Claim identified in the Meet and Confer Statement. The Contractor's Mediation demand must be submitted to the District: (i) in writing; (ii) by registered mail or certified mail, return receipt requested; (iii) within ten (10) days after the Meet and Confer Statement is submitted to the Contractor; and (iv) with specific identification of the disputed Claims issues subject to Mediation. Failure of the Contractor to strictly comply with the foregoing is deemed a waiver of the Contractor's right to demand Mediation procedures under Section 9204.

**15.11.2.5.2 Mediator Selection.** The District and Contractor shall mutually agree to a mediator within ten (10) business days after the date of the Contractor's demand for Mediation. If the District and Contractor do not mutually agree to a mediator, the District and Contractor shall each select a mediator and the District/Contractor selected mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim.

**15.11.2.5.3 Mediation Procedures.** Mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the District and Contractor in dispute resolution through negotiation or by issuance of an evaluation.

**15.11.2.5.4 Mediation Costs.** All costs, fees and expenses of the mediator(s) and mediation administration shall be shared equally by the District and Contractor. The foregoing notwithstanding, the Contractor and District shall each bear the costs, fees and expenses of their own attorneys, experts and consultants.

**15.11.2.5.5 Post-Mediation Disputed Claims.** Any Claims issues in dispute after Mediation shall be resolved in accordance with the applicable provisions of the Contract Documents.

**15.11.2.5.6 Waiver.** The District and Contractor may mutually agree to waive, in writing, Mediation under Section 9204 and subject to the Contractor's compliance with Government Code Claim requirements, proceed directly to commencement of a civil action or binding arbitration.

**15.11.2.6 Payments of Undisputed Claims.** If a payment due from the District for Undisputed Claims identified in the Claim Review Statement

or the Meet and Confer Statement issued for a Claim is not made within the time established under Section 9204 the overdue portion of such payment shall bear interest at the rate of seven percent (7%) per annum from the date due. The District's credit application of any amount due for an Undisputed Claim against amounts due from the Contractor under the Contract Documents shall be deemed payment of the Undisputed Claim.

**15.11.2.7 Subcontractor Claims.**

**15.11.2.7.1 Subcontractor Claim Submittal.** If a Subcontractor, of any tier (collectively "Subcontractor") lacks legal standing to assert a Claim against the District because privity of contract does not exist, the Contractor may present the District a Claim on behalf of the Subcontractor ("Subcontractor Claim"). Each Subcontractor requesting submittal of a Subcontractor Claim to the District shall furnish reasonable documentation to support the Subcontractor Claim. Within forty-five (45) days of receipt of a Subcontractor's written request to submit a Subcontractor Claim, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the Subcontractor Claim to the District. If the Contractor did not present the Subcontractor Claim, the Contractor shall provide the Subcontractor with a statement of the reasons for not having done so.

**15.11.2.7.2 Contractor Certification of Subcontractor Claim.** The District's review of Subcontractor Claims is expressly subject to the Contractor's submittal of a duly completed and executed form of Contractor Certification of Subcontractor Claim certifying that the Contractor has thoroughly reviewed the Subcontractor Claim and based on the Contractor's review, certify that: (i) the Subcontractor Claim is made by the Subcontractor in good faith; (ii) the Subcontractor Claim is supported by reasonable documentation establishing entitlement to the relief requested and District liability therefor; and (iii) the Subcontractor Claim does not incorporate any request constituting a False Claim under applicable law, including the California False Claim Act (Government Code §12650 et seq). The form of Contractor Certification of Subcontractor Claim is included in the Contract Documents. (Attached hereto as Attachment 2.)

**15.11.2.7.3 District Review of Subcontractor Claim.** Subcontractor Claims presented by the Contractor to the District are subject to the Section 9204 non-binding dispute resolution procedures set forth above, as modified herein. Requests for the District to conduct Meet and Confer and/or non-binding mediation procedures must be submitted jointly by the Contractor and the Subcontractor submitting the Subcontractor Claim. If Mediation proceedings are initiated in connection with a Subcontractor Claim, mediator and



mediation administration fees and costs shall be borne equally by the District, Contractor and Subcontractor.

**15.11.2.7.4 Disputed Subcontractor Claims.** Subcontractor Claims which are not fully resolved by the Section 9204 non-binding dispute resolution procedures shall be resolved by Section 20104.4 Dispute Resolution Procedures or binding arbitration, as applicable. Commencement of Section 20104.4 Dispute Resolution Procedures or binding arbitration proceedings in connection with any Subcontractor Claim is subject to compliance with Government Code Claims requirements.

**15.11.3 Government Code Claim Requirements.** Pursuant to Government Code §930.6, any claim, demand, dispute, disagreement or other matter in controversy asserted by the Contractor, whether on behalf of itself or a Subcontractor, against the District for money or damages, including without limitation Claims or portions thereof remaining in dispute after completion of the Section 9204 non-binding dispute resolution procedures described above are deemed a "suit for money or damages" and shall be subject to the provisions of Government Code §§945.4, 945.6 and 946 ("Government Code Claims Process"). An express condition precedent to the Contractor's initiation of Section 20104.4 Dispute Resolution Procedures or binding arbitration proceedings pursuant to the following is the Contractor's compliance with the Government Code Claims Process, including without limitation, presentation of the claim, demand, dispute, disagreement or other matter in controversy between the Contractor and the District seeking money or damages to the District and acted upon or deemed rejected by the District in accordance with Government Code §900, et seq.

**15.11.4 Section 20104.4 Dispute Resolution Procedures; Claims Less Than \$375,000.** Any Claim, or portion thereof, in dispute after completion of the Section 9204 non-binding dispute resolution procedures and the Government Code Claims Process which is equal to or less \$375,000 shall be resolved in accordance with the civil action procedures established in Public Contract Code §20104.4. Unless otherwise agreed to by the District and the Contractor in writing, the mediation conducted pursuant to Section 9204 procedures shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

**15.11.5 Binding Arbitration of Claims Exceeding \$375,000.**

**15.11.5.1 JAMS Arbitration.** Any Claim, or portion thereof in dispute after completion of the Section 9204 procedures and the Government Code Claims Process which exceeds \$375,000 and any other claims, disputes, disagreements or other matters in controversy between the District and the Contractor arising out of, or related, in any manner, to the Contract Documents, or the interpretation, clarification or enforcement thereof shall be resolved by binding arbitration conducted before a retired judge in accordance with the Construction Arbitration Rules and Procedures of Judicial Arbitration Mediation Services ("JAMS") in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the JAMS closest to the Site.

**15.11.5.2 Demand for Arbitration.** A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. If more than one Demand for Arbitration is filed by either the District or the Contractor relating to the Work or the Contract Documents, all Demands for Arbitration shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and the Contractor. The Contractor's Surety, a Subcontractor or Material Supplier to the Contractor and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements with the Contractor, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the District and the Contractor, in which case an appropriate severance order shall be issued by the Arbitrator(s).

**15.11.5.3 Discovery.** In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference.

**15.11.5.4 Arbitration Award.** The award rendered by the Arbitrator(s) ("Arbitration Award") shall be final and binding upon the District and the Contractor only if the Arbitration Award is: (i) supported by substantial evidence; (ii) based on applicable legal standards in effect that the time the Arbitration Award is issued; and (iii) supported by written findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296. Any Arbitration Award that does not conform to the foregoing is invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the Arbitration Award if, after review, the Court determines either that the Arbitration Award does not fully conform to the foregoing. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be made by the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.

**15.11.5.5 Arbitration Fees and Expenses.** The expenses and fees of the Arbitrator(s) shall be divided equally among all of the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys' fees, witness fees and other costs or expenses incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator(s) may award arbitration costs, including Arbitrators' fees but excluding attorneys' fees, to the prevailing party. By this arbitration provision, the District and the Contractor

acknowledge and agree that neither shall recover from the other any attorney's fees associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder. The limited exceptions in the Contract Documents that provide attorney's fees for specific issues shall neither be construed as applying to this arbitration provision under California Civil Code § 1717(a) nor be deemed to be "authorized by the Laws."

**15.11.5.6 Limitation on Arbitrator.** The Superior Court for the State of California for the County in which the Project Site is situated has the sole and exclusive jurisdiction, and an arbitrator has no authority, to hear and/or determine a challenge to the commencement or maintenance of an arbitration proceeding on the grounds that: (i) the subject matter of the arbitration proceeding is barred by the applicable statute of limitations; (ii) the subject matter of the arbitration proceeding is barred by a provision of the California Government Claims Act; (iii) the subject matter of the arbitration proceeding is outside the scope of the arbitration clause; (iv) the Contractor has failed to satisfy all conditions precedent to commencement or maintenance of an arbitration proceeding; (v) waiver of the right to compel arbitration; (vi) grounds exist for the revocation of the arbitration agreement; and/or, (vii) there is the prospect that a ruling in arbitration would conflict or potentially with a ruling in a pending proceeding regarding the Project on a common issue of law or fact.

**15.11.6 Inapplicability to Bid Bond.** The arbitration proceedings described above are not applicable to disputes, disagreements or enforcement of rights or obligations under the Bid Bond. All claims, disputes and actions to enforce rights or obligations under the Bid Bond shall be adjudicated only by judicial proceedings commenced in a court of competent jurisdiction.

**15.11.7 Limitation on Special/Consequential Damages.** In the event of the District's breach or default of its obligations under the Contract Documents, the damages, if any, recoverable by the Contractor shall be limited to general damages which are directly caused by the breach or default of the District and shall exclude any and all special or consequential damages, if any. The Contractor expressly acknowledges the foregoing limitation to recovery of only general damages from the District if the District is in breach or default of its obligations under the Contract Documents; the Contractor expressly waives and relinquishes any recovery of special or consequential damages from the District.

**15. Conflicts/Inconsistencies.** In the event of conflict or inconsistency between the provisions of this Amendment, the terms of the Agreement, the terms of the Contractor's Proposal, the terms of Amendment shall take precedent over the Agreement, and the Agreement shall prevail over the Contractor's Proposal. No term or condition of this Amendment or the Agreement shall be modified or amended except by a subsequent writing executed by the District and Contractor. It is further agreed that District's attachment of any of Contractor's Proposals shall not constitute a modification, amendment or limitation of any term or condition of the Agreement or any Amendment unless such term or condition is expressly set forth in writing in this Amendment.

**16. No Cost Amendment.** The Parties acknowledge and agree that this Amendment does not alter, modify or in any way affect the Contract Price of the Agreement.

**17. No Further Modification.** Except as expressly set forth hereinabove, this Amendment is not intended to, and shall not, modify, alter or revise any other provision, section, article or term of the Agreement or Project Assignment.

Dated: \_\_\_\_\_, 2017

**"District"**  
**SIMI VALLEY UNIFIED SCHOOL DISTRICT**

**"Contractor"**  
**TRANE US INC. dba TRANE**

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

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

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

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

Attachment 1

VERIFICATION OF PRE-QUALIFICATION  
APPLICATION INFORMATION

Project: Proposition 39 Phase 2, Projects at Simi Valley High School, Santa Susana High School, Hillside Middle School and Sinaloa Middle School

I, \_\_\_\_\_ am the \_\_\_\_\_ of  
(Name) (Title)

\_\_\_\_\_, declare and state as follows:  
(Bidder Name)

1. I am authorized to execute this Verification of Pre-Qualification Application Information on behalf of the above-identified Bidder.
2. I have reviewed the Pre-Qualification Application submitted by the Bidder to the District, and I have conducted all necessary and appropriate inquiries to ascertain whether there have been any material and/or adverse changes in the information provided by the Bidder in its Pre-Qualification Application.
  - I have personal knowledge of the absence of any material and/or adverse changes to the information provided by the Bidder in its Pre-Qualification Application.
  - On \_\_\_\_\_, 201\_, at least ten (10) calendar days prior to submitting this Bid Proposal, Bidder completed and submitted to the District a Prequalified Bidder's Update Form advising the District of any and all material and/or adverse changes to the information provided by Bidder to the District in the Pre-Qualification Application submitted by the Bidder.
  - The Bidder has received written confirmation from the District confirming Bidder's continued prequalification to bid on District Projects.
  - No written confirmation has been received by the Bidder from the District confirming Bidder's continued prequalification to bid on District Project. Bidder acknowledges and agrees that should the District determine that Bidder is no longer qualified to bid on District projects, Bidder's Bid Proposal will be deemed non-responsive.

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

Dated: \_\_\_\_\_  
(Signature)

Attachment 2  
CONTRACTOR CERTIFICATION OF SUBCONTRACTOR CLAIM

**Project Name: Proposition 39 Phase 2, Projects at Simi Valley High School, Santa Susana High School, Hillside Middle School and Sinaloa Middle School**

Pursuant to Article 15.11.2.7.4 of the General Conditions, I certify as follows:

1. The portion of the Claim made on behalf of the Subcontractor to which this certification is attached is made in good faith.
2. I have reviewed the attached Subcontractor Claim and certify that to the best of my knowledge and belief, the amounts claimed for costs, expenses and damages incurred and supporting data submitted to CM/Contractor by the Subcontractor on behalf of any and all subcontractors or suppliers to Subcontractor, of all tiers, or any person or entity under Subcontractor, are accurate and complete. Subcontractor will not submit, after the date of execution of this certification, any such supporting data, including any such new amounts that, to the best of my knowledge and belief, that are not accurate and complete.
3. The amount requested accurately reflects the amount for which the Subcontractor believes the District is liable to Contractor.
4. The Subcontractor Claim does not incorporate any request constituting a False Claim under applicable law, including the California False Claim Act (Government Code §12650 et seq).
5. I am duly authorized to certify the Subcontractor Claim 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.

Executed at: \_\_\_\_\_, in the State of California, on \_\_\_\_\_, 201\_.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name of Contractor)

Printed from ~~EXHIBIT~~ "A"  
Board  
portion of website on 7/25/17

**TITLE: APPROVAL OF ENERGY SERVICES AGREEMENT NO. A17.286  
BETWEEN THE SIMI VALLEY UNIFIED SCHOOL DISTRICT AND TRANE  
U.S., INC. FOR DESIGN BUILD SERVICES UNDER PROPOSITION 39  
PROJECTS AT SIMI VALLEY HIGH SCHOOL, SANTA SUSANA HIGH  
SCHOOL, HILLSIDE MIDDLE SCHOOL AND SINALOA MIDDLE SCHOOL**

Business & Facilities  
Consent #7

February 21, 2017  
Page 1 of 2

Prepared by: Ron Todo, Assistant Superintendent  
Business & Facilities

**Background Information**

Proposition 39 California Clean Energy Jobs Act provides funding for K-12 energy efficiency projects, aimed at reducing energy consumption through replacement of inefficient equipment, and through implementation of upgrades to buildings that reduce the amount of energy required for heating, cooling, and lighting.

Whereas the Simi Valley Unified School District has adopted Resolution 56-14/15 to establish an Energy Service Agreement under Government Code 4217.10 for Proposition 39 Clean Energy Jobs Act projects. Simi Valley Unified School District desires to enter into an Energy Services Agreement with Trane U.S., Inc. to provide Design/Build Construction Services for the implementation of a Proposition 39 California Clean Energy Jobs Act Project. The scope of work includes the following:

1. **Simi Valley High School** – Replacing 27 Rooftop HVAC units, replacing Interior and Exterior Lighting with LED technology and installing Energy Management Control Systems campus wide.
2. **Santa Susana High School** - Replacing 25 Rooftop HVAC units, replacing Exterior Lighting with LED technology and installing Energy Management Control Systems campus wide.
3. **Hillside Middle School** – Replacement of Interior and Exterior Lighting with LED technology.
4. **Sinaloa Middle School** – Replacement of Interior and Exterior Lighting with LED technology.

Contract is attached as Exhibit 1.

Adoption of Resolution 56-14/15 is attached as Exhibit 2.

On motion # \_\_\_\_\_ by Trustee \_\_\_\_\_, seconded by Trustee \_\_\_\_\_ and carried by a vote of \_\_\_\_\_, the Board of Education approved the Energy Services Agreement A17.286 with Trane U.S. Inc., to provide Design Build Services for Proposition 39 Projects at Simi Valley High School, Santa Susana High School, Hillside Middle School and Sinaloa Middle School under the Proposition 39 California Clean Energy Jobs Act.

Ayes: \_\_\_\_\_ Noes: \_\_\_\_\_ Absent: \_\_\_\_\_ Abstain: \_\_\_\_\_

Business & Facilities  
Consent #7

February 21, 2017  
Page 2 of 2

**Fiscal Analysis**

The cost associated with Agreement A17.286 is \$2,885,125.00. It will be funded by Proposition 39 California Clean Energy Jobs Act and C4 Bond Funds per this breakdown.

Site	Cost	Prop 39	C4 Bond Funds
Santa Susana High School	\$ 1,048,169.83	\$ 508,621.90	\$ 539,547.93
Simi Valley High School	\$ 1,387,230.00	\$ 673,150.04	\$ 714,079.96
Hillside Middle School	\$ 243,474.89	\$ 118,145.61	\$ 125,329.28
Sinaloa Middle School	\$ 206,250.28	\$ 100,082.45	\$ 106,167.83
<b>Project Total</b>	<b>\$ 2,885,125.00</b>	<b>\$ 1,400,000.00</b>	<b>\$ 1,485,125.00</b>

**Recommendation**

It is recommended that the Board of Education approve the Energy Services Agreement A17. 286 with Trane U.S. Inc., to provide Design Build Services for Proposition 39 Projects at Simi Valley High School, Santa Susana High School, Hillside Middle School and Sinaloa Middle School under Proposition 39 California Clean Energy Jobs Act.