



HAWTHORNE SCHOOL DISTRICT

13021 S. Yukon Ave.
Hawthorne, CA 90250

February 24, 2024

REQUEST FOR PROPOSAL No. R23-24-6B

OUTDOOR WALK-IN REFRIGERATOR AND FREEZER UNITS

DESIGN-BUILD SERVICES

Request for Information Due:

March 1, 2024

4:00 PM

RFP Submittal Due Date:

March 12, 2024

2:00 PM Sharp!

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INSTRUCTIONS TO PROPOSERS

Each Proposers shall review and comply with all proposal instructions and requirements set forth in RFP No. R23-24-6B. All blanks in the Proposal Form must be appropriately filled in, and all proposed prices must be stated clearly and legibly. Any exceptions or proposed alterations to the conditions and requirements defined in this document must be included the proposal. All proposals must be signed by the Proposers in permanent ink and submitted in sealed envelopes, bearing on the outside, the detail information stipulated under the article title "Proposal Package Requirements."

1. General Information

Pursuant to Education Code section 17250.10 et seq. and section 200.318(a) and 200.320(b)(2) of Title 2 of the Code of Federal Regulations, the District is seeking a Design-Build Entity ("DBE") for a design-build construction delivery method for the Outdoor Walk-in Refrigerator and Freezer Unit Turnkey Project (the "Project"), to be located at the HSD Learning Center, 13928 Kornblum Ave., Hawthorne, CA 90250. The Project is further defined in **Appendix A**.

The selected DBE must be appropriately licensed and registered in the State of California for architectural, engineering, and construction services as needed to complete the Project. In addition, the selected DBE shall have experience with both design and construction of public facilities work, outdoor refrigerators and freezers units, and installation of outdoor refrigerators and freezers, and in working with the local utility companies, and local governing agencies having jurisdiction for this project.

The selected DBE must be registered with the Department of Industrial Relations ("DIR") as required by law. The selected DBE will be required to comply with the Labor Code prevailing wage requirements, skilled and trained workforce requirements, and the District's bonding and insurance requirements. The selected DBE shall be required to work cooperatively with District staff, all other technical consultants, the criteria architect, the project inspector, and any program and/or construction manager, if any, retained by the District for the Project.

The District will award the contract to the DBE that provides the "best value" (as defined in Education Code Section §17250.15) to the District using the criteria set forth in this Request for Proposal ("RFP").

The District intends to select the Proposer that best meets the District's needs to perform the development and construction services as described in this RFP. The Proposer will be the District's representative in relation to any trade Proposers hired by the Proposer, and will ensure compliance with the Project plans. In addition, the DBE's responsibilities include, but are not limited to:

- Value engineering.
- Procurement of long lead materials and products.
- Facilitating meetings.
- Master scheduling the Project per preliminary master schedule, milestones established by the District; and
- Budgeting for the Project.

The design-build procurement includes the following process:

- a. Use of a two-phase solicitation process; a Request for Qualifications (RFQ), which has been completed, and a Request for Proposals.
- b. Design-Build Competitive Process- Second, the District will issue an RFP, inviting only prequalified Proposers that are on the Short List, to submit competitive sealed proposals for this Project.
 - The numerical score from the RFQ will not carry over to the RFP scoring criteria.
 - The RFP selection will use a "best value" approach for the selection of the DBE.

All documents provided pursuant to this RFQ that are not otherwise a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

The RFQ for prequalification will require that the information be certified under penalty of perjury by the DBE and its general joints partners or joint venture members.

2. Conflict of Interest

Proposer shall certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting construction agreement, nor that any such person will be employed in the performance of any construction agreement without immediately divulging of this fact to the District.

3. Estimate Project Budget

The estimated budget for the design, equipment, construction, and etc. of this turnkey project is **one million one hundred ten thousand dollars (\$1,110,000.00)**. The district reserves the right to change the Project cost prior to contract award through addenda and after contract award in accordance with the design-build contract.

4. Project Completion

The design-build entity is responsible for achieving substantial completion and final completion for each element of work. The design-build entity is also responsible for obtaining all required approvals, completing, freezer units and equipment installation requirements, start-up and commissioning, permits, and meeting all warranty/guarantee requirements.

5. Tentative Schedule

The District anticipates that the schedule of events in connection with this RFP will be as set forth below. However, the District reserves the right, in its sole discretion and at any time prior to entering into an agreement for this Project, to alter its anticipated schedule as related to this RFP.

<u>Event</u>	<u>Anticipated Date</u>
Notice to Prequalified Proposers on Short List:	January 29, 2024
Issue RFP to short listed DBEs:	February 23, 2024
Deadline for Request for Information (RFI):	March 1, 2024 @ 4:00 p.m.
RFPs Due:	March 12, 2024 @ 2:00 p.m.
Interviews with 2 highest ranked, If applicable:	TBD
Recommendation to Board of Trustees:	April 10, 2024 (Tentative)
Notice-to-Proceed:	April 24, 2024 (Tentative)
Finalize Contract:	May 3, 2024 (Tentative)
Anticipated Start Date:	June 3, 2024 (Tentative)
Anticipated Completion Date:	TBD

6. Assignment

Any construction agreement resulting from this RFP and any amendments or supplements thereto shall not be assignable by the successful Proposer either voluntarily or by operation of law without the written approval of the District.

7. District Standards

The District has a list of District Standards of materials and procedures that the design-build entity shall follow. It will be made available for review at the time the Request for Proposal is released.

8. AB566

Proposer must comply with requirements to provide a "skilled and trained workforce," as set forth by the Education and Public Contract Codes.

9. Prevailing Wage

Proposer shall comply with the provisions of the Labor Code pertaining to payment of the generally prevailing rate of wages and apprenticeships or other training programs. The Department of Industrial Relations has made available the general prevailing rate of per diem wages in the locality in which the work is to be performed for each craft, classification, or type of worker needed to execute the contract, including employer payments for health and welfare, pension, vacation, apprenticeship, and similar purposes. Copies of these prevailing rates are available to any interested party upon request and are online at <http://www.dir.ca.gov/DLSR>.

The Proposer and all sub proposers shall pay not less than the specified rates to all workers employed by them in the execution of the contract. It is the Proposer's responsibility to determine any rate change.

The schedule of per diem wages is based upon a working day of eight (8) hours. The rate for holiday and overtime work shall be at least time and one half.

10. Labor Requirements

The DBE and all its subcontractors shall comply with the requirements set forth in Division 2, Part 7, Chapter 1 of the Labor Code. The District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this work is to be performed for each craft, classification or type of worker needed to execute the Contract. These per diem rates, including holiday and overtime work, as well as employer payments for health and welfare, pension, vacation, and similar purposes, are on file at the District, and are also available from the Director of the Department of Industrial Relations. Pursuant to California Labor Code section 1720 et seq., it shall be mandatory upon the DBE to whom the Contract is awarded, and upon any subcontractor under such Contractor, to pay not less than the said specified rates to all workers employed by them in the execution of the Contract.

A DBE 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 the Labor Code, unless currently registered and qualified to perform public work pursuant to Labor Code 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.

The DBE and all subcontractors shall furnish certified payroll records as required pursuant Labor Code section 1776 directly to the Labor Commissioner in accordance with Labor Code section 1771.4 on at least on a monthly basis (or more frequently if required by the District or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement (DLSE).

The DBE and all subcontractors of any tier must comply with the requirements set forth in Education Code section 17250.25 (c), including providing an enforceable commitment that the DBE and all subcontractors of any tier will use a "skilled and trained workforce" to perform all work on the Project that falls within an apprenticeable occupation in the building and construction trades in accordance with Public Contract Code section 2600 et seq.

11. Workers' Compensation

In accordance with the provisions of Labor Code section 3700, the successful bidder as the Contractor shall secure payment of compensation to all employees. The Contractor shall sign and file with the District the following certificate prior to performing the work under this contract: "I am aware of the provisions of Section 3700 of the Labor Code, which requires 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." The form of such certificate is included as a part of the Bid Documents.

12. Brand Name or Equal

If items in this RFP are identified by "brand name" or "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality, characteristics and functionality of the products that will be satisfactory. Proposals offering substitutions for "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are determined by the District to fully meet the salient quality, functionality, and characteristics requirements listed in the RFP. Bidders submitting bid proposals other than the specified product must include detailed literature and specifications sheets with their bid proposal.

13. "Buy American" Clause.

Pursuant to California Public Contract Code Section 3410, a preference to United States-grown produce and United States-processed foods will be given when economically feasible. For purposes of this section, the determination of "economically feasible" shall be made by District. BUY AMERICAN PROVISIONS: Federal Regulations require that to the maximum extent possible, domestic products be purchased consistent with the "Buy American" provisions of Public Law (PL 100-237) for the school lunch program. Under the terms of this agreement, Bidder shall provide products and/or product ingredients that have been manufactured or grown in the United States. In certain circumstances, product and/or product ingredients manufactured or grown in other countries of origin may be provided if an acceptable product is not available domestically and/or the cost of the domestic product is unreasonable (Federal Acquisition Regulation Subpart 25.103 & 25.105 (b) (2)). For purposes of determining reasonableness of cost the following factors should be applied: If the domestic product price that is not the low price, and the "Buy American" statue

applies to the low price (non-domestic), the contractor must determine the reasonableness of the domestic price by adding to the low price (non-domestic), inclusive of duty, 1) Six (6) percent, if the lowest domestic price is from a large business concern; or 2) Twelve (12) percent if the lowest domestic offer is from a small business concern. The domestic price is considered reasonable if it does not exceed the low price (non-domestic) after the addition of the appropriate evaluation factor.

14. Small, Minority, Women, and Disabled Veteran Business Enterprises

The District in an effort to encourage small, minority, women, and disabled veteran owned business enterprises may consider the efforts of a Proposer to meet the goals set forth in the RFP documents.

15. Equal Opportunity

The Proposer shall certify that it is an Equal Opportunity Employer and has made a good faith effort to improve minority employment and agrees to meet federal and state guidelines. Legal residents of the United States of America shall be used in providing all services under this RFP.

Proposer shall not discriminate nor permit discrimination against any person because of race, color, religion, age, national origin, ancestry, creed, handicap, sexual orientation, or union membership in the performance of the work, including but not limited to preparation, manufacturing, fabrication, installation, erection and delivery of all supplies and equipment. In the event of receipt of such evidence of such discrimination by the Proposer or its agents, employees or representatives, District shall have the right to rescind and terminate the contract.

The successful Proposer agrees to include the paragraph above with appropriate adjustments in all subcontracts, which are entered into for work to be performed pursuant to the contract.

16. Signature

The proposal form and all other documents must be signed in permanent ink in the name of the Proposers and must bear the Hard copies of the proposal and all other documents must be signed in permanent ink in the name of the Proposer and must bear the signature in longhand of the person or persons duly authorized to sign the bid.

If Proposer is a corporation, the legal name of the corporation shall first be set forth, together with two signatures: one from the President and one from the Secretary or Assistant Secretary. Alternatively, the signature of other authorized officers or agents may be affixed, if a certified copy of the resolution of the corporate board of directors authorizing them to do so is provided to the Owner. Such documents shall include the title of such signatories below the signature and shall bear the corporate seal.

If the Proposer is a partnership, the true name of the firm shall first be set forth, together with the names of all persons comprising the partnership or co-partnership. The proposal must be signed by all partners comprising the partnership unless proof in the form of a certified copy of a statement of partnership acknowledging the signer to be a general partner is presented to the Owner, in which case the general partner may sign.

Proposals submitted as joint ventures must so state and be signed by each joint venturer.

Proposals submitted by individuals must be signed by the DBE unless an up to date power- of-attorney is on file in the Owner office, in which case, said person may sign for the individual.

The above rules also apply in the case of the use of a fictitious firm name. In addition, however, where a fictitious name is used, it must be so indicated in the signature

17. Modifications

Changes in or additions to the proposal form, recapitulations of the work Proposal upon, alternative proposals or any other modification of the proposal form which is not specifically called for in the Proposal Documents may result in the District's rejection of the proposal as not being responsive to the RFP's Proposal documents. **No oral or telephonic modification of any Proposal submitted will be considered.**

18. Erasures, Inconsistent or Illegible Proposals

The proposal submitted must not contain any erasures, interlineations, or other corrections unless each such correction creates no inconsistency and is suitably authenticated by affixing in the margin immediately opposite the correction the signature or signatures of the person or persons signing the proposal. In the event that the District determines that any proposal is unintelligible, inconsistent, or ambiguous, the District may reject such proposal as not being responsive to the RFP's documents.

19. District's Right to Modify Contract Documents

Before the scheduled closing time for receipt of the Proposals, the District may modify the scope of service, the Contract Documents, or any portion(s) thereof by the issuance of written addenda disseminated to all Proposers who are on the District's

short list. Only questions answered by formal written addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. If the District issues any addenda, the failure of any Proposers to acknowledge such addenda in its Proposal will render the Proposal non-responsive.

20. Inquiries and Clarifications

Inquiries shall be sent in writing via e-mail to Aneska I. Kekula, Purchasing Director, at the address or email listed below. All inquiries must be received by **March 1, 2024, by 4:00 PM**. The District will not respond to any inquiries after this time. Proposers are solely responsible for ensuring their written inquiry is received prior to this deadline and the District is not responsible for any delays or errors in delivery. The District will issue responses to all inquiries through its website at <http://www.hawthorne.k12.ca.us>. Proposers are responsible for reviewing the District's website and incorporating any and all clarifications provided therein into their Proposal.

TO: Aneska I. Kekula, Purchasing Director
Hawthorne School District
13021 S. Yukon Ave,
Hawthorne, CA 90250

Or via email at:
ikekula@hawthorne.k12.ca.us

21. Interested Parties

The General/ Prime Contractor/ Lead Entity and the Architect of Record will not be allowed to participate in the RFP process in any capacity as a design-build team member to more than one design-build entity. For the purposes of interpreting and applying the requirements of this paragraph, branch offices of a General/ Prime Contractor/ Lead Entity and Architect of Record that is an individual, corporation, partnership, or other legal entity, where such branch offices are owned and/or managed, in whole or in substantial part, by such individual, corporation, partnership, or other legal entity, shall be deemed identical to such General/ Prime Contractor/ Lead Entity and Architect of Record.

22. Withdrawal/Resubmission of Proposals

Any proposal may be withdrawn, either personally or by written request, at any time prior to the scheduled closing time for receipt of proposals. The Proposal security for proposals withdrawn prior to the scheduled closing time for receipt of proposals, in accordance with this paragraph, shall be returned upon demand therefor.

Proposer may thereafter submit a new or modified Proposal prior to the response deadline. A Proposal cannot be changed or corrected after the response deadline.

No Proposers may withdraw any proposal for a period of ninety (90) calendar days after the date set for the opening of proposals.

23. Proposal Protest Procedure

A Proposer may file a protest if the award is not in compliance with law, Board policy, or RFP's specifications. A protest must be filed in writing with the Owner's Purchasing Department within three (3) working days after receipt of notification of the intent to award the contract and shall include all documents supporting or justifying the protest. An email address shall be provided and, by filing the protest, the protesting Proposer consents to receipt of email notices for purposes of the Protest and Protest related questions and Protest Appeal, if applicable. The protest shall specify the reasons and facts upon which the protest is based. A Proposer's failure to file the protest documents in a timely manner shall constitute a waiver of his/her right to protest the award of the contract, and shall also constitute a failure to exhaust an available administrative remedy and bar any further action.

a. Resolution of Proposal Controversy: Once the proposal protest is received, the apparent awarded Proposer will be notified of the protest and the evidence presented. If appropriate, the apparent awarded Proposer will be given an opportunity to rebut the evidence and present evidence that the apparent low Proposer should be allowed to provide the services. If deemed appropriate by the Owner, an informal hearing will be held. Owner will issue a written decision within fifteen (15) days of receipt of the protest unless factors beyond the Owner's reasonable control prevent such resolution. The Decision on the Bid Protest will be copied to all parties involved in the protest.

b. Finality. The decision made by the District concerning the Proposal controversy will be final and not subject to any further Appeals.

c. Failure to comply with this Proposal Protest Procedure shall constitute a waiver of the right to protest and shall constitute a failure to exhaust the protesting Vendor's administrative remedies.

24. Business License

The Proposer shall be a licensed contractor pursuant to the California Business and Professions Code and be licensed to perform the work called for in this RFP. The Proposer must possess a valid and active **Class B License** at the time of award and throughout the duration of this Contract. The Proposer's Contractor's License number shall be clearly stated in the proposer's proposal.

25. Security of School Facilities

The awarded Proposer will be issued keys and gate clickers to open gates and gain access to the District grounds. The keys must not be duplicated and the Proposer is responsible for returning the keys and gate clickers to the District at the completion of the contract. The Proposer will be charged for keys and gate clickers that are not returned to the District at the completion of the contract, fees are as follows:

Grand Master Key	\$50,000.00 each
Site Master Key	\$25,000.00 each
Individual Key	\$ 5,000.00 each
Gate Clicker	\$10,000.00 each

The awarded Responded or their designee shall be responsible to secure the facility when the building is not in use. No classroom, office, or site gate shall be left opened or unlocked. The Service Proposer's staff must secure the site.

If the awarded Proposer or their designee fails to properly enter the facility and trips the alarm upon entry or exiting of the building and it causes a false alarm, all fees associated with the false alarm incident shall be billed to the awarded Proposer.

26. Insurance Requirements

Commercial General Liability: \$2,000,000 per occurrence, \$5,000,000 aggregate except as provided herein, for Bodily Injury, Personal and Advertising Injury, Products and Completed Operations, and Property Damage, including Blanket Contractual Liability, Products, and Completed Operations. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage should be at least as broad as Insurance Services Office Commercial General Liability coverage, occurrence Form CG 00 01 10 93, or Insurance Services Office Form, CG 00 09 11 88 Owners, and Proposer's Protective Liability Coverage Form – Coverage Operations of Designated Proposer.

- A. Proposer's insurance to be primary and non-contributory.
- B. 30-day notice of intent to cancel, non-renewal, or make material change in coverage.
- C. The District, its Board of Trustees, officers, employees, and agents to be named as "Additional Insured" by separate endorsement (at least as broad as ISO Form 20 10 11 85 or if not available both CG 20 10 10 01 and CG 20 37 10 01) with respect to liability arising out of work or operations performed by or on behalf of the Proposer including materials, parts, or equipment furnished in connection with such work or operations.
- D. Coverage shall not exclude the perils of explosion, collapse, or underground (XCU) or sudden and accidental pollution.

Commercial Automobile Liability:

Coverage should be at least as broad as Insurance Services Office Form Number CA 00 010 06 92, covering Automobile Liability, Symbol 1 ("Any Autos").

- \$1,000,000 per accident for Bodily Injury and Property Damage
- Coverage to include "Owned, Non-Owned, and Hired" automobiles ("Any Autos").
- 30-day notice of intent to cancel, non-renewal, or make material change in coverage

Worker's Compensation/Employee Liability:

Workers' Compensation Insurance shall be provided in accordance with the provisions of the California Labor Code Section 3700 adequate to protect any person, Proposer, or corporation employed directly or indirectly in connection with the work of the Proposer from claims under Workers' Compensation Acts which may arise for operations, whether such operations be by any person, Proposer, or corporation, employed directly or indirectly by the Proposer upon or in connection with the work.

- Certificate of Insurance indicating "statutory" limits, as required by the State of California
- Employer's Liability: \$1,000,000 each accident for bodily injury by accident; \$1,000,000 each employee for bodily injury by disease; \$1,000,000 coverage period aggregate.

- 30-day notice of intent to cancel, non-renewal, or make material change in coverage

Professional Liability

With respect to DBE and its design phase subconsultants, coverage should be with limits no less than \$2,000,000 per occurrence or claim, and \$5,000,000 policy aggregate. Professional Liability may be Claims Made policies, provided the following provisions: (1) the retroactive date must be shown and must be before the date of the contract or the beginning of the contract work; (2) insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work; and (3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

Excess Liability Coverage

Excess Liability Insurance coverage in the amount of Five Million Dollars (\$5,000,000.00) overlying the above-referenced insurance coverage shall be provided.

Miscellaneous Requirements

Proposers must include a copy of their current certificate of insurance in their proposals evidencing all of the minimum insurance requirements set forth above, and the successful Proposer shall be required to submit required endorsements before execution of a contract. Evidence of Excess Liability Coverage may be deferred until prior to the execution of the contract, however Proposers electing such option shall submit a letter from your insurance broker stating that they will be able to provide and meet the insurance requirements inclusive of the Excess Liability coverage.

Insurance is to be placed with insurers having a current A.M. Best rating of no less than A:VII or equivalent unless otherwise approved by the District.

To the extent Proposer employs subcontractors or subconsultants as part the work covered this project, it shall be Proposer's responsibility to require and confirm that each subcontractor meets the minimum insurance requirements specified above (via as broad as ISO CG 20 38 04 13). Proposer shall on request from the District deliver copies of such policy or policies of insurance and the receipts for payment of premiums thereon.

Waiver of Subrogation

Proposer hereby grants to the District a waiver of any right of subrogation which any insurer of said Proposer may acquire against the District by virtue of the payment of any loss under such insurance. Proposer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

27. Waiver of Subrogation

Proposer hereby grants to the District a waiver of any right of subrogation which any insurer of said Proposer may acquire against the District by virtue of the payment of any loss under such insurance. Proposer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

28. Non-Collusion Declaration

Public Contract Code Section 7106 requires Proposers to submit the declaration of non-collusion with their Proposals. This form is included with the RFP documents and must be signed and dated by the Proposers under penalty of perjury.

29. Restrictions on Lobbying and Contracts

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

30. Non-Appropriation of Funds

Notwithstanding any other provision to the contrary, if for any fiscal year of this contract the Governing Board for any reason fails to appropriate or allocate funds for future payments under this contract, or if this program is no longer funded by the CDE, the District will not be obligated to pay the balance of funds remaining unpaid beyond the fiscal period for which funds have been appropriated and allocated.

31. False or Misleading Statements

A proposal which contains false or misleading statements, or which provides references which do not support an attribute or condition contended by the Proposer may be rejected. If, in the opinion of the District, such information was deemed misleading the District may reject the proposal.

32. District's Standards to Be Used in Evaluating Proposals, Selection Criteria, and Scoring

The RFP will be evaluated as listed below:

- A. First, to be deemed responsive and qualify for the evaluation process, a proposal must be timely submitted and materially satisfy all mandatory requirements identified in this RFQ. Submitted proposals will be initially screened for completeness. Proposals that are not materially complete, at the District's discretion, will not be evaluated further.
- B. Second, the award of a contract shall be based on the DBE whose proposal is determined by the district to be the best value, based on its evaluation and impressions of the responses and information received from Proposer. The best value shall be evaluated only on the criteria listed below (maximum points 1,000), and the relative weight that has been assigned to each one.
- C. Finally, when the evaluation is complete, the District shall rank the top three responsive proposers based on determination of value provided by their proposal. The contract shall be awarded to the DBE whose proposal is determined by the District to have offered the best value to the public.

TECHNICAL CRITERIA	MEASUREMENT	MAXIMUM POINTS
A. Cover Letter	Ability to provide complete information as requested and outlined in Tab 1.	0-100
B. Technical Expertise	The District is seeking submissions that are well thought out given all the information that is being provided in this RFP, that reflects the DBE's technical design & construction experience. Years in Industry, strength of key personnel, experience based on but not limited to the criteria listed in Tab 2.	0-350
C. Capacity & Methodology	The District will evaluate the prospective Proposers ability to provide the services, fulfill the requirements, life-cycle costs, and the expectations of the District, as outlined in Tab 3.	0-300
D. Stakeholders	Plans that demonstrate the ability to work with stakeholders effectively for schedule, review comments, cost benefits, analysis, as outlined in Tab 4.	0-50
E. Safety Record	The District will consider and rate the Proposer's safety record based on submitted documents that indicate compliance, but not limited to, as outlined in Tab 5.	0-20
F. Skilled & Trained Workforce	Ability to provide complete information and demonstrate compliance, as requested and outlined in Tab 6.	0-60
G. Price	The price proposal to the District for the turnkey project, as outlined in Tab 7.	0-20
H. Interview (optional)	At the District's discretion and to further assist in evaluations, the district may request the three highest ranked DBEs with the best value to the district to participate in an interview process, as outlined in Appendix B.	0-100
Total Maximum Points 1,000		

- D. The District, at its sole discretion, may elect to interview Proposers of its choosing, or may select a Proposer based upon the information provided in the written proposal. At its discretion, if the District conducts interview(s) it shall score the criterion on a scale of zero (0) to one-hundred fifty (100).
- E. If the District and said Proposer cannot agree on contract terms, then the District shall select the next highest best value score DBE and so on. The District reserves the right to reject any and all proposals at any time before ratification of a contract.

A review and selection committee that the District intends to be composed of key personnel from within and possibly from outside the District will review and evaluate all proposals. Proposals will be kept confidential to the extent permitted by law.

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

PROPOSAL REQUIREMENTS

1. Goals and Objectives

The District's goals and objectives are to receive submission of Request for Proposal responses from DBEs that were prequalified and are on the district's short list of DBEs that are eligible to participate in this RFP process for the Outdoor Walk-in Refrigerator and Freezer Units Turnkey Project ("Project"), in accordance with Education Code Section §17250.10 et seq., and Sections 200.318(a) and 200.320(b)(2) of Title 2 of the Code of Federal Regulations ("CFR") permits the use of design-build procurement, subject to compliance with its provisions and those of Part 200 of CFR Title 2, when such procurement procedures are consistent with State and local laws. The Project is defined in **Appendix A**.

- a. Those Proposers shortlisted to respond to the RFP will provide a price proposal and non-priced for consideration by the District. The Proposer shall submit all requested information specified in this RFP. Proposals must set forth full, accurate, and complete information as required by this solicitation, including attachments.
- b. The District intends to award a contract to the responsible design-build entity whose proposal the selection committee determines meets the solicitation and offers the best overall value to the District.
- c. The District reserves the right to change the Project cost prior to contract award through addenda and after contract award in accordance with the design-build contract.
- d. All proposals will remain subject to acceptance for 90 days after the day of the proposal opening. The District may, at its sole discretion, release any proposal prior to that date.
- e. In addition to, and without limitation upon any other requirements of this RFP, the District shall have the right to disqualify any design-build entity and reject any proposal should it determine that any information submitted by any Proposer during the RFQ or RFP process is untrue or misleading as determined by the District

This request is a solicitation for proposals only and not an offer by the District to contract with any Proposer responding to this Request for Proposal of qualified DBEs.

2. Requirements

DBEs that intend to submit a Response must meet the following mandatory minimum requirements to participate in the District's RFP process, which include but are not limited to:

- Hold a Class B Contractor's License, which is current, valid, and in good standing with the California Proposer's State License Board.
- Have a minimum of five (5) years' experience in construction on K-12 public works construction projects.
- Have a minimum of five (5) years' experience in engineering, design, and project management, including development of specifications.
- Have a minimum of five (5) years' experience in installation, modifications, project management, and commissioning of all equipment.
- Warranty support and close-out documentation.
- Training of District Staff in the operation of new equipment, remote monitoring services, on-going support services that will ensure objectives are met.
- Minimum of 2 million in bonding capacity (Payment and Performance Bonds);
- Experience working with school district and in preparing submittals, receiving approval, and Project Close-out.
- Meet minimum Insurance requirements.
- Prequalified through the District's prequalification process and listed on the District's short list.
- Met the Worker's Compensation Experience Modification Rate (EMR).
- Met the recordable injury(ies) or illness rate criteria.
- DBE must be registered with the Department of Industrial Relations (DIR).
- Architect-Engineer services required by this RFP shall be performed by licensed Architects and Engineers registered with the State of California.

3. General Scope of Project

The DBE will be responsible for all design, permits, agency review and approval, freezer units, construction services, as outlined in Appendix A, which include but are not limited to:

- Shall provide the full design and architectural/engineering services and construction services necessary to complete this design-build turnkey project.
- Furnish and install all freezer units, switches, pipping, vents, compressors with balancing evaporator 208/230/3, electrical, and etc. and final connections.
- All equipment must be new, of the latest model, complete with all motors and controls.
- All materials and equipment shall comply with all state, local and federal codes.
- Coordinate and obtain all local jurisdictional agency plan approval and permitting is required, and fees/permits will be paid for by the District.
- All work, freezer, and measurements shall be verified in field prior to commencement of work by the DBE.
- New entry driveway, site work/irrigation, removal of grass
- Asphalt and rough grading, lighting/poles, curbs and gutters, gates, and rolling gate, fencing
- Water, storm drain, electrical and other required utilities.
- Verify in Field (VIF), the DBE must verify required voltage and

4. Location

The project is located at the HSD Learning Center, 13928 Kornblum Ave., Hawthorne, CA 90250.

5. Owner's Contingency Amount. The Schedules of Values for Construction Phase shall include a separate line item for a District controlled contingency amount not to exceed 12% of the construction services amount. The District shall have complete control over the use of the contingency. DBE's fee, costs and other mark ups for insurance and bonds as contained in the Schedule of Values will not be computed based on the use of the contingency. Any use of the contingency shall be computed, valued and issued as a Change Order. Any unused contingency at the end of the project shall be fully returned to the District.

6. Liquidated Damage. Should the DBE neglect, fail or refuse to achieve Substantial Completion of the Work within the Contract Time, (subject to adjustments authorized under the Contract Documents), the DBE agrees to pay to the District the amount of **Five Hundred Dollars (\$ 500.00)** per day as per diem Liquidated Damages, not as a penalty but as Liquidated Damages, for every day beyond the Contract Time (or such later date as adjusted to in accordance with the Contract Documents) the date of Substantial Completion occurs.

7. Tentative Schedule of Events

After the award of the contract and the district issuance of a Notice to Proceed, the District will arrange a design meeting with the DBE. The meeting agenda shall include the following, but not limited to:

- Review and emphasize the District's design needs and objectives.
- Design schedule.
- Equipment specifications.
- Submittals process.
- Permits.
- Start date June 3, 2024 (tentative)
- Completion date TBD
- Progress payments.
- Modifications.
- Deliverables.

8. Summary Design Schedule

The District anticipates that the Notice to Proceed shall be issued within five (5) days of the Board approval of the design-build contract. The DBE shall prepare the plans and specifications in conformance with the District's design requirements as outlined in Appendix A. The district reserves the right to change the timeline and dates at its sole discretion.

Freezer units' specification shall be submitted to the district by:	April 24, 2024
80% Design-Build documents shall be submitted to the district by:	May 8, 2024
80% Design-Build documents comments issued to DBE by district:	May 14, 2024
100% Completed Design-Build documents:	May 29, 2024

DBE shall procure the freezer units, if approved by the District:	April 25, 2024
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RFP PACKAGE REQUIREMENTS

Three (3) hard copies of the proposal one marked "Original," two copies, and one (1) digital copy on a CD or pen drive, the proposal shall be submitted in a three-ring loose-leaf binder if DBE are submitted in any other type of binding (i.e., spiral). All RFP packages, hard or electronic copy, will bear on the outside of the sealed envelope, the name of the DBE, address telephone number, the Owner's name, RFP number and title. The District may reject proposals that do not include the properly required attachments. Submission of Proposals that are sealed or boxed clearly marked, may be mailed or hand-delivered to the address listed below:

Attn: Aneska I. Kekula, Purchasing Director
Hawthorne School District
13021 S. Yukon Ave,
Hawthorne, CA 90250

Proposals should be divided by tab sections (1 through 8) in accordance with the items listed below. Responses should be limited to thirty (40) pages; the page limit does not include the table of contents, cover letter, certifications, attachments, job descriptions, etc.). The Proposal shall be divided into tab sections according to the items in the index; this will assist the evaluation team in identifying items and information submitted with the Proposal. To be eligible for evaluation, a proposal must adhere strictly to the format set forth below; failure to do so may result in disqualification, as non-responsive to proposal documents. To receive the highest consideration by the District, it is desired that each Proposer provides the information below in their RFP response. The content and sequence of the proposal will be as follows:

TAB 1: COVER LETTER – A maximum of two (2) pages, dated Introductory Letter must be submitted including the legal name of the DBE, address, telephone and fax numbers, e-mail and the name, title, and signature of the person(s) authorized to submit the proposal on behalf of the DBE, stating the interest, qualifications, and experience in providing the services as outlined in the RFP.

- a Proposed working relationship between General, Architect/Engineer, and subcontractors.
- b A statement to the effect that the design-build team members identified in the SOQ continue to be on the RFP submission.
- c A statement to the effect that the proposal shall remain valid for a period of not less than 90 days from the due date of submittal.
- d Signature of person(s) authorized to bind design-build entity to the terms of the proposal.

TAB 2: TECHNICAL EXPERTISE. Describe your expertise in providing services as outlined in this RFP, which shall include but not be limited to the following:

- A. Team Organizational Chart: provide a project organization chart that includes the Contractor, Architect/Engineer, Mechanical, Electrical, Plumbing subcontractor(s), or other trade partners. The chart shall include but not be limited to:
 - Name, title, and address.
 - Clearly delineates communication/reporting relationships among the DBE team & key personnel.
 - Former names, where applicable
 - License Information, and include copies of all licenses.
 - Department of Industrial Relations registration number, where applicable
 - Description of the DBE's and its organizational structure
- B. Resume of key personnel to be involved with the Project.
 - I. Design-Build Project Manager Resume. This is the premier role on the design-build team and will act as the first point of contact between the design-build team and the District's team. The position requires a minimum of five years' experience in design or construction management. Demonstrate satisfactory experience to lead, manage and control both design and construction. The design-build project manager must be solely assigned to this Project. Resumes that demonstrate cross functional expertise such as proven project manager, construction manager, and licensed architect or engineer will receive additional consideration.

List recent relevant experience - Projects with K-12 schools in California, experience with projects that are similar in size, value, type of facility and complexity will be rated favorably. Design-build entities are encouraged to supplement and further detail the proposed design-build project manager's experience and other qualitative factors not addressed in the SOQ previously submitted.

- II. **Architect Project Manager Resume.** A licensed professional Architect with a minimum of five years' experience in facilities of similar size and scope. An Architect with DSA experience and construction administration experience will be rated more favorably.

List recent relevant experience - Projects with K-12 schools in California, experience in creating and designing construction projects that specify the requirements of each trade and identify their functions and scope of work. Along with the plans and design, experience in the design of instructions and technical specifications for the contractor. DBE's are encouraged to supplement and further detail the proposed architect project manager's experience and other qualitative factors not addressed in the SOQ previously submitted.

- C. **Strength of Key Personnel Dedicated to this Project:** Provide in your Proposal sufficient documentation, training, certifications, and etc. that demonstrates your ability to provide the services as requested in this RFP.

- List DBE key personnel to be involved with the Project.
- Including their school construction experience.
- Include any training certifications.
- Include an special licenses held by the DBE's key personnel

NOTE: Upon engagement, any change in personnel must be approved by the District. Proposer shall be responsible for any additional costs incurred by the engagement of a change in personnel.

TAB 3: CAPACITY & METHODOLOGY – Describe within a three-page narrative how your team will manage and fulfill the requirements and expectations of the District and this RFP. Describe recommended changes and betterments to the plan elements provide. Additional pages may be for diagrams and graphics illustrating how the site will be utilized, access points, and impact on operations. Use this section to address the ability of your Company to undertake and accomplish the required scope of work but not limited to:

- Meeting deadlines and completion dates.
- Provide a conceptual milestone schedule that will demonstrate the DBE's overall understanding of the Project.
- Additional milestones such as procuring the freezer units, design reviews and completion, life-cycle costs over 15 years, offsite approvals, and permits.
- Describe how the DBE will monitor all scheduling and milestone requirements and what steps will be taken should the Project fall behind the approved schedule.
- Describe how the DBE will minimize delays of the Project.
- Please explain how the Proposer can meet the District's desired timeline based on Exhibit A.
- Providing examples of value engineering that resulted in significant savings of money or time.
- Constructability review.
- Estimating and scheduling and provide examples of constructability reviews that you performed that resulted in the identification of significant design conflicts or omissions.
- Describe the Proposer's experience with all software programs, and the software program it will use to assist with scheduling of this project.

TAB 4: STAKEHOLDER – Describe how the Stakeholder's involvement and how its expectations will be managed throughout the Project.

- Describe the Proposer's knowledge and understanding of local environmental factors that may affect Project delivery, including but not limited to local City/County approval processes. Describe any relationships that may facilitate a timely and efficient Project delivery.
- Describe how the DBE will coordinate with the stakeholders during the first thirty (30) days of the Project to present, modify, and receive approval for the DBE proposed phasing plan.
- Describe how stakeholder comments will be received, addressed, and managed during the design and construction phases of the Project.

- Indicate how cost benefit analysis will apply to requests from stakeholders.

TAB 5: SAFETY RECORD – A design-build entity’s safety record shall be deemed “acceptable” if its Experience Modification Rate (EMR) for the most recent three (3) year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three (3) year period does not exceed the applicable statistical standards for its business category. Please provide safety record information related to this type of project which shall include but not be limited to:

- Please describe the content and frequency of the safety meetings, the basis for its current EMR number as provide in the RFQ, its Injury and Illness Prevention Program and who the Proposer’s safety officer would be and his/her qualifications for that position.
- Discuss your plan to maintain a safe worksite, include whether your Company has an Injury and Illness Prevention Program that complies with 8 CCR § 1509.
- Does your company have a safety program that meets Cal/OSHA requirements?
- Please state whether the Company has had any accidents in the past five years that resulted in a fatality on any of your projects, and provide any details for each incident.
- Please state whether the company has had any recordable injuries in the past five years and provide the average total recordable injuries for the past year.
- Please detail any additional information relating to safety that you would like the District to consider.

TAB 6: SKILLED AND TRAINED LABOR FORCE AVAILABILITY – Describe the DBE’s plan and methodology to comply with the requirements for use of a skilled and trained workforce as set forth in Chapter 2.9 (commencing with Section 2600) of Part 1 of the Division 2 of the Public Contract Code, for each apprenticeship occupation that will be used on this Project, include the following information but is not limited to:

- Include all subcontractors and any tier.
- Include your plan and methodology to comply with the percentage requirements for the use of skilled journeypersons for each apprenticeship occupation.
- Submit a copy of the required monthly report prepared by the Prime Contractor for another owner that demonstrates compliance.
- Identify and discuss which apprenticeship occupation(s) might be the most difficult to meet the percentage requirement for skilled journeypersons on the Project and state why?

TAB 7: PRICE PROPOSAL AND SIGNATURE FORM - Pursuant to and in compliance with this RFP, and all the other documents relating thereto, the undersigned Proposers, having reviewed the Request for Proposal Documents and all other Contract Documents and upon compliance with all requirements therein with reference to the submittal of this Proposal, hereby agrees to provide everything required in strict compliance with the Contract Documents for this project. Please note, you must use this Signature and Fee Proposal Form, submission on a different form or format may cause your proposal to be deemed non-responsive.

Furnish all equipment, labor, installation, materials, supplies, and sundries required to complete this turnkey project, as described in this RFP, specifications, drawings, and etc.

Line Item	Description			Total Price
No. 1	Design Services			\$
No. 2	Construction Services			\$
No. 3	Dry Storage Unit – 1 ea			\$
No. 4	Refrigerator Unit – 1 ea			\$
No. 5	Freezer Units	Qty 2 ea	\$ ea	\$
No. 6	Contingency Amount (12% of construction services amount)			\$
				\$

Grand Total (sum of Line Items 1 + 6)

Acknowledgment of Proposal Addenda

In submitting this Proposal the Service Proposer, the undersigned Proposer acknowledges receipt of all Proposal Addenda issued by the District, as set forth below. Acknowledge the inclusion of each and all addenda issued prior to Proposal due date in the blanks provided below and submit this page with your proposal. Failure to do so shall render your proposal non-responsive.

Proposer's ACKNOWLEDGES THE FOLLOWING ADDENDUM:

Number	Number	Number	Number	Number	Number	Number	Number
_____	_____	_____	_____	_____	_____	_____	_____

The Proposers declares that he/she has examined the Contract Documents, including the Addenda, and all other documents and requirements, and hereby proposes and agrees, if this proposal is accepted, to provide all services, to fulfill the said services in accordance with the Contract Documents.

I agree to receive service of notices at the e-mail address listed below.

CERTIFICATION

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

Proper Name of Company

Name of Proposers Representative

Street Address

City, State, and Zip

()

Phone Number

()

Fax Number

E-Mail

By: _____

Signature of Proposers Representative

Date: _____

NOTE: If Proposer is a corporation, the legal name of the corporation shall be set forth above together with the signature of authorized officers or agents and the document shall bear the corporate seal; if Proposers is a partnership, the true name of the Proposers shall be set forth above, together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; and if Proposers is an individual, his signature shall be placed above.

All signatures must be made in permanent blue ink.

**REQUEST FOR PROPOSAL
SCORING MATRIX**

		POINTS	Evaluation Score
TAB 1	COVER LETTER		
	Legal name of DBE Identified	0-10	
	Working Relation Identified	0-10	
	Proposal shall remain valid for a period of not less than 90 days	0-20	
	SOQ identified design-build team member continue to be on the RFP Submission	0-30	
	Cover letter signed by person authorized to bind the DBE to the terms of the RFP.	0-30	
	Total Score Tab 1 (0-100)		
TAB 2	TECHNICAL DESIGN & CONSTRUCTION EXPERTISE		
	Organization Chart	0-50	
	Design-Build Manger's Resume	0-100	
	Architect Project Manager's Resume	0-100	
	Strength of DBE Key Personnel dedicated to this Project	0-100	
	Total Score Tab 2 (0-350)		
TAB 3	CAPACITY & METHODOLOGY		
	Narrative with requested details	0-50	
	Meeting Deadlines	0-50	
	Milestones	0-50	
	Schedule	0-50	
	Value Engineering & Life-Cycle Cost	0-50	
	Delays	0-50	
	Total Score Tab 3(0-300)		
Tab 4	STAKEHOLDERS		
	Stakeholders	0-25	
	Knowledge and understanding of local environment factors	0-25	
	Total Score Tab 4 (0-50)		
Tab 5	SAFETY RECORD		
	Acceptable Safety Record	20	
	Total Score Tab 5 (0-20)		
Tab 6	SKILLED AND TRAINED WORKFORCE		
	Compliance plan & methodology	0-30	
	Subcontractors & tiers	0-30	
	Total Score Tab 6 (0-60)		
Tab 7	PRICE PROPOSAL		
	Design Costs	0-10	
	Construction Services Costs	0-10	
	Total Score Tab 7 (0-20)		
Optional	INTERVIEW	0-100	
	TOTAL SCORE		

Total Maximum Points 1,000

Tab 8: Required Forms

NON-COLLUSION DECLARATION

The undersigned declares:

I am the _____ [Title] of _____ [Name of Company], the party making the foregoing Proposal.

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

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

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

Signed: _____

Typed Name: _____

SKILLED AND TRAINED WORKFORCE COMPLIANCE

1. By this submittal, DBE hereby acknowledges, agrees, and hereby provides an enforceable commitment to District that:
 - a. DBE and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Public Contract Code section 2600 et seq.; or
 - b. DBE has agreed to be bound by: (i) a project labor agreement ("PLA") entered into by the District that will bind all contractors and subcontractors performing work on the project to use a skilled and trained workforce; (ii) the extension or renewal of a PLA that was entered into by the District prior to January 1, 2017; or (iii) a PLA entered into by the DBE that will bind the DBE and all its subcontractors at every tier performing work on the project to use a skilled and trained workforce.

2. CERTIFICATION

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

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

Date: _____, **2024**

Name of DBE or Member

Signature by authorized individual

Print Name

Title

U. S. DEPARTMENT OF AGRICULTURE

Certification Regarding Debarment, Suspension, Ineligibility
and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ ATTACHED INSTRUCTIONS)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Attach proof from <https://www.sam.gov/portal/SAM/##11>

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representative of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

CERTIFICATION REGARDING LOBBYING

INSTRUCTIONS: To be completed and submitted **ANNUALLY** by 1) any child nutrition entity receiving Federal reimbursement in excess of \$100,000 per year and 2) potential or existing contractors/Awardees as part of an original bid, contract renewal or extension when the contract exceeds \$100,000.

Applicable to Grants, Sub-grants, Cooperative Agreements, and Contracts

Exceeding \$100,000 in Federal Funds

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The undersigned certifies, to the best of his or her knowledge and belief, that:

- 1.) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- 2.) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form –LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- 3.) The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all sub-recipients shall certify and disclose accordingly.

Name of School Food Authority Receiving Child Nutrition Reimbursement in Excess Agreement of \$100,000:	
Address of School Food Authority:	
Printed Name and Title of Submitting Official:	Signature:
	Date:

OR

Names of Food Service or Awardee/Contractor		
Printed Name and Title:	Signature:	Date:

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1.) Type of Federal Action: a. Contract b. Grant c. Cooperative Agreement d. Loan e. Loan Guarantee f. Loan Insurance		2.) Status of Federal Action: a. Bid/Offer/Application b. Initial award c. Post-award		3.) Report Type: a. Initial filing b. Material change FOR MATERIAL CHANGE ONLY: Year:___ n/a Quarter:___	
4.) Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input checked="" type="checkbox"/> Sub-Awardee Tier _____ if known Congressional District, if known:				5.) If Reporting Entity in No.4 is Sub-Awardee, Enter Name And Address of Prime: Congressional District, if known:	
6.) Federal Department/Agency:				7.) Federal Program Name/Description: CFDA Number, if applicable:	
8.) Federal Action Number, if known:				9.) Award Amount, if known: \$	
10a) Name and Address of Lobbying Entity (if individual, last name, first name, MI)				10b) Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):	
11.) Amount of Payment (check all that apply): \$ _____ actual _____ planned _____ <input type="checkbox"/> <input type="checkbox"/>				12.) Type of Payment (check all that apply): Retainer <input type="checkbox"/> One-time Fee <input type="checkbox"/> Commission <input type="checkbox"/> Contingent Fee <input type="checkbox"/> Deferred <input type="checkbox"/> Other; specify: _____	
13.) Form of Payment (check all that apply): Cash In-kind; specify: Nature _____ <input type="checkbox"/> Value _____ <input type="checkbox"/>					
14.) Brief description of services performed or to be performed and date(s) of service, including officer(s), employees(s) or member(s) contacted, for payment indicated in No. 11:					
15.) If necessary was a continuation sheet attached for 10a, 10b or 14? <input type="checkbox"/> Yes <input type="checkbox"/> no					
16.) Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.				Signature: _____ Print Name: _____ Title: _____ Telephone No: () _____ Date: _____	
Federal Use Only:				Authorized for local reproduction Standard Form – LLL	

IRAN CONTRACTING ACT OF 2010 COMPLIANCE AFFIDAVIT

(California Public Contract Code Sections 2200-2208)

The California Legislature adopted the Iran Contracting Act of 2010 to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The Iran Contracting Act prohibits Respondents engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A Respondent who "engages in investment activities in Iran" is defined as either:

1. A Respondent providing goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including provision of oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. A Respondent that is a financial institution (as that term is defined in SO U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2203(b) as a person engaging in the investment activities in Iran.

The Respondent shall certify that at the time of submitting a bid for new contract or renewal of an existing contract, the Respondent is not identified on the DGS list of ineligible businesses or persons and that the Respondent is not engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts (PCC § 2205).

To comply with the Iran Contracting Act of 2010, the Respondent shall provide its Respondent or financial institution name, and Federal ID Number if available, in completing ONE of the options shown below.

OPTION #1: CERTIFICATION

I, the official named below, certify that I am duly authorized to execute this certification on behalf of the Respondent or financial institution identified below, and that the Respondent or financial institution identified below is not on the current DGS list of persons engaged in investment activities in Iran and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person or Respondent, for 45 days or more, if that other person or Respondent will use the credit to provide goods or services in the energy sector in Iran and is identified on the current DGS list of persons engaged in investment activities with Iran.

Respondent Name/Financial Institution (printed)	Federal ID Number (or n/a)
By (Authorized Signature)	
Print Name and Title of Person Signing	Date Executed

OPTION #2: EXEMPTION

Pursuant to PCC § 2203(c) and (d), a public entity may permit a Respondent or financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enter into, or renew, a contract for goods and services. If the Respondent or financial institution identified below has obtained an exemption from the certification requirement under the Iran Contracting Act of 2010, the Respondent or financial institution shall complete and sign below and attach documentation demonstrating the exemption approval.

Respondent Name/Financial Institution (printed)	Federal ID Number (or n/a)
By (Authorized Signature)	
Print Name and Title of Person Signing	Date Executed

CONTRACTOR'S CERTIFICATE REGARDING WORKERS' COMPENSATION FORM

Labor Code Section 3700 in relevant part provides: Every employer except the State shall secure the payment of compensation in one or more of the following ways:

1. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.

2. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to employees.

3. For any county, city, city and county, municipal corporation, public Owner, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702.

I am aware of the provisions of Labor Code Section 3700 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 provision before commencing the performance of the work of this Contract.

(Signature)

(Print)

(Date)

In accordance with Article 5 (commencing at section 1860), Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and submitted with the Contractor's bid.

CONTRACTOR'S CERTIFICATE REGARDING DRUG-FREE WORKPLACE

This Drug-Free Workplace Certification form is required from all successful Respondents pursuant to the requirements mandated by Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by performing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the Contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

Pursuant to Government Code section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it 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 actions which 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. The availability of drug counseling, rehabilitation and employee-assistance programs; and
 - 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, the undersigned, agree to fulfill the terms and requirements of Government Code section 8355 listed above and will (a) publish a statement notifying employees concerning the prohibition of controlled substance at the workplace, (b) establish a drug-free awareness program, and (c) require each employee engaged in the performance of the contract be given a copy of the statement required by section 8355(a) and require such employee agree to abide by the terms of that statement.

I also understand that if the Hawthorne School District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350 et seq.

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

DATE: _____

CONTRACTOR

By: _____
Signature

**CONTRACTOR’S CERTIFICATE REGARDING ALCOHOLIC BEVERAGE AND
TOBACCO-FREE CAMPUS POLICY**

The Contractor agrees that it will abide by and implement the District’s Alcoholic Beverage and Tobacco-Free Campus Policy, which prohibits the use of alcoholic beverages and tobacco products, of any kind and at any time, on District-owned or leased buildings, on DISTRICT property and in DISTRICT vehicles. The Contractor shall procure signs stating “ALCOHOLIC BEVERAGE AND TOBACCO USE IS PROHIBITED” and shall ensure that these signs are prominently displayed in all entrances to school property at all times.

DATE: _____

CONTRACTOR

By: _____
Signature

CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS

_____ certifies that it has performed one of the following:

[Name of contractor/consultant]

Pursuant to Education Code Section 45125.1, Contractor has conducted criminal background checks, through the California Department of Justice, of all employees providing services to the Hawthorne School District, pursuant to the contract/purchase order dated _____, and that none have been convicted of serious or violent felonies, as specified in Penal Code Sections 1192.7(c) and 667.5(c), respectively.

As further required by Education Code Section 45125.1, attached hereto as Attachment "1" is a list of the names of the employees of the undersigned who may come in contact with pupils.

OR

Pursuant to Education Code Section 45125.2, Contractor will ensure the safety of pupils by one or more of the following methods:

1. The installation of a physical barrier at the worksite to limit contact with pupils.
2. Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date _____, 20____

[Name of Contractor/Consultant]

By its: _____

ATTACHMENT 1:

CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS

(INSERT NAMES OF EMPLOYEES WHO MAY COME IN CONTACT WITH PUPILS)

EQUAL OPPORTUNITY EMPLOYER CERTIFICATION

The undersigned declares:

I am the _____ [Title] of _____ [Name of Company], the party making the foregoing proposal for RFP No. R18-19-6 Fresh Produce.

Federal affirmative action regulations mandate that Government Contracts include an Equal Opportunity (EO) clause in all contracts, subcontracts, and purchase orders. In compliance with the non-discrimination and affirmative action provisions of Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, the Vietnam Era Veterans' Readjustment Assistance Act, and the Job for Veterans Act flow down to all tiers of contractors.

This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60.741.5(a). These regulations prohibit discrimination against all individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment, individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

I acknowledge that I am aware of the provisions and hereby certify that I will adhere to all legal provision and I certify that the Company is an equal opportunity employer as defined in the Equal Opportunity Act.

DATE: _____

CONTRACTOR

By: _____
Signature

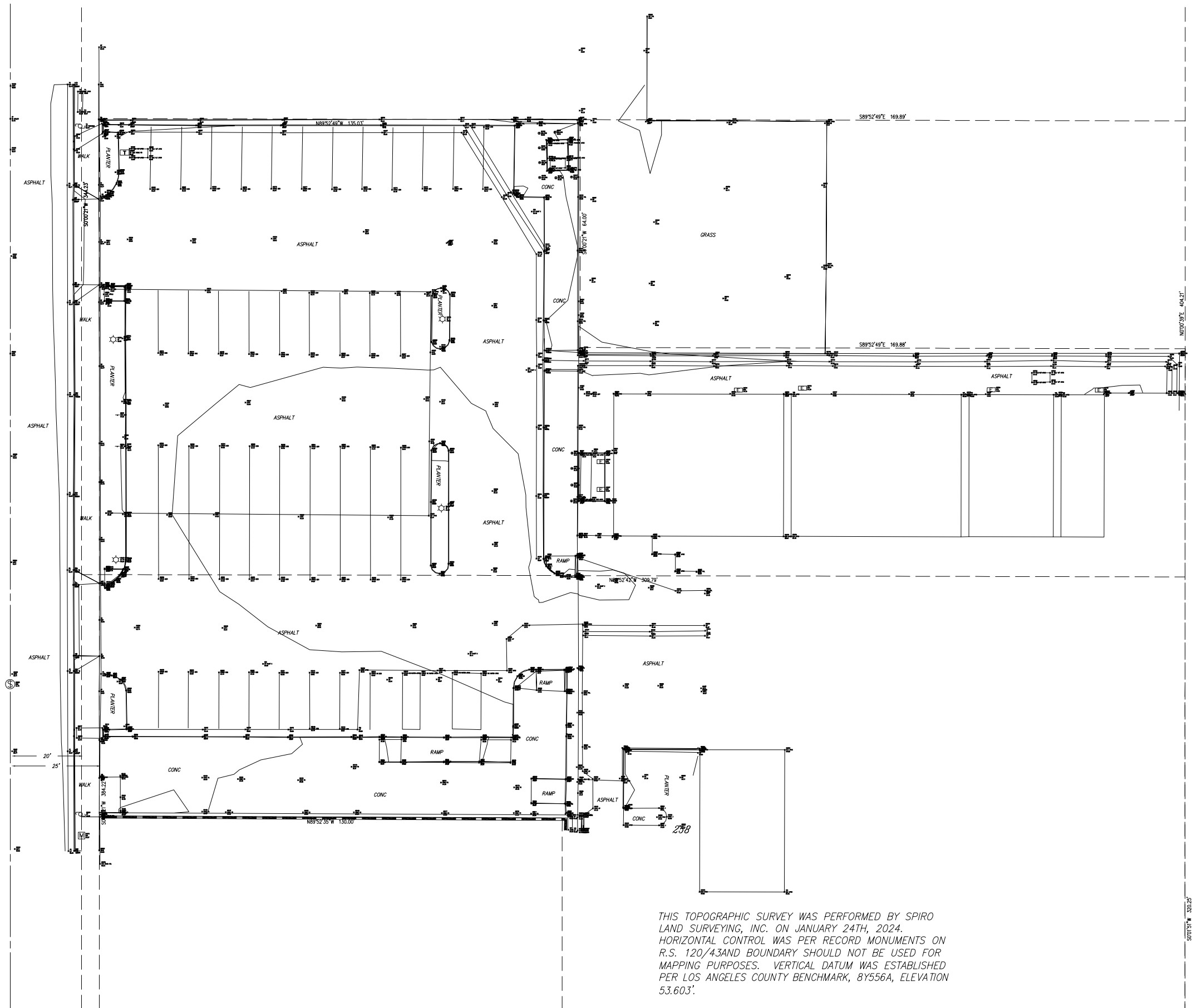
APPENDIX A

PROJECT DETAILS AND ANTICIPATED CONSTRUCTION BUDGET

This project consists of the design-build construction delivery method for the outdoor walk-in refrigerator and freezer units, to be located at the HSD Learning Center, 13928 Kornblum Ave., Hawthorne, CA 90250. The area is undeveloped and is approximately 4,485 sf. The proposed project includes new outdoor walk-in refrigerator (1), freezers (2), and dry storage (1) units, the size of each unit shall not exceed 250 sf. The units shall also include pallet racks and wall protectors. The dimensions of the shall be approximately 13'10" W X 18' L x 10' H. Insulation 4" foamed in place Urethan, with hand nose tongue and groove high density urethane perimeter. Embossed Acrylume interior. 4" insulated floor with 4" concrete finish. The door for each unit shall be 60" x 84" flush mounted, self-closing with magnetic gasket. Accessories shall include 8 LED light fixtures, 1 EPS sloped foam roof, 1 3-way light switch w/LED thermometer, 1 duralast membrane roof cap, heated concrete threshold, rain gutter, and seismic anchoring. Refrigeration, 2 – 3.5 HP low temp, R-448a, condensing unit with balancing evaporator 208/230/3. All condensing units are provided with pressure controls, timer, sight glass, and dryer. All evaporator coils are provided with energy savings controllers, expansion valves, solenoids, and thermostat.

The site development work includes a new entry driveway, site work/irrigation, removal of grass, asphalt, rough grading, lighting/poles, curbs and gutters, gate, rolling gate, installation of walk-in units (4), fencing, water, storm drain, electrical, and other required utilities. Coordination to obtain all local jurisdictional agency plan approvals and permitting is required, but fees/permit costs will be paid for by the District.

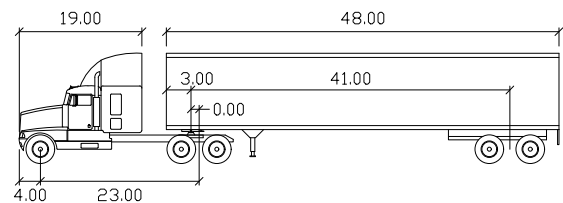
Projected Construction Budget: \$1,100,000.00



OPTION A

8.5 X 67' TRAILER TO PARK ON KORNBLUM AVE.

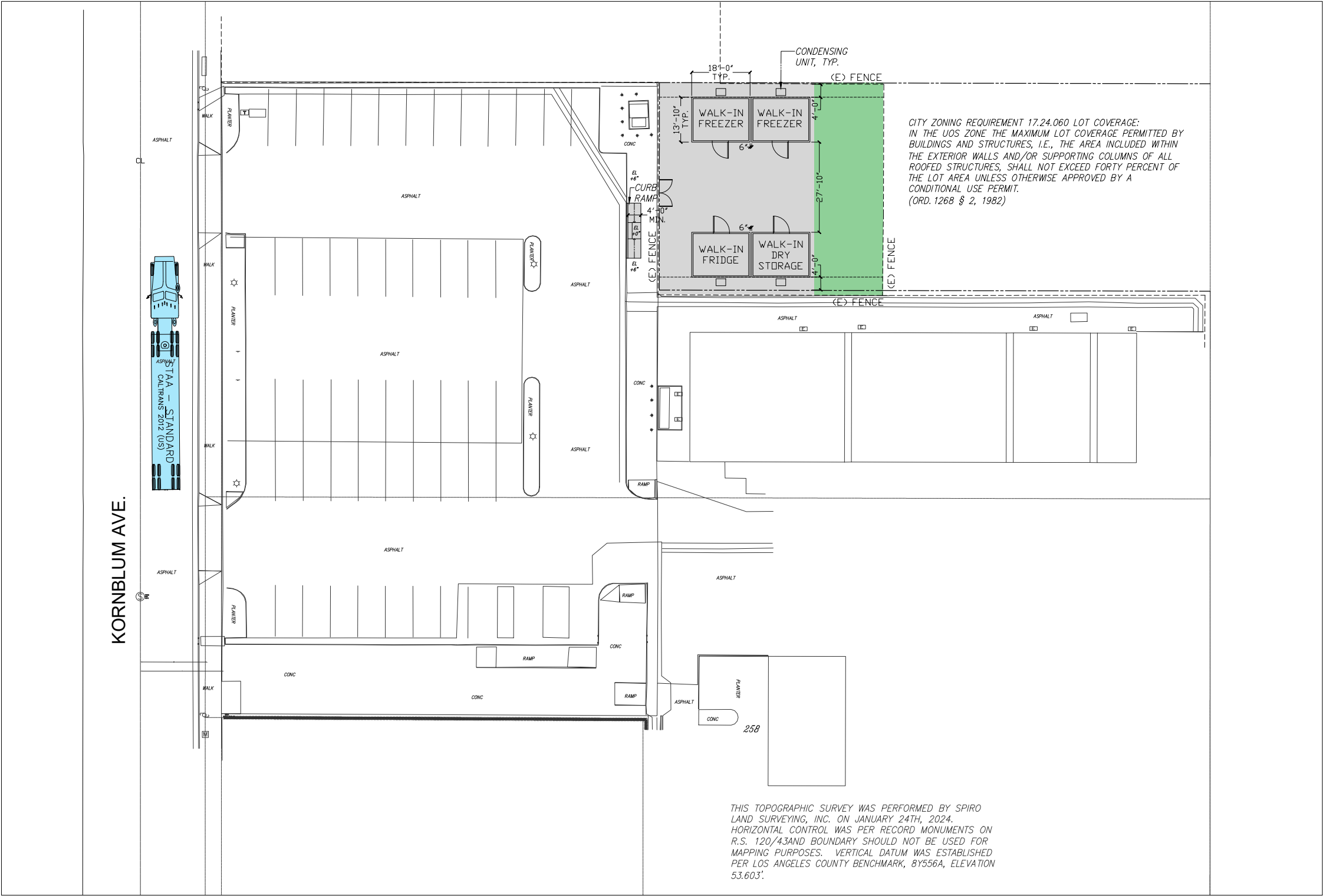
- FREEZER UNITS ARE NOT DSA COMPLIANT
- DOLLY THROUGH (E) PARKING LOT AND NEW CURB RAMP TO THE NEW FREEZER UNITS
- NEED TO COMMUNICATE WITH LOCAL STREET PARKING USERS



STAA - STANDARD

feet

Tractor Width	: 8.50	Lock to Lock Time	: 6.0
Trailer Width	: 8.50	Steering Angle	: 26.3
Tractor Track	: 8.50	Articulating Angle	: 70.0
Trailer Track	: 8.50		



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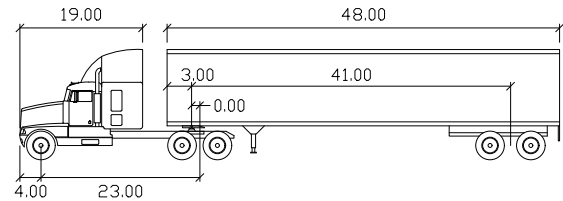
OPTION A _ 67' TRAILER



OPTION A-1 (NOT FEASIBLE)

8.5 X 67' TRAILER TO BACK UP INTO THE (E) PARKING LOT THROUGH THE SOUTHERN DRIVEWAY

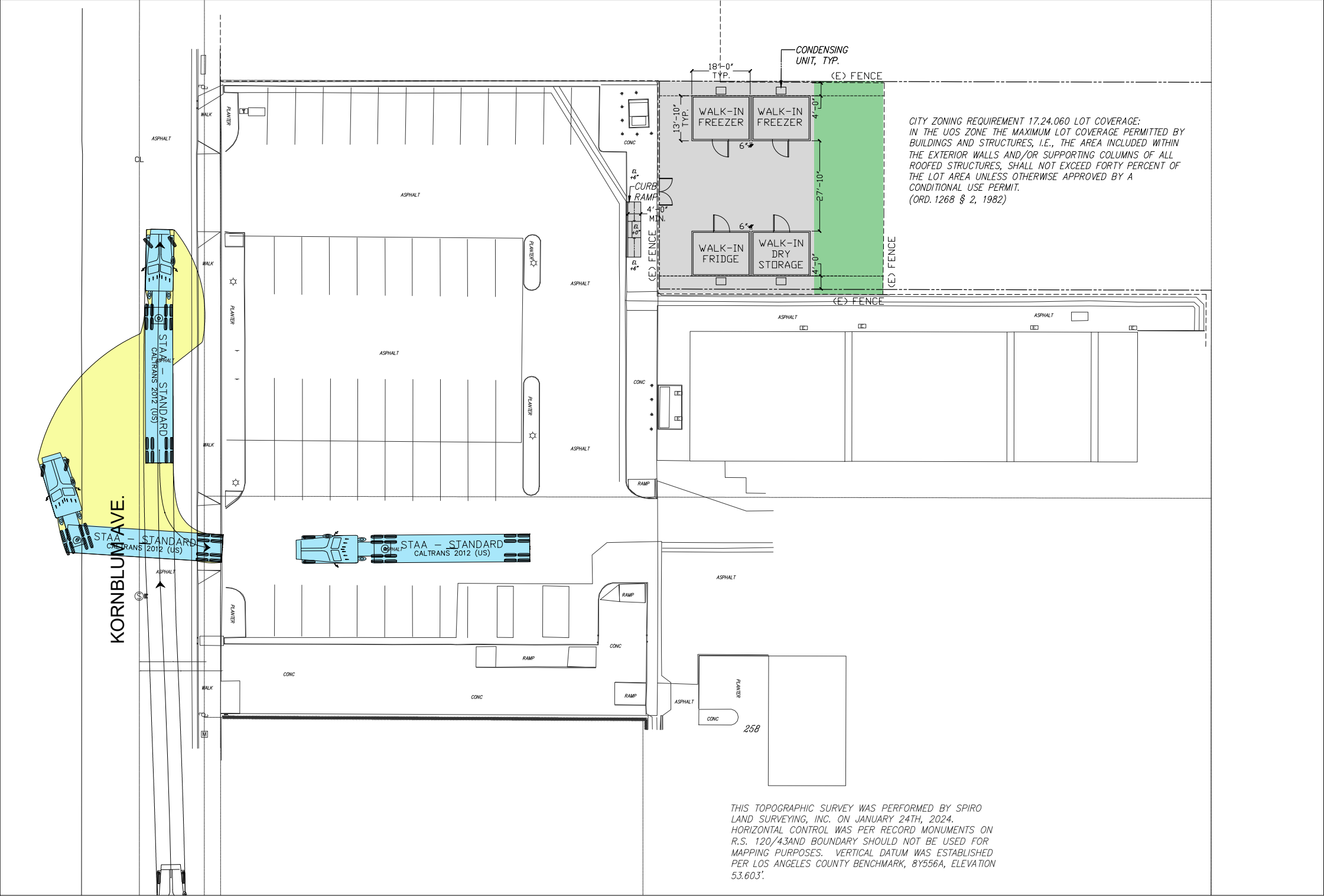
- FREEZER UNITS ARE NOT DSA COMPLIANT
- CURB CUT, FENCE GATE AND PLANTER ADJUSTMENT NEEDED
- TRUCK FRONT WILL ENCROACHES ON BOTH THE EASTERN AND WESTERN SIDEWALK
- NEED TO COMMUNICATE WITH LOCAL STREET PARKING USERS
- DOLLY UP NEW CURB RAMP TO THE NEW FREEZER UNITS



STAA - STANDARD

feet

Tractor Width	: 8.50	Lock to Lock Time	: 6.0
Trailer Width	: 8.50	Steering Angle	: 26.3
Tractor Track	: 8.50	Articulating Angle	: 70.0
Trailer Track	: 8.50		



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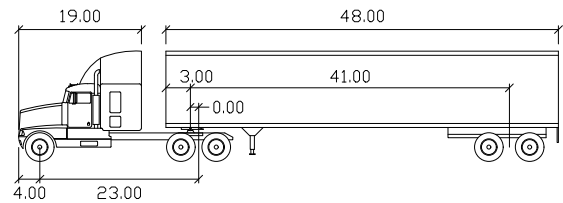
OPTION A-1 _ 67' TRAILER



OPTION A-2 (NOT FEASIBLE)

8.5 X 67' TRAILER TO BACK UP INTO THE (E) PARKING LOT THROUGH THE NORTHERN DRIVEWAY

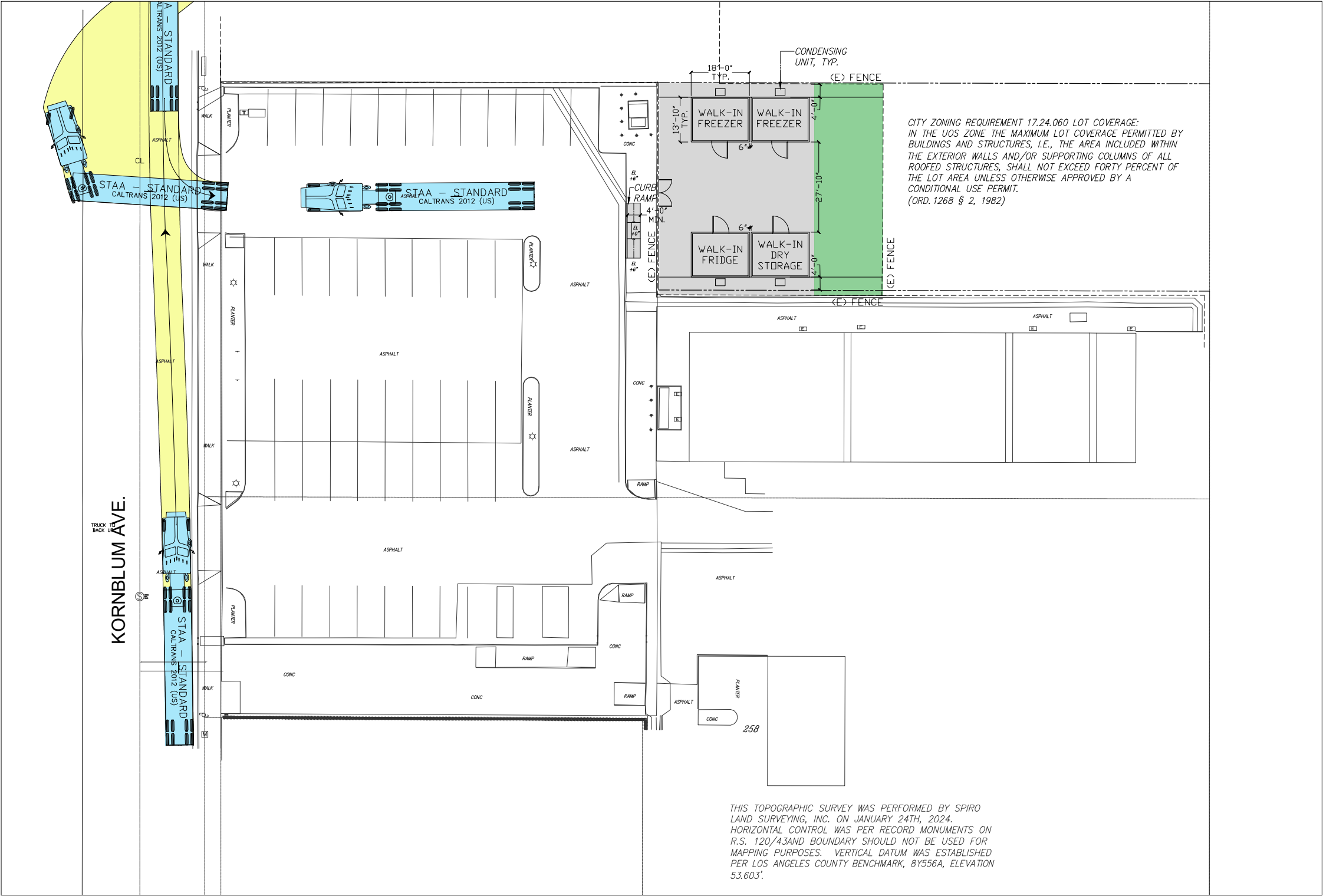
- FREEZER UNITS ARE NOT DSA COMPLIANT
- CURB CUT, FENCE GATE AND PLANTER ADJUSTMENT NEEDED
- TRUCK FRONT WILL ENCROACHES ON BOTH THE EASTERN AND WESTERN SIDEWALK
- NEED TO COMMUNICATE WITH LOCAL STREET PARKING USERS
- DOLLY UP NEW CURB RAMP TO THE NEW FREEZER UNITS



STAA - STANDARD

feet

Tractor Width	: 8.50	Lock to Lock Time	: 6.0
Trailer Width	: 8.50	Steering Angle	: 26.3
Tractor Track	: 8.50	Articulating Angle	: 70.0
Trailer Track	: 8.50		



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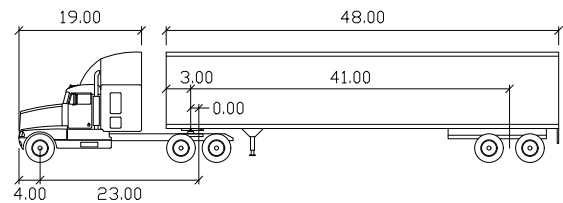
OPTION A-2 _ 67' TRAILER



OPTION A-3 (NOT FEASIBLE)

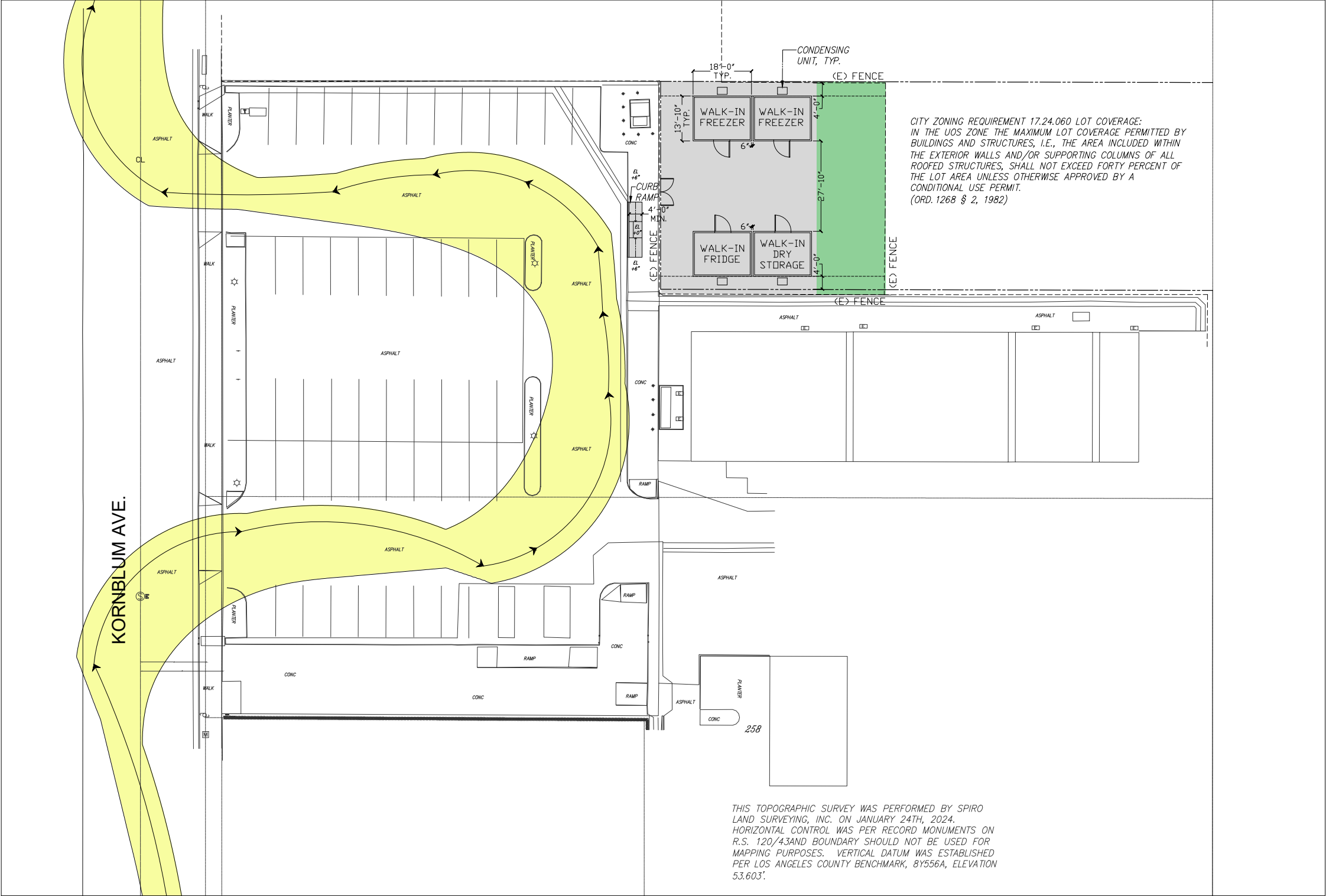
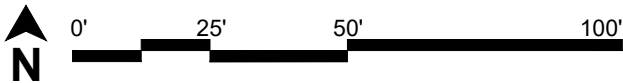
8.5 X 67' TRAILER TO NAVIGATE THE (E) PARKING LOT

- FREEZER UNITS ARE NOT DSA COMPLIANT
- NOT ENOUGH TURNING RADIUS IN THE (E) PARKING LOT FOR THE TRAILER
- AFFECTS A LOT OF (E) PARKING SPACES



STAA - STANDARD

	feet	
Tractor Width	: 8.50	Lock to Lock Time : 6.0
Trailer Width	: 8.50	Steering Angle : 26.3
Tractor Track	: 8.50	Articulating Angle : 70.0
Trailer Track	: 8.50	



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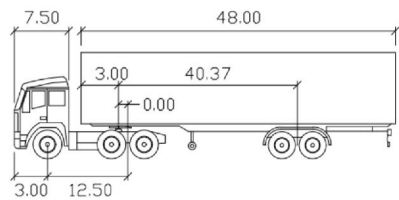
OPTION A-3 _ 67' TRAILER



OPTION A-4 (NOT FEASIBLE)

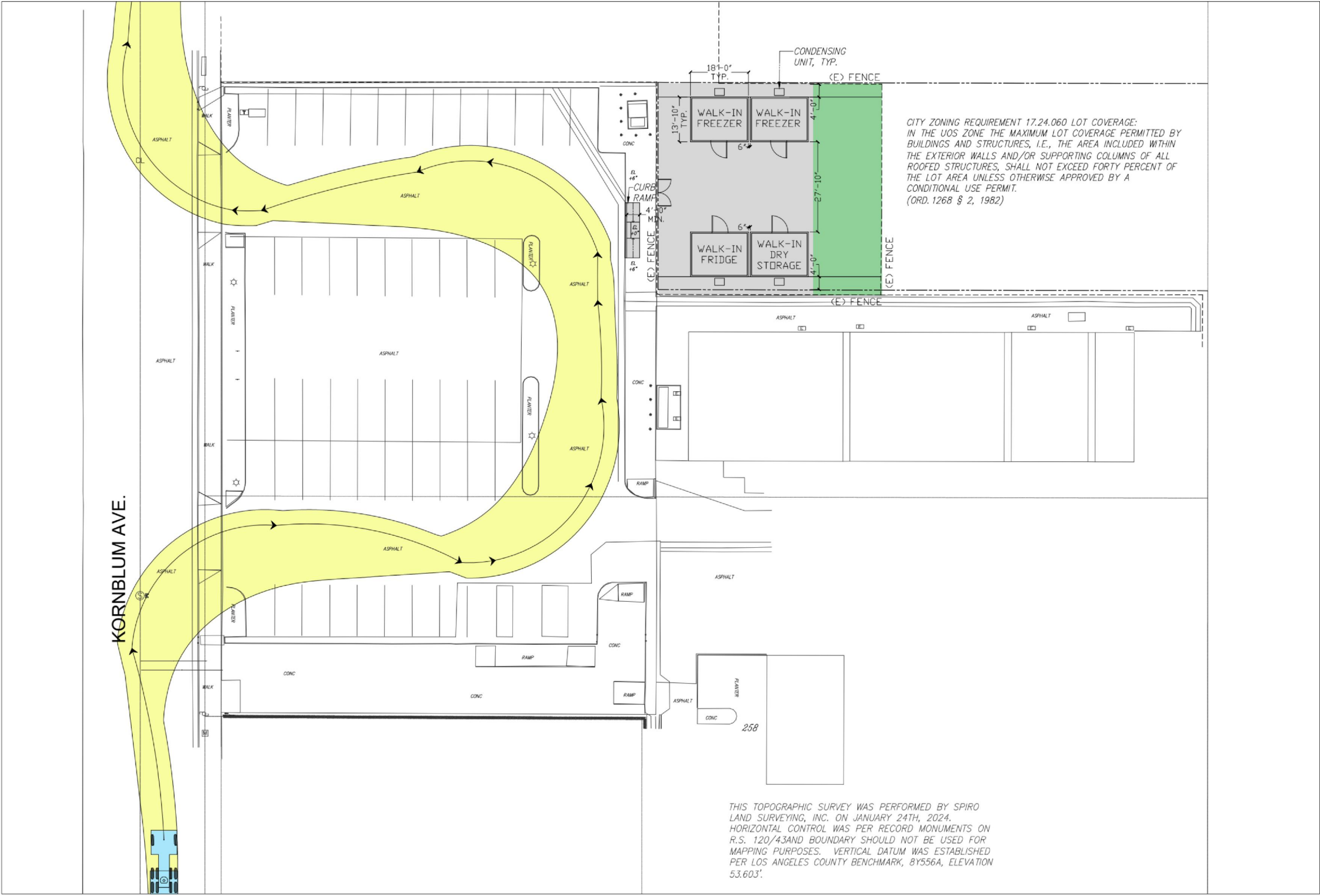
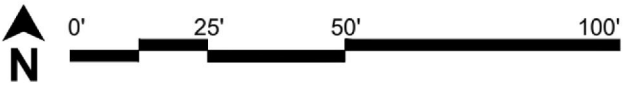
8.5 X 55.5' TRAILER TO NAVIGATE THE (E) PARKING LOT

- FREEZER UNITS ARE NOT DSA COMPLIANT
- NOT ENOUGH TURNING RADIUS IN THE (E) PARKING LOT FOR THE TRAILER
- AFFECTS A LOT OF (E) PARKING SPACES



WB-55

	feet	
Tractor Width	: 8.00	Lock to Lock Time : 6.0
Trailer Width	: 8.50	Steering Angle : 17.7
Tractor Track	: 8.00	Articulating Angle : 70.0
Trailer Track	: 8.50	



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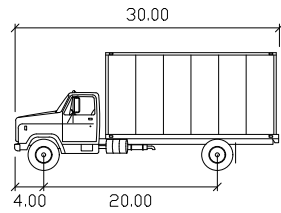
OPTION A-4 _ 55.5' TRAILER



OPTION B

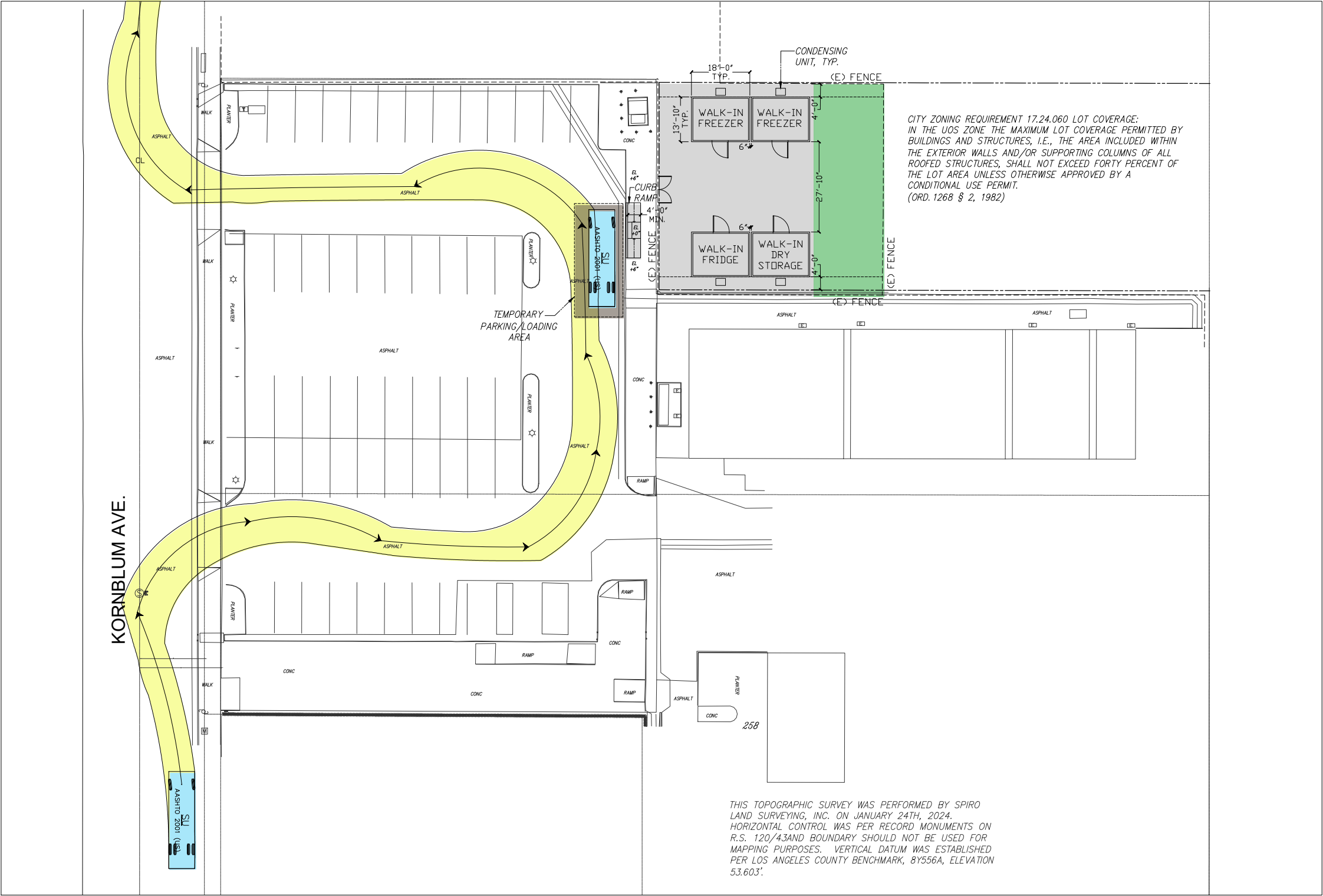
8' X 30' TRUCK TO NAVIGATE THE (E) PARKING LOT AND PARK/LOAD ALONG THE EASTERN SIDEWALK

- FREEZER UNITS ARE NOT DSA COMPLIANT
- PROVIDE TEMPORARY PARKING/LOADING IN THE ALONG THE EASTERN SIDEWALK
- (E) PARKING SPACES ARE NOT AFFECTED



SU

	feet
Width	: 8.00
Track	: 8.00
Lock to Lock Time	: 6.0
Steering Angle	: 31.8



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OPTION B _ 30' TRUCK

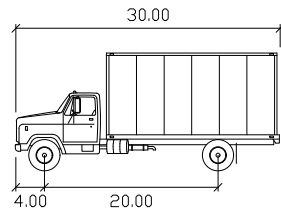


This document is incomplete and may not be used for regulatory approval, permit or construction.

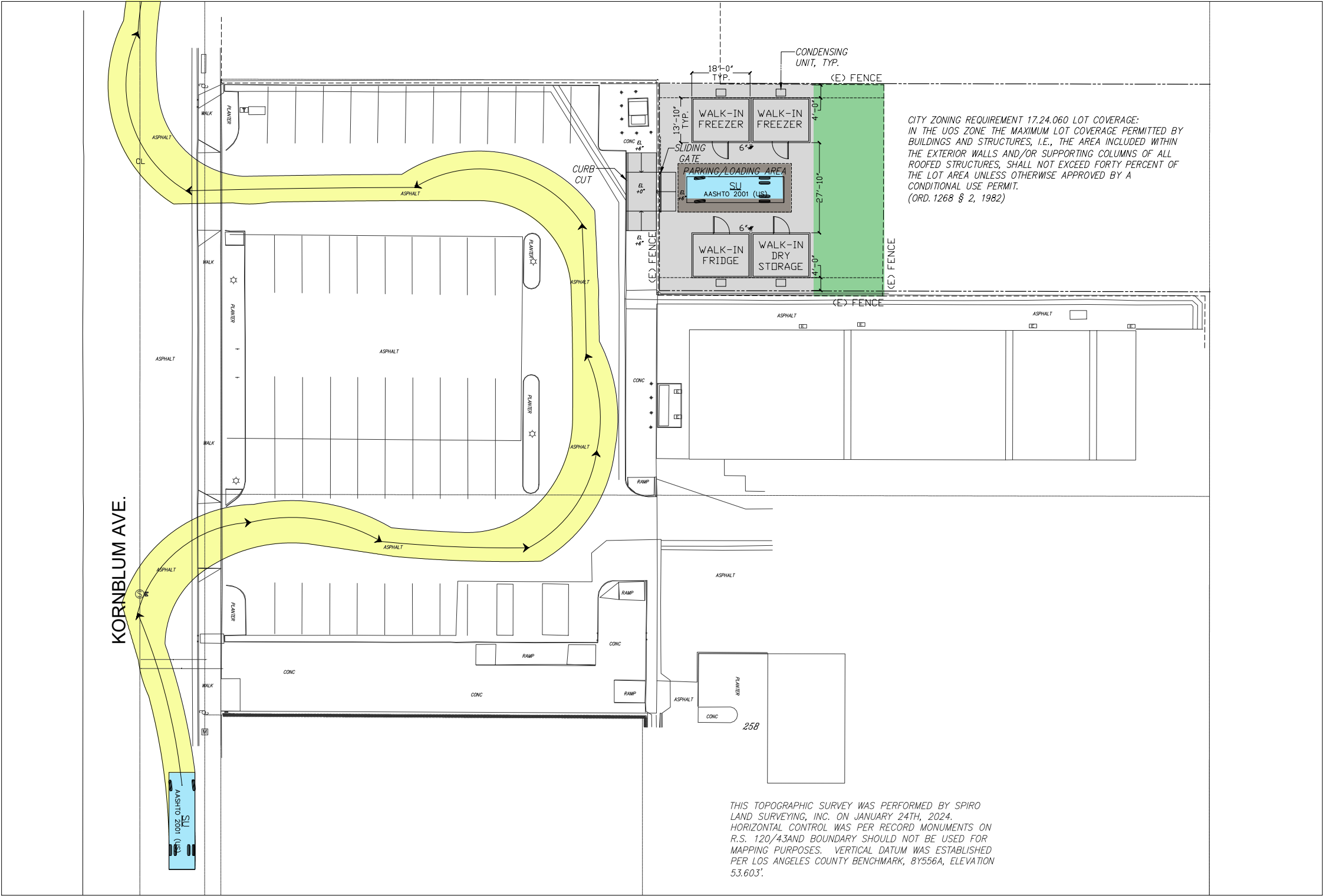
OPTION B-1

8' X 30' TRUCK TO NAVIGATE THE (E) PARKING LOT AND PARK/LOAD IN THE FREEZER AREA

- FREEZER UNITS ARE NOT DSA COMPLIANT
- PROVIDE TEMPORARY PARKING/LOADING IN THE NEW FREEZER UNITS AREA
- (E) PARKING SPACES ARE NOT AFFECTED



SU
feet
Width : 8.00
Track : 8.00
Lock to Lock Time : 6.0
Steering Angle : 31.8



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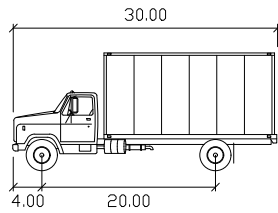
OPTION B-1 _ 30' TRUCK



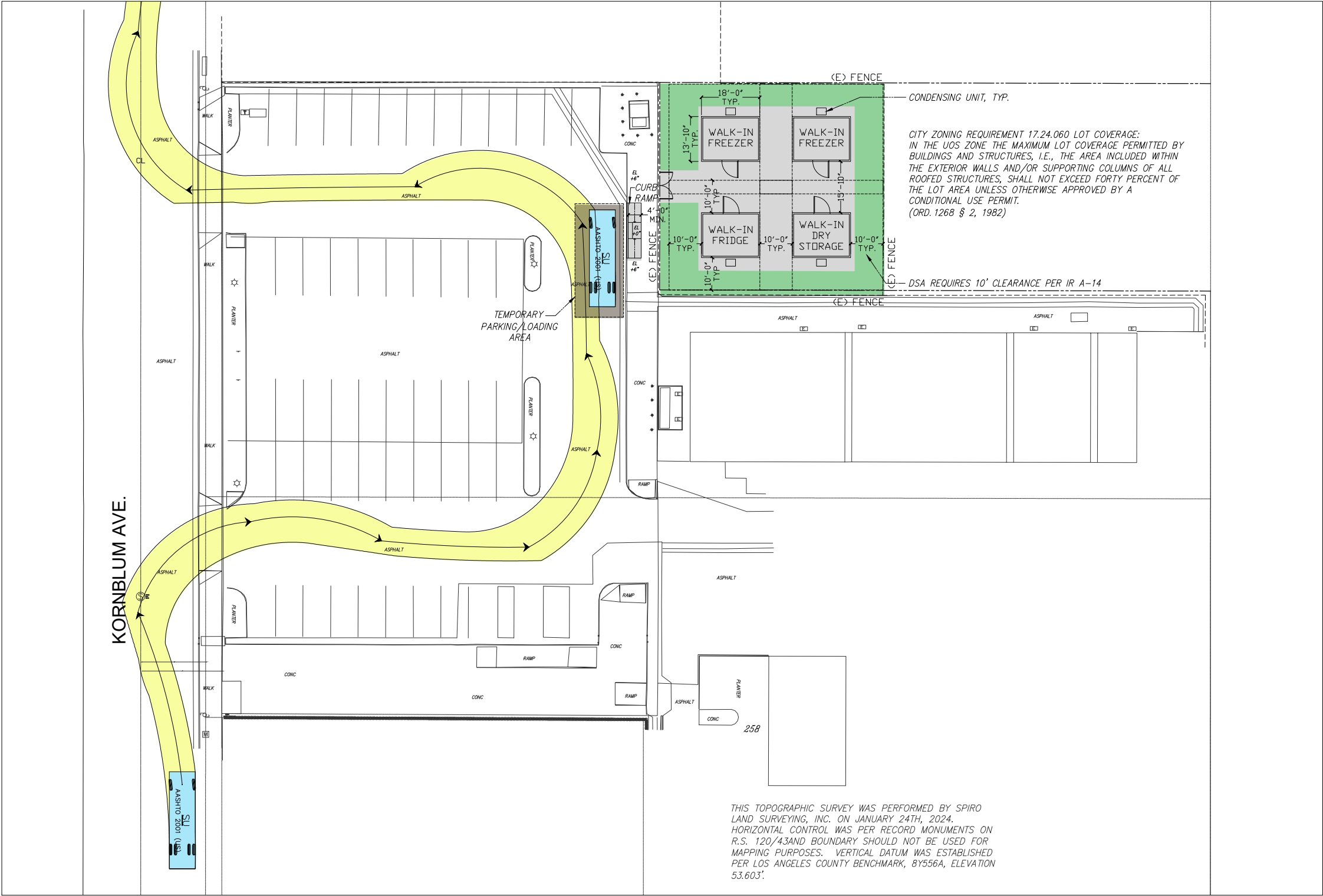
OPTION C

8.5 X 30' TRUCK TO PARK ON KORNBLUM AVE.

- FREEZER UNITS ARE DSA COMPLIANT
- PROVIDE TEMPORARY PARKING/LOADING IN THE NEW FREEZER UNITS AREA



feet
Width : 8.00
Track : 8.00
Lock to Lock Time : 6.0
Steering Angle : 31.8



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OPTION C _ 30' TRUCK _ DSA COMPLIANT



APPENDIX B

Interview Criteria and Scoring (if interviews are conducted)

Proposers meeting or exceeding the minimum total qualification points through Step 2 may be invited to interview with the District. The subject matter for the interview will be at the District's discretion but shall include, at a minimum, the following topics.

Item	Maximum Qualification Points	Qualification Points
1. Past Projects/Experience: Proposer's articulation of Proposer's history, education, and background; Proposer's experiences working with similar, past projects; issues faced and how addressed (i.e. claims, bonding/surety involvement, owner relations, citations, etc.); and questions, concerns, and highlights from the SOQ.	1-35	
2. Projects: Proposer's articulation of how it will perform preliminary services, construct the Projects, its ideas related to constructability, and other construction-specific ideas, concerns, or related issues (i.e. schedules, budgets, subcontractor selection, etc.).	1-30	
3. Personnel/Leadership: Proposer's articulation of its design-build team of personnel, leadership, Architect/Engineer, subcontractor relations, apprenticeship program, etc.	1-25	
4. Overall Ability and General Suitability. Proposer's articulation of its overall skills, ability to complete projects, design-build projects, and general suitability for the District's purposes (i.e. implementation of District policies and procedures, compliance with District Programs, political atmosphere, additional information, etc.)	1-10	
MAXIMUM POINTS	100	

APPENDIX C

HAWTHORNE SCHOOL DISTRICT Nutrition Services Department

Procurement Code of Conduct

In accordance with the general procurement standards in Title 2, *Code of Federal Regulations (2 CFR)*, Section 200.318©, and in conjunction with the District's Board Policy and Purchasing Policy, Regulations, and Procedures, these written standards govern the actions of the District employees or agents who engage in the selection, award and administration of contracts funded by federal awards.

Any person employed by the School Food Authority (SFA), in the Nutrition Services Department, who purchases goods and services, or is involved in the purchasing process for the SFA, shall be bound by this code and shall:

1. Avoid the intent and appearance of unethical or compromising practice in relationships, actions, and communications;
2. Diligently follow all lawful instructions while using professional judgment, reasonable care, and exercising only the authority granted;
3. Conduct all purchasing activities in accordance with the laws, while remaining alert to and advising the SFA regarding the legal ramifications of the purchasing decisions;
4. Identify and strive to eliminate participation of any individual in operational situations where a conflict of interest may be involved;
5. Never solicit or accept money, loans, credits, or prejudicial discounts, and discourage and avoid the acceptance of gifts, entertainment, favors, or services from present or potential suppliers which might influence or appear to influence purchasing decisions;
6. Promote positive supplier relationships through impartiality in all phases of the purchasing cycle;
7. Display the highest ideals of honor and integrity in all public and personal relationships in order to merit the respect and inspire the confidence of the public being served;
8. Provide an environment where all business concerns, large or small, majority- or minority-owned, are afforded an equal opportunity to compete for the SFA's business.

APPENDIX D

SAMPLE AGREEMENT

DESIGN-BUILD AGREEMENT TABLE OF CONTENTS

- 1. The Project.**
 - 1.1. General.
 - 1.2. Description.
 - 1.3. The Work.
 - 1.4. Contract Price.
 - 1.5. Contract Time.
 - 1.6. Notice to Proceed.
- 2. Security for DBE's Performance of Obligations Under the Contract Documents.**
 - 2.1. Payment Bond; Performance Bond.
- 3. Design Services.**
 - 3.1. General.
 - 3.2. Design Consultants; Design Disciplines.
 - 3.3. Design Services Standard of Care.
 - 3.4. Obligation to Design Within Construction Costs.
 - 3.5. Conformity to District Specifications and Standards.
 - 3.6. DBE Design Services Project Manager.
 - 3.7. Design Documents.
 - 3.7.1. Scope of Design Documents.
 - 3.7.2. District Review of Design Documents.
 - 3.7.3. DBE Preparation of Design Documents.
 - 3.8. Construction Documents.
 - 3.9. Limitations on District Acceptance of Design Documents.
 - 3.10. Permits, Approvals.
- 4. Construction Services.**
 - 4.1. General.
 - 4.2. California DBEs' License.
 - 4.3. DBE/Subcontractor Registration
 - 4.4. District.
 - 4.4.1. **District Representative.**
 - 4.4.2. **The Project Inspector.**
 - 4.4.2.1. **Access to Work.**
 - 4.4.2.2. **Limitations on Project Inspector.**
 - 4.4.2.3. **Compliance with Project Inspector's Corrective Requirements.**
 - 4.4.3. **Other Inspections.**
 - 4.4.4. **District's Right to Suspend Work.**
 - 4.4.4.1. **Adjustments to Contract Price and Contract Time.**
 - 4.4.5. District Right to Stop Work.
 - 4.4.6. District Partial Occupancy or Use.
 - 4.4.7. No Acceptance of Defective or Non-Conforming Work.
 - 4.5. District Separate DBEs.
 - 4.6. DBE Construction Activities.
 - 4.6.1. Field Measurements.
 - 4.6.2. Dimensions; Layouts and Field Engineering.
 - 4.6.3. Work in Accordance With Contract Documents.
 - 4.6.4. Subsurface Conditions.
 - 4.6.5. Archaeological Finds.

- 4.6.6. Supervision and Construction Procedures.
 - 4.6.6.1. Supervision of the Work.
 - 4.6.6.2. Responsibility for the Work.
 - 4.6.6.3. Layouts.
 - 4.6.6.4. Construction Utilities.
 - 4.6.6.5. Existing Utilities; Removal, Relocation and Protection.
- 4.6.7. Conferences and Meetings.
 - 4.6.7.1. Pre-Construction Conference.
 - 4.6.7.2. Progress Meetings.
 - 4.6.7.3. Special Meetings.
 - 4.6.7.4. Minutes of Meetings.
- 4.6.8. Temporary Sanitary Facilities.
- 4.6.9. Noise and Dust Control.
 - 4.6.9.1. Noise Control.
 - 4.6.9.2. Dust Control.
 - 4.6.9.3. DBE Failure to Comply.
- 4.6.10. Hours and Days of Work at the Site.
- 4.6.11. Work Hours/Days.
 - 4.6.11.1. Limitations on Work Hours/Days.
- 4.6.12. Labor and Materials.
 - 4.6.12.1. Payment for Labor, Materials and Services.
 - 4.6.12.2. Employee Discipline.
 - 4.6.12.3. DBE's Superintendent/Assistant Superintendent.
- 4.6.13. Prohibition on Harassment.
 - 4.6.13.1. District's Policy Prohibiting Harassment.
 - 4.6.13.2. DBE's Adoption of Anti-Harassment Policy.
 - 4.6.13.3. Prohibition on Harassment at the Site.
- 4.6.14. Taxes.
- 4.6.15. Compliance With Laws.
- 4.6.16. Submittals.
 - 4.6.16.1. Waiver of Submittals.
 - 4.6.16.2. No Substitutions of Materials/Equipment Without District Review.
 - 4.6.16.3. District Review of Submittals for Substitutions of Materials Equipment.
 - 4.6.16.4. Deferred Approval Items.
- 4.6.17. Materials and Equipment.
 - 4.6.17.1. Specified Materials, Equipment.
 - 4.6.17.2. No Substitutions or Alternatives.
 - 4.6.17.3. Placement of Material and Equipment Orders.
 - 4.6.17.4. District's Right to Place Orders for Materials and/or Equipment.
- 4.6.18. Safety.
 - 4.6.18.1. Safety Programs.
 - 4.6.18.2. Safety Precautions.
 - 4.6.18.3. Safety Signs, Barricades.
 - 4.6.18.4. Safety Notices.
 - 4.6.18.5. Safety Coordinator.
 - 4.6.18.6. Emergencies; First Aid.
- 4.6.19. Hazardous Materials.
 - 4.6.19.1. General.
 - 4.6.19.2. Prohibition on Use of Asbestos Construction Building Materials ("ACBMs").
 - 4.6.19.3. Disposal of Hazardous Materials.
- 4.6.20. Maintenance of Documents.
 - 4.6.20.1. Documents at Site.
 - 4.6.20.2. Maintenance of Record Drawings.
- 4.6.21. Use of Site.
- 4.6.22. Clean-Up.

- 4.6.23. Patents and Royalties.
- 4.6.24. Cutting and Patching.
- 4.6.25. Encountering of Hazardous Materials.
- 4.7. **Wage Rates; Employment of Labor.**
 - 4.7.1. **Determination of Prevailing Rates.**
 - 4.7.2. **Payment of Prevailing Rates.**
 - 4.7.3. **Prevailing Rate Penalty.**
 - 4.7.4. **Payroll Records.**
 - 4.7.5. **Hours of Work.**
 - 4.7.5.1. **Limits on Hours of Work.**
 - 4.7.5.2. **Penalty for Excess Hours.**
 - 4.7.5.3. **DBE Responsibility.**
 - 4.7.6. **Apprentices.**
 - 4.7.6.1. Employment of Apprentices.
 - 4.7.6.2. Apprenticeship Certificate.
 - 4.7.6.3. Ratio of Apprentices to Journeymen.
 - 4.7.6.4. Exemption from Ratio.
 - 4.7.6.5. Contribution to Trust Funds.
 - 4.7.6.6. DBE's Compliance.
- 4.8. Employment of Independent DBEs.
- 4.9. Assignment of Antitrust Claims.
- 4.10. DBE Responsibility.
- 4.11. Subcontractors.
 - 4.11.1. Subcontracts.
 - 4.11.2. Subcontractors List.
 - 4.11.3. Substitution of Listed Subcontractor.
 - 4.11.3.1. Substitution Process.
 - 4.11.3.2. Responsibilities of DBE Upon Substitution of Subcontractor.
 - 4.11.4. Subcontractors' Work.
- 4.12. Correction or Completion of the Work After Substantial Completion.
 - 4.12.1. Substantial Completion.
 - 4.12.2. Punchlist.
 - 4.12.3. Time for Completing Punchlist Items.
 - 4.12.4. Final Completion.
 - 4.12.5. Final Acceptance.
- 4.13. Construction Schedule.
 - 4.13.1. Submittal of Preliminary Construction Schedule.
 - 4.13.1.1. Review of Preliminary Construction Schedule.
 - 4.13.1.2. Preparation and Submittal of Contract Construction Schedule.
 - 4.13.1.3. Revisions to Approved Construction Schedule.
 - 4.13.1.4. Updates to Approved Construction Schedule.
 - 4.13.1.5. DBE Responsibility for Construction Schedule.
 - 4.13.2. Adjustment of Contract Time.
 - 4.13.2.1. Excusable Delays.
 - 4.13.2.2. Compensable Delays.
 - 4.13.2.3. Unexcusable Delays.
 - 4.13.3. Adjustment of Contract Time.
 - 4.13.3.1. Procedure for Adjustment of Contract Time.
 - 4.13.3.2. Limitations Upon Adjustment of Contract Time on Account of Delays.
- 4.14. Liquidated Damages.
 - 4.14.1. Generally
 - 4.14.2. District's Right to Take-Over Work.
- 4.15. Payment of Contract Price.
 - 4.15.1. No Adjustment to Contract Price.
 - 4.15.2. Reimbursable Expenses.
 - 4.15.3. DBE Billings for Payment of the Design Services and Construction Services Contract Price.

- 4.15.4.District Payments for Design and Construction Services.
- 4.15.5.Disbursement of Design Services Contract Price.
 - 4.15.5.1.Initial Payment.
 - 4.15.5.2.Interim Payments.
 - 4.15.5.3.Final Payment.
- 4.15.6.Disbursement of Construction Services Contract Price.
 - 4.15.6.1.Allocation of Construction Services Contract Price.
 - 4.15.6.2.Disbursement of Construction Services.
- 4.15.7.Progress Payments for Construction Services Contract Price.
 - 4.15.7.1.Applications for Progress Payments.
 - 4.15.7.2.District's Review of Applications for Progress Payments.
 - 4.15.7.3.Review of Applications for Progress Payments.
- 4.15.8.District's Disbursement of Progress Payments.
 - 4.15.8.1.Timely Disbursement of Progress Payments.
 - 4.15.8.2.Untimely Disbursement of Progress Payments.
 - 4.15.8.3.District's Right to Disburse Progress Payments by Joint Checks.
 - 4.15.8.4.No Waiver of Defective or Non-Conforming Work.
 - 4.15.8.5.Progress Payments for Changed Work.
 - 4.15.8.6.Materials or Equipment Not Incorporated Into the Work.
 - 4.15.8.6.1.Limitations Upon Payment.
 - 4.15.8.6.2.Materials or Equipment Delivered and Stored at the Site.
 - 4.15.8.6.3.Materials or Equipment Not Delivered or Stored at the Site.
 - 4.15.8.6.4.Materials or Equipment in Fabrication or Transit.
 - 4.15.8.7.Exclusions From Progress Payments.
 - 4.15.8.8.CSI Rebates.
- 4.15.9.Title to Work.
- 4.15.10. Substitute Security for Retention.
- 4.15.11. Final Payment.
 - 4.15.11.1. Application for Final Payment.
 - 4.15.11.2. Conditions Precedent to Disbursement of Final Payment.
 - 4.15.11.3. Disbursement of Final Payment.
 - 4.15.11.4. Waiver of Claims.
 - 4.15.11.5. Claims Asserted After Final Payment.
 - 4.15.11.6. Withholding of Payments.
 - 4.15.11.7. Payments to Subcontractors.
- 4.16. Changes.
 - 4.16.1.Changes in the Work During Construction Phase.
 - 4.16.2.DBE Submittal of Data.
 - 4.16.3.Adjustment to Contract Price and Contract Time on Account of Changes to the Work.
 - 4.16.3.1.Mutual Agreement.
 - 4.16.3.2.Determination by the District.
 - 4.16.3.3.Basis for Adjustment of Contract Price.
 - 4.16.3.3.1.Labor.
 - 4.16.3.3.2.Materials and Equipment.
 - 4.16.3.3.3.Construction Equipment.
 - 4.16.3.3.4.Mark-up on Costs of Changes to the Work.
 - 4.16.3.3.5.DBE Maintenance of Records.
 - 4.16.3.3.6.Adjustment to Contract Time.
 - 4.16.4.Change Orders.
 - 4.16.4.1.DBE Notice of Changes.
 - 4.16.4.2.Disputed Changes.
 - 4.16.5.Emergencies.
 - 4.16.6.Minor Changes in the Work.
 - 4.16.7.Unauthorized Changes.
- 4.17. Tests; Inspections; Observations.
 - 4.17.1.Testing/Inspection Laboratory.

- 4.17.2. Additional Tests, Inspections and Approvals.
- 4.17.3. Delivery of Certificates'
- 4.17.4. Timeliness of Tests, Inspections and Approvals
- 4.18. Correction of Work; Warranties.
 - 4.18.1. Uncovering of Work.
 - 4.18.2. Rejection of Work.
 - 4.18.3. Correction of Work.
 - 4.18.4. Failure of DBE to Correct Work.
 - 4.18.5. Acceptance of Defective or Non-Conforming Work.
 - 4.18.6. Workmanship and Materials.
 - 4.18.7. Warranty Requirements.
 - 4.18.8. Meters.
 - 4.18.9. Warranty Work.
 - 4.18.10. Survival of Warranties.

5. Post Construction Services

- 5.1. Final Completion.
- 5.2. Rebate/Incentive Programs.
 - 5.2.1. DBE Assistance.
 - 5.2.2. District as Owner.
- 5.3. Performance Guarantee.
- 5.4. Close-Out Documents.
 - 5.4.1. Assembly/Transmittal of Close-Out Documents.
 - 5.4.2. Governmental Agency Close-Out.
 - 5.4.3. As-Built Drawings.
 - 5.4.4. Warranties.

6. Insurance; Indemnity and Bonds.

- 6.1. Design and Construction Phase Insurance Requirements.
 - 6.1.1. Workers' Compensation Insurance; Employer's Liability Insurance.
 - 6.1.2. Commercial General Liability and Property Insurance.
 - 6.1.3. Design Phase Insurance.
 - 6.1.4. Builder's Risk "All-Risk" Insurance.
- 6.2. Insurance Policy Requirements.
 - 6.2.1. Minimum Coverage Amounts.
 - 6.2.2. Required Qualifications of Insurers.
- 6.3. Evidence of Insurance; Subcontractor's Insurance.
- 6.4. Maintenance of Insurance.
- 6.5. DBE's Insurance Primary.
- 6.6. Indemnity.

7. Termination; Suspension.

- 7.1. Termination for Default.
- 7.2. District's Right to Suspend.
- 7.3. District's Termination for Convenience.
- 7.4. DBE Suspension of Services.
- 7.5. DBE Obligations Upon Termination.

8. District Responsibilities.

- 8.1. Access to Site.
- 8.2. Compliance with Laws and Agreements.
- 8.3. Cooperation.
- 8.4. Storage.

9. Miscellaneous.

- 9.1. Governing Law; Interpretation.

- 9.2. Ambiguities; Conflicting Terms/Provisions.
- 9.3. Successors and Assigns.
- 9.4. Cumulative Rights and Remedies; No Waiver.
- 9.5. Severability.
- 9.6. No Assignment by DBE.
- 9.7. Gender and Number.
- 9.8. Independent DBE Status.
- 9.9. Notices.
- 9.10. Disputes; Continuation of Work.
- 9.11. Dispute Resolution; Arbitration.
 - 9.11.1. Claims Under \$375,000.00.
 - 9.11.2. Arbitration.
 - 9.11.3. DBE Compliance with California Government Code § 900 et seq.
- 9.12. Limitation on Damages.
- 9.13. Attorneys' Fees.
- 9.14. Provisions Required by Law Deemed Inserted.
- 9.15. Days.
- 9.16. Use of Design Documents.
 - 9.16.1. Ownership.
 - 9.16.2. Electronic Files.
- 9.17. Definitions.
- 9.18. Entire Agreement.
- 9.19. Authority to Execute.

Exhibits

- Exhibit A - Scope of Work
- Exhibit B - Labor and Materials Payment Bond
- Exhibit C - Performance Bond
- Exhibit D - Subcontractor List
- Exhibit E - Certificate of Workers Compensation Insurance
- Exhibit F - Drug-Free Workplace Certificate
- Exhibit G - Warranty
- Exhibit H - Student Safety Certification

DESIGN-BUILD AGREEMENT

THIS DESIGN-BUILD AGREEMENT ("Agreement") is made in the County of Los Angeles, State of California, by and between **HAWTHORNE SCHOOL DISTRICT**, a California School District ("District" or "HSD"), and Design Build Entity [REDACTED], having its principal offices at [REDACTED] ("DBE") (DBE and the District are hereinafter collectively referred to as "the Parties" or, generally, as a "Party") and shall be effective as of [REDACTED], 2024.

WHEREAS, the subject of this Agreement is a design-build project as defined in Education Code § 17250.15(c), described as the Outdoor Walk-In Refrigerator and Freezer Units Project ("Project") for a design-build construction delivery method for the Outdoor Walk-in Refrigerator and Freezer Unit Turnkey Project (the "Project"), to be located at the HSD Learning Center, 13928 Kornblum Ave., Hawthorne, CA 90250;

WHEREAS, the scope of work, services, materials, goods and equipment to be provided by DBE as described in this Agreement that are necessary or prudent in order to complete the design and construction of those improvements described in the attached Project Scope Description (the "Scope"), incorporated herein as Exhibit A;

WHEREAS, DBE is an entity, comprising a [REDACTED], which provides, or is composed of separate entities which together provide architectural design, professional engineering, construction services and all related services necessary for the complete design and construction of a new outdoor walk-in refrigerator and freezer unit;

WHEREAS, the District issued a written Request for Qualifications as required under Education Code § 17250.25(b) ("RFP") pursuant to which DBE was deemed qualified for the Project, whereupon DBE was invited to submit a Proposal in response to the District's Request for Proposals ("RFP") issued in accordance with Education Code § 17250.25(d) soliciting proposals from qualified professional public works design and construction firms, which Proposal by DBE was determined by the District based on the representations made therein to comprise the best value Proposal as defined in Education Code §§ 17250.15(a) and 17250.25(f); and

WHEREAS, the District and DBE desire by this Agreement to establish terms and conditions relating to the Project.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged by the Parties and each of them, the Parties agree as follows:

1. The Project.

- 1.1. General. The Project shall consist of an outdoor walk-in refrigerator and freezer unit to be located at the HSD Learning Center, 13928 Kornblum Avenue in Hawthorne, California 90250.
- 1.2. Project Description. The Project description in the Recitals, above, is hereby incorporated by reference and shall be the operative definitions of the term "Project" throughout this Agreement.
- 1.3. The Work. DBE shall provide all services, labor, materials and equipment to complete the Project comprising the following components: (i) all architectural, design and/or engineering services, including, without limitation, all structural, civil, mechanical and electrical engineering necessary to produce a reasonably complete and accurate set of Construction Documents for the Project, and all construction observation and administration to ensure Construction Services are consistent in every material respect with the Construction Documents ("Design Services"); (ii) complete construction of the Project, including, without limitation, all site preparation, procurement of all materials and equipment, and construction, erection and installation necessary to the Project ("Construction Services"); (iii) equipment start-up ("Start-Up Services"); and (iv) equipment commissioning ("Commissioning Services"). DBE shall provide, on a turnkey basis, all professional design and engineering services for the design and, if and when required, preparation of design documents necessary to secure the requisite approvals and final project completion certification from the Division of State Architect ("DSA"), together with all construction services including, without limitation, equipment procurement, supervision, labor, materials, equipment, tools, construction equipment and machinery, utilities, transportation, and procurement of DBE Permits for the Project in accordance with this Agreement (hereinafter collectively referred to as "the Work"), and other facilities, items and services, in each case to the extent necessary to

complete the Work in accordance with the Scope of Work (Exhibit A). DBE shall have sole control over the engineering, design and construction means, methods, techniques, sequences, and procedures and for coordination of all portions of the Work unless otherwise provided herein.

- 1.4. Contract Price. The District shall pay the DBE as full consideration for the DBE's full, complete and faithful performance of the DBE's obligations under the Contract Documents of [REDACTED] Dollars (\$ [REDACTED]) for the Project.

1.4.1. The District's payment of the Contract Price shall be in accordance with Article 4.11 of this Agreement.

1.5. Contract Time.

1.5.1. DBE shall achieve Substantial Completion on or before [REDACTED], and Final Completion on or before [REDACTED]. The deadlines for Substantial and Final Completion shall be extended only as expressly provided herein. In the event that the District provides its approval of Design or Construction Documents in less than the maximum number of days allotted under various sections of this Agreement, DBE will make reasonable efforts to expeditiously commence the next phase of work; provided, however, that DBE shall not be obligated to commence the next phase of work by any particular date and it shall not be required to accelerate or otherwise shorten the deadlines for Substantial and Final Completion under this Agreement.

1.6. Notice to Proceed. The District shall issue the Notice to Proceed for all Work to be performed hereunder (the "NTP Date"). If the NTP Date is later than [REDACTED], then DBE shall be entitled to a day for day extension to the Project Schedule and/or an equitable increase in the Contract Price. DBE shall not commence the Work hereunder until it receives the Notice to Proceed.

2. Security for DBE's Performance of Obligations Under the Contract Documents

2.1. Payment Bond; Performance Bond. Prior to commencement of the Work, the DBE shall furnish a Performance Bond in the form attached hereto as Exhibit C as security for DBE's faithful performance of the Work and a Labor and Material Payment Bond in the form provided by District in the form attached hereto as Exhibit B as security for payment of persons or entities performing work, labor or furnishing materials in connection with DBE's performance of the Work under the Contract Documents. The Performance Bond will guarantee DBE's completion of the Work, and will remain in force for one year from the date of final acceptance of the Work and guarantee DBE's performance of any and all warranty work during that period. The Payment Bond will remain in force for the duration of the applicable local, state or federal law. Unless otherwise stated in the Special Conditions, the amounts of the Performance Bond and the Payment Bond required hereunder shall be one hundred percent (100%) of the cost of the Work. Said Labor and Material Payment Bond and Performance Bond shall be in the form and content set forth in attached Exhibits B and C to this Agreement. The failure or refusal of the DBE to furnish either the Performance Bond or the Labor and Material Payment Bond in strict conformity with this Section may be deemed by the District as a default by the DBE of a material obligation hereunder. Upon request of the DBE, the District may consider and accept, but is not obligated to do so, multiple sureties on such bonds. The Surety on any bond required under the Contract Documents shall be an Admitted Surety Insurer as that term is defined in California Code of Civil Procedure § 995.120.

3. Design Services.

3.1. General. All of the Design Services provided by or through DBE under this Agreement shall be provided and performed consistent with professional skill and care and in such a manner as to avoid hindrance, unnecessary interruption or delay to the orderly progress and completion of the Design Services. Design Services consist generally of the preparation of Drawings and Specifications with sufficient accuracy, clarity and completeness to reflect the Scope, observation of all Construction Services, including maintenance of such personal contact with the construction of the Project as necessary, to assure construction of the Project is consistent in every material respect with the Approved Construction Documents. DBE shall perform all other responsibilities of the design professional in general responsible

charge of the Project as defined in Title 24, Section 4-316, of the California Administrative Code in the event that the Project is subject to the jurisdiction of the Division of the State Architect (DSA).

- 3.2. Design Consultants; Design Disciplines. Design Services include all architectural, engineering and other design services necessary to complete Project Design Services including without limitation and as applicable: (a) architectural; (b) engineering disciplines: structural, mechanical, electrical, plumbing and civil; (c) landscaping. The Design Services may be completed by DBE's personnel or the personnel of Design Consultants to DBE provided that all of the Design Services hereunder shall be provided by or under the direction and control of a California licensed Architect or California registered engineer as required by the nature of the Design Services being provided.
- 3.3. Design Services Standard of Care. DBE and/or its Design Consultants shall provide the Design Services: (a) using their best professional skill and judgment; (b) acting with due care and in accordance with professional standards of care and the terms of this Agreement; and (c) in accordance with all applicable codes, laws, rules or regulations in effect or reasonably foreseeable at the time the Design Services are rendered.
- 3.4. Obligation to Design Within Construction Costs. A material obligation of the DBE under this Agreement and in connection with the Project hereunder is the DBE's development and preparation of Design Documents for the Project that can be constructed within the Construction Price set forth herein, as adjusted by Change Order approved by the District. Design Documents for the Project shall include features, elements, components or other items which may be added to or deleted from the scope of the Project without impairing the size, intended uses or functions of the Project ("Design Alternatives").
- 3.5. Conformity to District Specifications and Standards. Design Documents prepared by or through the DBE for the Project shall conform to the Specifications as set forth in the Scope of Work (Exhibit A). Modifications of the Design Documents for the Project to conform to the Specifications shall be without adjustment of the Contract Price for the Project.
- 3.6. DBE Design Services Project Manager. DBE shall designate a responsible employee of DBE to serve as DBE's Design Services Project Manager. The Design Services Project Manager shall: (a) be reasonably satisfactory to the District; (b) not be replaced without the prior consent of the District; (c) have the overall responsibility for DBE's timely and complete performance of Design Services obligations under this Agreement; and (d) be authorized to act on behalf of DBE, which shall not be unreasonably withheld, in connection with Design Services of DBE under this Agreement.
- 3.7. Design Documents.
 - 3.7.1. Scope of Design Documents. Based on the Project scope described in Exhibit A, DBE shall develop and prepare Design Documents which include: (a) Drawings indicating schematic layout of all structures and related equipment and improvements, (b) complete Specifications including designation/description of materials/equipment to be incorporated into the Work.
 - 3.7.2. District Review of Design Documents. Upon completion of the Design Documents, DBE shall submit the same to the District Representative for review and acceptance. If the District Representative fails to provide written acceptance of such Documents within twenty-one (21) calendar days of DBE's submittal of said Documents, the Parties agree that the dates for Substantial and Final Completion shall be extended on a day for day basis, for each day beyond twenty-one (21) calendar days that District continues its review, prior to granting approval of the Design Documents. The Design Documents shall be deemed to have been accepted only upon express written acceptance thereof by the District. DBE shall modify the Design Documents as reasonably necessary to obtain the District's acceptance thereof.
 - 3.7.3. DBE Preparation of Design Documents. Upon the execution and ratification of this Agreement, the DBE shall be deemed authorized to commence with the preparation of Design Documents and other Design Services under this Agreement and procure long lead time equipment, without further action of the District.
- 3.8. Construction Documents. Based on the Design Documents as approved by District, incorporating all comments of the District Representative to the Design Documents, DBE shall prepare Construction Documents consisting of detailed

Drawings and Specifications with sufficient clarity, coordination and consistency to construct the Project in accordance with the construction Contract Time established by the District and within the Contract Price. DBE shall submit the completed Construction Documents to the District for review, comment and acceptance. If the District Representative fails to provide a written acceptance of such Documents within twenty-one (21) calendar days of DBE's submittal of said Documents, the Parties agree that dates for Substantial and Final Completion shall be extended on a day for day basis, for each day beyond twenty-one (21) calendar days that District continues its review, prior to granting approval of the Design Documents. Upon completing revisions, if any, to the Construction Documents to address comments of the District, DBE shall submit the same to the District Representative for review, comment and acceptance on behalf of the District. DBE shall revise the Construction Documents as reasonably necessary to obtain the District's acceptance of the entirety of the Construction Documents, which acceptance or rejection shall not unreasonably be withheld and shall solely be based on whether the Construction Documents are, as determined in the good faith and discretion of District, comply in every material respect with this Agreement. The Construction Documents accepted by the District shall be referred to as the Approved Construction Documents. Notwithstanding any provision of this Agreement to the contrary and in addition to other comments/revisions necessary to obtain the District's acceptance of the Construction Documents, the District's acceptance of the Construction Documents may be conditioned upon DBE providing, in response to the District's request, a written statement accompanying the Construction Documents which shall specifically warrant and represent to the District that the scope of the Project depicted in the Contract Documents comprise Energy Conservation Measures that meet or exceed the requirements stated in the Scope of Work. Unless otherwise indicated in this Agreement, references to the Construction Documents in this Agreement shall be deemed references to the Approved Construction Documents.

- 3.9. Limitations on District Acceptance of Design Documents. The District's review of Design Documents shall be for the limited purpose of confirming that the Work reflected in the Design Documents conforms in every material respect to the requirements of the Project, as determined in the good faith and discretion of District, which shall not unreasonably withhold its approval. The District's review and acceptance of the Design Documents or any portion thereof shall not relieve or limit DBE's obligations, whether pursuant to the terms of this Agreement or by operation of law, relating to its standard of care in preparing Design Documents, nor shall such review/acceptance result in any District assumption of responsibility for the content thereof nor the completeness and accuracy of the Design Documents. If the District fails to provide a written acceptance of such Documents within twenty-one (21) calendar days of District's receipt of DBE's submittal of said Documents, the Parties agree that dates for Substantial and Final Completion shall be extended on a day for day basis, for each day beyond twenty-one (21) calendar days that District continues its review, prior to granting approval of the Design Documents. The. If the District deems the Design Documents unacceptable and the DBE disagrees with the District's assessment, a third party mutually acceptable to the Parties shall mediate among the Parties toward resolution of whether the Design Documents meet the requirements of this Agreement.
- 3.10. Permits, Approvals. Upon completion of the Approved Construction Documents, DBE shall submit the same, on behalf of the District, to all governmental or quasi-governmental agencies or entities with jurisdiction over any portion of the Work depicted therein for review and issuance of permits or other approvals necessary or required for construction of the Work including, without limitation, DSA as applicable. DBE shall promptly process such applications and promptly obtain all necessary permits and approvals for construction of the Project. DBE shall keep the District informed of the status of such applications for permits and approvals. Except for the fee(s) charged by the governmental or quasi-governmental agency issuing a permit or approval relating to Project construction, all costs and expenses associated with or arising out of the submission and processing of necessary permits or approvals for construction of the Project are included and incorporated into the Contract Price. The District shall be responsible for payment of the fee(s) charge by the governmental or quasi-governmental agency issuing a permit or approval relating to Project construction.

4. Construction Services

- 4.1. General. DBE shall provide Construction Services, consisting generally of all labor, materials, equipment and services necessary to procure install and construct the Work indicated in the Construction Documents. The Work indicated in the Construction Documents shall be installed and constructed in accordance with the Construction Documents and applicable laws, ordinances, rules or regulations.

- 4.2. California DBEs' License. At all times during performance of Construction Services, DBE shall be duly licensed and in good standing by the California DBEs State License Board under License # [REDACTED].
- 4.3. DBE/Subcontractor Registration. Pursuant to Labor Code Section 1771.1, "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 Labor Code Section 1725.5." DBE's public works contractor registration number, issued by the Department of Industrial Relations is [REDACTED].
- 4.4. District.
- 4.4.1. **District Representative.** The District will designate [REDACTED], as the District Representative during construction of the Project to serve as the District Representative. The District Representative is authorized to act on behalf of the District and to enforce the District's rights under this Agreement. All Work of the Project, whether in place or in progress, shall be available for inspection, observation or review by the District Representative at any time during standard working hours or, outside of such hours, with one (1) working day prior written notice. Without adjustment of the Contract Price, DBE shall provide the District Representative with access to the Work, whether in place or in progress. DBE shall have the right, but not the obligation, to accompany the District Representative.
- 4.4.2. **The Project Inspector.** In addition to the authority and rights of the Project Inspector as provided for elsewhere in the Contract Documents and/or arising by operation of the Laws, all of the Work shall be performed under the observation of the Project Inspector. The performance of the duties of the Project Inspector under the Contract Documents shall not relieve or limit the DBE's performance of its obligations under the Contract Documents.
- 4.4.2.1. **Access to Work.** If required by DSA or the Project Inspector, the DBE shall provide the Project Inspector and other Inspectors with access to all parts of the Work at any time during standard working hours or, outside of such hours, with one (1) working day prior written notice, wherever located and whether partially or completely fabricated, manufactured, furnished or installed. DBE shall have the right to accompany such Project Inspector or other Inspectors. The Project Inspector and other Inspectors shall have the authority to stop Work if the Work is not in conformity with the Contract Documents.
- 4.4.2.2. **Limitations on Project Inspector.** Except to the extent provided herein, the Project Inspector and other Inspectors do not have authority to modify the Work depicted in the Contract Documents, or to interpret the Contract Documents in a manner that effects a modification of the design intent expressed therein. Neither the Project Inspector nor any other Inspector have any authority relative to the content or scope of the DBE's safety plan/program. No Work inconsistent with the Contract Documents shall be performed solely on the basis of the direction of the Project Inspector or other Inspector, and the DBE shall be liable to the District for the consequences of all Work performed on such basis.
- 4.4.2.3. **Compliance with Project Inspector's Corrective Requirements.** If the Inspector determines that any portion of the Work is defective or not conforming to requirements of the Construction Documents, upon notice of such defective or non-conforming conditions, DBE shall promptly take all necessary measures to correct such defective or non-conforming conditions. DBE shall undertake and complete corrections to defective/non-conforming conditions identified by the Project Inspector. If DBE fails or refuses to commence correction of defective/non-conforming conditions pursuant to the preceding within ten (10) calendar days of the Project Inspector's determination, the District, with its own forces or its own separate contractor, may complete correction to

defective or non-conforming conditions at the cost and expense of DBE. The District may deduct such cost(s) and expense(s) from any portion of the Contract Price then or thereafter due DBE. If the DBE contends that the Inspector's corrective requirements are in error and are inconsistent with or constitute a modification of the Contract Documents pursuant to section 4.4.2.2, DBE shall, within no more than 24 hours of receipt of the Project Inspector's Notice of Defective or Non-Conforming Condition, submit written notice of such alleged error, inconsistency or modification, together with all supporting documentation, to the District's Representative, who shall address the issue with the Project Inspector. The Project Inspector shall thereafter issue a written directive to DBE regarding the notice of defective or non-conforming issue. If the Project Inspector's notice of defective or non-conforming issue is determined to be proper, DBE shall bear sole responsibility and liability for any and all delay to the Project Schedule.

4.4.3. **Other Inspections.** All of the Work shall also be subject to inspections conducted by public agencies with jurisdiction over the Project or any portion thereof.

4.4.4. **District's Right to Suspend Work.** The District may, without cause, and without invalidating or terminating the Contract, order the DBE, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine. The DBE shall resume and complete the Work suspended by the District in accordance with the District's directive, whether issued at the time of the directive suspending the Work or subsequent thereto.

4.4.4.1. **Adjustments to Contract Price and Contract Time.** 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 DBE 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 such adjustment of the Contract Price shall not include any adjustment to increase the DBE's overhead, general administrative costs or profit, all of which will remain as reflected in the Cost Breakdown submitted by the DBE pursuant to the Contract Documents. In the event of the District's suspension of the Work, the Contract Time shall be equitably adjusted.

4.4.5. **District Right to Stop Work.** In addition to the District's right to suspend the Work or terminate the Contract pursuant to the Contract Documents, the District, may, by written order, direct DBE to stop the Work, or any portion thereof, until the cause for such stop work order has been eliminated if DBE: (i) fails to correct Work which is not in conformity and in accordance with the requirements of the Construction Documents, or (ii) otherwise fails to carry out the Work in conformity and accordance with the Contract Documents. The right of the District to stop the Work hereunder shall not be deemed a duty on the part of the District to exercise such right for the benefit of DBE or any other person or entity, nor shall the District's exercise of such right waive or limit the exercise of any other right or remedy of the District under the Contract Documents or at law. If Work is stopped or suspended pursuant to the foregoing, the Contract Price and the Contract Time are not subject to adjustment.

4.4.6. **District Partial Occupancy or Use.** The District may occupy or use any completed or partially completed portion of the Work, provided that: (i) the District has obtained the consent of, or is otherwise authorized by, public authorities with jurisdiction thereof, to so occupy or use such portion of the Work and (ii) the District and DBE have accepted, in writing, the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, utilities, damage to the Work, insurance and the period for correction of the Work and commencement of warranties required by the Contract Documents for such portion of the Work partially used or occupied by the District. If District occupies or uses any completed or partially completed portion of the Work; District shall indemnify the DBE for any damages occurred in association with such occupation or use of the Work. If DBE and the District are unable to agree upon the matters set forth in (ii)

above, the District may nevertheless use or occupy any portion of the Work, with the responsibility for such matters subject to resolution in accordance with the Contract Documents. Immediately prior to such partial occupancy or use of the Work, or portions thereof, the District, and DBE shall jointly inspect the portions of the Work to be occupied or to be used to determine and record the condition of the Work. Repairs, replacements or other corrective action noted in such inspection shall be promptly performed and completed by DBE so that the portion of the Work to be occupied or used by the District is in conformity with the requirements of the Contract Documents and the District's occupancy or use thereof is not impaired. The District's use or occupancy of the Work or portions thereof pursuant to the preceding shall not be deemed "completion" of the Work as that term is used in Public Contract Code § 7107. DBE shall be entitled to a reasonable extension of time and reasonable increase in the contract amount in the event that the use by the District results in performance delays or increased project costs or expenses.

- 4.4.7. No Acceptance of Defective or Non-Conforming Work. Unless otherwise expressly agreed upon by the District and DBE, the District's partial occupancy or use of the Work or any portion thereof, shall not constitute the District's acceptance of the Work not complying with the requirements of the Contract Documents or which is otherwise defective.
- 4.5. District Separate Contractors. The District reserves the right to perform construction or other operations at or about the Site with its own forces or other contractors. DBE shall cooperate with the District and the District's separate contractors to coordinate their respective activities on or about the Site and shall afford the District and the District's separate contractors a reasonable opportunity for storage of materials/equipment and performance of their respective activities at or about the Site to the same extent that the District has provided to DBE.
- 4.6. DBE Construction Activities.
- 4.6.1. Field Measurements. Prior to commencement of the Work, or portions thereof, DBE shall take field measurements and verify field conditions at the Site sufficient to assure itself that no field conditions exist at or about the Site which would require revision to the Scope of Work, Contract Price, dates for Substantial or Final Completion, or any other material provision of this Agreement.
- 4.6.2. Dimensions; Layouts and Field Engineering. DBE shall be solely responsible for coordinating the Work of the Contract Documents. All field engineering required for laying out the Work and establishing grades for earthwork operations shall be by DBE at its expense. Any field engineering or other engineering to be provided or performed by DBE under the Contract Documents and required or necessary for the proper execution or installation of the Work shall be provided and performed by a registered engineer under the laws of the State of California in the engineering discipline for such portion of the Work and shall be submitted to the District Representative for review and acceptance. Upon commencement of any item of the Work, DBE is responsible for dimensions of such item of Work and related Work; without adjustment of the Contract Time or Contract Price, DBE is responsible for making component parts of the Work fit together properly.
- 4.6.3. Work in Accordance With Contract Documents. DBE shall perform all of the Work in strict conformity with the Contract Documents and applicable laws, codes, regulations, rules and ordinances. The Project, as completed shall conform to the Construction Documents, except to the extent that the District has accepted a Change and issued a Change Order therefor. DBE shall furnish and install the materials and equipment as specified in the Construction Documents, unless DBE shall have obtained the District's consent and approval to a substitution of specified materials or equipment.
- 4.6.4. Subsurface Conditions. If the Work under the Contract Documents involves digging trenches or other excavations that extend deeper than four feet below the surface, DBE shall promptly and before the following conditions are disturbed, notify the District Representative in writing, of any: (i) material that DBE believes may be material that is hazardous waste, as defined in California Health and Safety Code § 25117, that is required to be removed to a Class I or Class II or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Contract

Documents. If the District and the DBE determine that the conditions so materially differ or involve such hazardous materials which require an adjustment to the Contract Price or the Contract Time, the District shall issue a Change Order in accordance with the provisions of this Agreement. If any of the conditions listed in (i), (ii), or (iii) above, are discovered and result in any delays by DBE or any increases in Contract Price by DBE, DBE shall be entitled to a change order granting it a reasonable extension of Contract Time and a reasonable increase in the Contract Price based upon the time and increased costs and expenses incurred by DBE in stopping or delaying performance under the Contract Documents, working around affected areas of the project site, and restarting performance under the Contract Documents. In accordance with California Public Contract Code § 7104, any dispute arising between DBE and the District as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse DBE from the completion of the Work within the Contract Time and DBE shall proceed with all Work to be performed under the Contract Documents. The District reserves the right to terminate the Contract pursuant to the Contract Documents should the District determine not to proceed because of any condition described in (i), (ii) or (iii) above. The District shall notify the DBE in writing of the Contract termination within five (5) calendar days of the notification provided by the DBE of such conditions. If the Contract is terminated because of any the conditions described in (i), (ii) or (iii), the DBE shall be entitled to payment for all Work performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

4.6.5. Archaeological Finds. If any significant archaeological deposits, features, or human remains are encountered, and they cannot be avoided, work in the affected area will be suspended. In such an event, an archaeologist recommended by the State Historic Preservation Office will conduct a survey of the affected area. A preliminary determination will then be made as to the significance of the survey findings. If considered significant, the survey remains will be preserved and appropriate professional actions taken in accord with established professional practices. In the event of a suspension under this subsection, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work and the Contract Time shall be equitably adjusted.

4.6.6. Supervision and Construction Procedures.

4.6.6.1. Supervision of the Work. DBE shall continuously supervise and direct performance of the Work, using DBE's best skill and attention. DBE shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents, unless Contract Documents give other specific instructions concerning these matters. DBE shall be responsible for inspection of completed or partially completed portions of Work to determine that such portions are in proper condition to receive subsequent Work.

4.6.6.2. Responsibility for the Work. DBE shall be responsible to the District for negligent and/or wrongful acts and omissions of DBE's employees, Subcontractors and their agents and employees and all other persons performing any portion of the Work under a contract with DBE and at DBE's discretion. DBE shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents by tests, inspections or approvals required or performed by persons other than DBE.

4.6.6.3. Layouts. DBE is solely responsible for laying-out the Work so that construction of the Work conforms to the requirements of the Contract Documents and so that all component parts of the Work are coordinated. DBE shall be responsible for maintenance and preservation of benchmarks, reference points and stakes for the Work. The cost of maintenance and preservation of benchmarks, reference points and stakes shall be included within the Contract Price. DBE shall be solely responsible for all loss or costs resulting from the loss, destruction, disturbance or damage of benchmarks, reference points or stakes by DBE and its agents, employee's invitees and other representatives. DBE shall not be liable for loss, destruction, disturbance or damage caused by vandal or other third parties not under the control or supervision of DBE. DBE shall be entitled to a reasonable extension of Contract Time and a reasonable increase in the Contract Price based upon the time and increased costs and

expenses incurred by DBE as a result of such occurrences.

4.6.6.4. Construction Utilities. The District will furnish and pay the costs of temporary power and water utility services for the Work. The foregoing notwithstanding, District provided water utility service shall not be used by DBE for any earthwork or grading operations. All other utilities necessary to complete the Work and to completely perform all of DBE's obligations shall be obtained by DBE without adjustment of the Contract Price. DBE shall furnish and install necessary or appropriate temporary distributions of utilities, including utilities furnished by the District. Any such temporary distributions shall be removed by DBE upon completion of the Work. The costs of all such utility services, including the installation and removal of temporary distributions thereof, shall be borne by DBE and included in the Contract Price.

4.6.6.5. Existing Utilities; Removal, Relocation and Protection. DBE and the District acknowledge that under California Government Code § 4215, the District assumes the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site which are not identified in the Drawings, Specifications or other Contract Documents. Prior to commencing any underground work on this Project, DBE shall: take all reasonable steps to confirm the location of such utility facilities sufficient to assure itself that no conditions exist at or about the Site which would require revision to the Scope of Work, Contract Price, dates for Substantial or Final Completion, or any other material provision of this Agreement; and, contact Underground Service Alert of Northern California ("USA") and arrange to have the project area marked by USA for underground utilities. In addition, DBE shall review the District's as-built drawings, survey's and other site documents produced and/or made available to DBE to locate and verify all underground utilities or other underground obstacles or site conditions. In the event that underground utilities or other underground obstacles or site conditions are discovered by DBE that were not reflected in the results of the USA underground service inspection or in the District's as-built drawings, survey's and other site documents produced to DBE, such matters shall be deemed unforeseen circumstances and DBE shall be entitled to a reasonable extension of time and a reasonable increase in the Contract Price based upon the time and increased costs and expenses incurred by DBE as a result of such inaccuracies. DBE and the District agree that the provisions of California Government Code § 4215 requiring that the utilities be identified in the invitation for bids shall not apply to this Agreement insofar as DBE has the responsibility for design of the Project as well as construction of the Project. Rather, DBE and the District agree that the scope of DBE's responsibilities relating to design of the Project includes review of District-provided existing condition information and interface with Underground Service Alert.

4.6.6.6. STORM WATER POLLUTION PREVENTION

4.6.6.6.1. Application. This Section addresses the preparation, implementation and monitoring of a Storm Water Pollution Prevention Plan (SWPPP) for the purpose of preventing the discharge of pollutants from the construction site. This includes the elimination of pollution discharges such as improper dumping, spills or leakage from storage tanks or transfer areas. The District will not issue a Notice to Proceed until DBE has prepared by a qualified individual and obtained approval of the Permit Registration Documents ("PRDs") that include a Notice of Intent, Construction Risk Calculation, Site Map, SWPPP, Annual Fee and any additional required documents from all applicable Local Governing Agencies including the Regional Water Quality Control Board. The DBE shall also secure a certification that the Project has met all of the conditions of the General Construction Activity Storm Water Permit (GCASP) and comply with all applicable local, state and federal regulations governing storm water pollution prevention.

4.6.6.6.2. References and Materials.

- 4.6.6.6.2.1. California Stormwater Quality Association New Development and Redevelopment Best Management Practice Handbook
- 4.6.6.6.2.2. 2009 California Stormwater Quality Association Construction BMP Handbook .
- 4.6.6.6.2.3. State Water Resources Control Board (2009). Order 2009-0009-DWQ, NPDES General Permit No. CAS000002: Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbing Activities. Available on-line at:
- 4.6.6.6.2.4. http://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.shtml.- Use materials of a class, grade and type needed to meet the performance described in the BMP Handbook.

4.6.6.6.3. Preparation and Approval

- 4.6.6.6.3.1. The DBE shall prepare by a qualified individual the PRDs that include a Notice of Intent, Construction Risk Calculation, Site Map, SWPPP, Annual Fee and any additional required documents. The DBE's Qualified SWPPP Developer ("QSD") shall prepare the Storm Water Pollution Prevention Plan (SWPPP) as required to comply with storm water pollution regulations for project sites with storm water discharges associated with construction activity such as clearing or demolition, grading, excavation and other land disturbances. The SWPPP shall apply to all areas that are directly related to construction activity, including but not limited to staging areas, storage yards, material borrow areas, and access roads.
- 4.6.6.6.3.2. The DBE shall prepare and submit to the Local Governing Agencies and the District the SWPPP for review and approval if the project sites, new or existing, with land disturbance of 1 or more acres (or less than 1 acres if part of a common plan of development); the construction activity that results in land surface disturbances of less than one acre is part of a larger common plan of development or sale of one or more acres of disturbed land surface; or the construction activity associated with Linear Underground/Overhead Projects ("LUPs") including, but not limited to, those activities necessary for the installation of underground and overhead linear facilities (e.g., conduits, substructures, pipelines, towers, poles, cables, wires, connectors, switching, regulating and transforming equipment and associated ancillary facilities) and include, but are not limited to, underground utility mark-out, potholing, concrete and asphalt cutting and removal, trenching, excavation, boring and drilling, access road and pole/tower pad and cable/wire pull station, substation construction, substructure installation, construction of tower footings and/or foundations, pole and tower installations, pipeline installations, welding, concrete and/or pavement repair or replacement, and stockpile/borrow locations.
- 4.6.6.6.3.3. The DBE shall also pay annual renewal fee(s) until the contract

is completed and make all such checks payable to the State Water Resources Control Board. The Notice of Intent must be submitted at least two weeks prior to the commencement of construction activities.

- 4.6.6.6.3.4. The DBE shall prepare the SWPPP by following the format in Sections 2, 3, 4 and Appendices A through F of the California Stormwater BMP Handbook - Construction, January 2009 edition, published by the California Stormwater Quality Association. The publication is available from:

California Stormwater
Quality Association
P.O. Box 2105
Menlo Park, CA 94026-2105
Phone: (650) 366-1042
E-mail: info@casqa.org

or

<https://www.casqa.org/store/products/tabid/154/p-167-construction-handbookportal-initial-subscription.aspx>

- 4.6.6.6.4. Where land disturbance is less than 1 acre, any BMPs indicated in the BMP Handbook needed to prevent or minimize storm water pollution shall be implemented at no extra cost to the District.

- 4.6.6.6.5. Within two weeks after Award of Contract by the District, the DBE shall submit to the District's Civil Engineer one copy of the PRDs including the SWPPP for review. After the District's approval, the DBE shall provide approved copies of the SWPPP as follows: one copy each to the District's Construction Inspector, District's Construction Manager, District Architect, Commissioned Architect and District's Civil Engineer.

4.6.6.6.6. Implementation

- 4.6.6.6.6.1. The DBE shall implement the Storm Water Pollution Prevention Plan by doing the following:

4.6.6.6.6.1.1. Obtain a Waste Discharger Identification (WDID) number from the SWRCB before beginning construction. This number will be issued once your PRDs are administratively accepted and fee is received.

4.6.6.6.6.1.2. Keep the SWPPP, REAPs, monitoring data on the construction site.

4.6.6.6.6.1.3. Employ a Qualified SWPPP Practitioner (QSP) to implement the SWPPP during construction and develop Rain Event Action Plans ("REAPs").

4.6.6.6.6.1.4. Install, inspect, maintain and monitor BMPs required by the General Permit.

4.6.6.6.6.1.5. Install perimeter controls prior to starting other

construction work at the site.

4.6.6.6.1.6. Contain on-site storm water at the jobsite. Do not drain on-site water directly into the storm drain.

4.6.6.6.2. Implement the SWPPP.

4.6.6.6.2.1. Provide SWPPP and BMP implementation training for those responsible for implementing the SWPPP.

4.6.6.6.2.2. Designate trained personnel for the proper implementation of the SWPPP.

4.6.6.6.2.3. Conduct monitoring, as required, and assess compliance with the Numeric Action Levels (NALs) or Numeric Effluent Limitations (NELs) appropriate to your project.

4.6.6.7. Report monitoring data:

4.6.6.7.1. Maintain a paper or electronic copy of all required records for three years from the date generated or date submitted, whichever is last. These records must be available at the construction site until construction is completed.

4.6.6.7.2. Have a QSD revise the SWPPP as needed to reflect the phases of construction and to suit changing site conditions and instances when properly installed Projects are ineffective.

4.6.6.7.3. Assist the District with entering any necessary data or information into the Stormwater Multi-Application and Reporting Project ("SMARTS").

4.6.6.7.4. At the end of Construction Contract:

4.6.6.7.4.1. Submit Notice of Termination (NOT) into the SMARTS when construction is complete and conditions of termination listed in the NOT have been satisfied. A copy of the NOT can be found at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.shtml.

4.6.6.7.5. Leave in place storm water pollution prevention controls needed for post-construction storm water management and remove those that are not needed as determined by the District. Thereafter, left-in-place controls will be maintained by the District.

4.6.6.7.6. Provide Site Monitoring Reports, SWPPP revisions, Compliance Certifications and related documents to the District. Post-construction storm water operation and management plan as mentioned in the compliance certifications are considered to be in place at the end of the Construction Contract.

4.6.6.8. Monitoring

4.6.6.8.1. The DBE shall conduct examination of storm water pollution prevention controls as required by the State Water Resources Control Board (2009). Order 2009-0009-DWQ, NPDES General Permit No. CAS000002: Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbing Activities. This includes properly qualified personnel performing all required monitoring, testing, inspections

and monitoring. The DBE shall also conduct examination of storm water pollution prevention controls, as well as before and after each storm event in compliance with the State Water Resources Control Board Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination Project General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities (General Permit) (SWRCB, 2009).and at least once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or BMP changes as soon as feasible. All maintenance related to a storm event should be completed within 48 hours of the storm event. The Contactor shall also prepare and maintain, at the jobsite, a log of each inspection using Site Monitoring Report forms.

4.6.6.9. Liabilities and Penalties

4.6.6.9.1. Review of the SWPPP and inspection logs by the District shall not relieve the DBE from liabilities arising from non-compliance with storm water pollution regulations.

4.6.6.9.2. Payment of penalties for non-compliance by the DBE shall be the sole responsibility of the DBE and will not be reimbursed by the District.

4.6.6.9.3. Compliance with the Clean Water Act pertaining to construction activity is the sole responsibility of the DBE. For any fine(s) levied against the District due to non-compliance by the DBE, the District will deduct from the final payment due the DBE the total amount of the fine(s) levied on the District, plus legal and associated costs.

4.6.6.10. The DBE shall submit to the District a completed NOI for change of information (Construction Site Information and Material Handling/Management Practices).

4.6.7. Conferences and Meetings. A material obligation of DBE under the Contract Documents is the attendance at required meetings by DBE's supervisory personnel for the Work and DBE's management personnel as required by the Contract Documents or as requested by the District. DBE's personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of DBE and to bind DBE. DBE is solely responsible for arranging for the attendance by Subcontractors, Material Suppliers at meetings and conferences relating to the Work as necessary, appropriate or as requested by the District.

4.6.7.1. Pre-Construction Conference. DBE's representatives (and representatives of Subcontractors as requested by the District) shall attend a Pre-Construction Conference at such time and place as designated by the District. The Pre-Construction Conference will generally address the requirements of the Work and Contract Documents, and to establish construction procedures. Subject matters of the Pre-Construction Conference will include as appropriate: (a) administrative matters, including an overview of the respective responsibilities of the District, DBE, Subcontractor, Inspectors and others performing any part of the Work or services relating to the Work; (b) Submittals; (c) Changes and Change Order processing; (d) employment practices, including Certified Payroll preparation and submission and prevailing wage rate responsibilities of DBE; (e) Progress Schedule development and maintenance; (f) development of Schedule of Values and payment procedures; (g) requisite Project accounting procedures and submission of records; (h) communication procedures; (i) emergency and safety procedures; (j) Site visitor policies; (k) conduct of DBE/Subcontractor personnel at the Site; and (l) punchlist/close-out procedures.

4.6.7.2. Progress Meetings. Progress meetings will be conducted on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). DBE's representatives and representatives of Subcontractors (as requested by the District) shall attend Progress Meetings. Progress Meetings will be chaired by the District and will generally include as agenda items: Site safety, field issues, coordination of Work, construction progress and impacts to timely completion, if any. The purposes of the Progress Meetings include: a formal and regular forum for discussion of the status and progress of the Work by all Project participants, a review of progress or resolution

of previously raised issues and action items assigned to the Project participants, and reviews of the Progress Schedule and Submittals.

- 4.6.7.3. Special Meetings. As deemed necessary or appropriate by the District, Special Meetings will be conducted with the participation of DBE, Subcontractors and other Project participants as requested by the District.
- 4.6.7.4. Minutes of Meetings. Following conclusion of the Pre-Construction Conference, Progress Meetings and Special Meetings, DBE will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless the District notifies DBE in writing of objections or corrections to minutes prepared hereunder within five (5) business days of the date of distribution of the minutes, the minutes as distributed shall constitute the official record of the meeting or conference. No objections or corrections of any Subcontractor or Material Supplier shall be submitted directly to the District; such objections or corrections shall be submitted to the District through DBE. If DBE timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next scheduled Progress Meeting. If the District hosts progress or special meetings, the District will prepare and distribute minutes reflecting the items addressed and actions taken at such meeting or conference. Unless the DBE notifies District in writing of objections or corrections to minutes prepared hereunder within five (5) dates of the date of distribution of the minutes, the minutes as distributed shall constitute the official record of the District hosted meeting or conference.
- 4.6.8. Temporary Sanitary Facilities. At all times during Work at the Site, DBE shall obtain and maintain temporary sanitary facilities in conformity with applicable law, rule or regulation. DBE shall maintain temporary sanitary facilities in a neat and clean manner with sufficient toilet room supplies. Personnel engaged in the Work are not permitted to use toilet facilities at the Site.
- 4.6.9. Noise and Dust Control.
 - 4.6.9.1. Noise Control. DBE shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction Equipment noise at the Site shall be limited and only as permitted by applicable law, rule or regulation. If classes are in session at any point during the progress of the Work, and, in the District's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, DBE shall schedule the performance of all such Work or make other arrangements so that the Work does not cause such disruption or disturbance. If the decibel level giving rise to the disruption does not exceed Occupational Safety and Health Act (OSHA) rules and regulations and/or the City and County ordinances, laws, rules or regulations governing noise, the District will negotiate in good faith with DBE regarding an adjustment of the Contract Price or the Contract Time, if the work is on the critical path.
 - 4.6.9.2. Dust Control. DBE shall be fully and solely responsible for maintaining all areas of the Site and adjoining areas, outdoors and indoors, and keeping all areas free from flying debris, grinding powder, sawdust, dirt and dust as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and District personnel. Additionally, DBE shall take specific care to avoid deposits of airborne dust or airborne elements. Such protection devices, Projects or methods shall be in accordance with the regulations set forth by the Environmental Protection Agency and OSHA, and other applicable laws, rules or regulations. Additionally, DBE shall be the sole party responsible to regularly and routinely clean up and remove any and all deposits of dust and other elements. Damage and/or any liability derived from DBE's failure to comply with these requirements shall be exclusively at the cost of DBE, including, without limitation, any and all penalties that may be incurred for violations of applicable laws, rules or regulations, and any amounts expended by the District to pay such damages shall be due and payable to the District on demand. DBE shall replace any damaged property or part thereof and professionally clean any and all items that become covered

or partially covered to any degree by dust or other airborne elements. If classes are in session at any point during the progress of Work, and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from any Work disrupts or disturbs the students or faculty or the normal operation of the school, at the District's request, DBE shall schedule the performance of all such Work around normal school hours and make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall such arrangements result in adjustment of the Contract Price or the Contract Time.

4.6.9.3. DBE Failure to Comply. If DBE fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of the Contract Documents, the District shall notify DBE in writing and DBE shall take immediate action. Should DBE fail to respond with immediate and responsive action within twenty-four (24) hours from such notification, the District shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all reasonable costs incurred by the District in connection with such actions shall be the sole responsibility of, and be borne by, DBE; the District may deduct such amounts from the Contract Price then or thereafter due DBE.

4.6.10. Hours and Days of Work at the Site. DBE shall plan and schedule all work in consultation with the District to ensure that no work or related activities cause any material detrimental impact on the educational operations of the District.

4.6.11. Work Hours/Days. DBE shall comply with the requirements of the city and county having jurisdiction with regard to hours and days of work governing construction sites and activities.

4.6.12. Labor and Materials.

4.6.12.1. Payment for Labor, Materials and Services. DBE shall provide and pay for labor, materials, equipment, tools, Construction Equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work.

4.6.12.2. Employee Discipline. DBE shall enforce strict discipline and good order among DBE's employees, the employees of any Subcontractor or Sub-Subcontractor, and all other persons performing any part of the Work at the Site. DBE shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. DBE shall dismiss from its employ and direct any Subcontractor or Sub-Subcontractor to dismiss from their employment any person deemed by the District to be unfit or incompetent to perform Work and thereafter, DBE shall not employ nor permit the employment of such person for performance of any part of the Work without the prior written consent of the District, which consent may be withheld in the reasonable discretion of the District.

4.6.12.3. DBE's Superintendent/Assistant Superintendent. DBE shall employ a competent superintendent and all necessary assistants who shall be in attendance at the Site at all times during Project construction. DBE's communications relating to the Work or the Contract Documents shall be through DBE's Superintendent or Assistant Superintendent. The superintendent or Assistant Superintendent shall represent DBE and communications given to the Superintendent or Assistant Superintendent shall be binding as if given to DBE. DBE shall dismiss the superintendent or any of his/her assistants if they are deemed, in the sole reasonable judgment of the District, to be unfit, incompetent or incapable of performing the functions assigned to them, the District shall have the right to approve the designated Superintendent and Assistant Superintendent and any such replacements.

4.6.13. Prohibition on Harassment.

4.6.13.1. District's Policy Prohibiting Harassment. The District is committed to providing a school and workplace free of sexual harassment and harassment based on factors such as race, color religion, national origin, ancestry, age, medical condition, marital status, disability or veteran status. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal, visual or physical conduct of a sexual nature.

4.6.13.2. DBE's Adoption of Anti-Harassment Policy. DBE shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy. DBE shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim. DBE shall require that any Subcontractor or Sub-Subcontractor is performing any portion of the Work to adopt and implement policies in conformity with these provisions relating to prohibition of harassment.

4.6.13.3. Prohibition on Harassment at the Site. DBE shall not permit any person, whether employed by DBE, a Subcontractor, Sub-Subcontractor, or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of the Work at or about the Site shall be subject to appropriate sanctions in accordance with the anti-harassment policy adopted and implemented pursuant to these provisions. Any person, performing or providing Work on or about the Site engaging in a prohibited form of harassment directed to any student, faculty member or staff of the District or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work. Upon the District's receipt of any notice or complaint that any person employed directly or indirectly by DBE in performing or providing the Work has engaged in a prohibited form of harassment, the District will promptly undertake an investigation of such notice or complaint. In the event that the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District shall promptly notify DBE of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the District's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, District shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment and nor shall the Contract Price or the Contract Time shall be adjusted on account thereof. DBE and the Surety shall defend, indemnify and hold harmless the District and its employees, officers, Governing Board, agents, and representatives from any and all claims, liabilities, judgments, awards, actions or causes of actions, including without limitation, attorneys' fees, which arise out of, or pertain in any manner to: (i) the assertion by any person dismissed from performing or providing work at the direction of the District pursuant to this provision; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of DBE has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of DBE and the Surety under the preceding sentence are in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Contract.

4.6.14. Taxes. DBE shall pay, without adjustment of the Contract Price, all sales, consumer, use and other taxes for

the Work or portions thereof provided by DBE under the Contract Documents.

4.6.15. Compliance With Laws. All Work and construction operations shall conform to and comply with all applicable laws, rules, regulations and ordinances. DBE shall comply with and give notices required by laws, ordinances, rules, regulations and other orders of public authorities bearing on performance of the Work.

4.6.16. Submittals.

4.6.16.1. Waiver of Submittals. Provided that DBE furnishes and installs the materials and equipment indicated in the Construction Documents, DBE shall not be required to submit Shop Drawings, Product Data, Samples and similar submittals (collectively "Submittals") of materials, equipment or construction procedures to the District Representative or any other party for review and acceptance.

4.6.16.2. No Substitutions of Materials/Equipment Without District Review. DBE shall perform no portion of the Work involving substitutions of materials/equipment indicated in the Construction Documents until the District Representative has reviewed and returned the Submittal to DBE indicating "No Exception Taken" to such Submittal. If District fails to return the Submittal to DBE indicating "No Exception Taken" to such Submittal within seven (7) calendar days of receipt of the Submittal by the DBE, the dates for Substantial and Final Completion shall be extended on a day for day basis, for each day beyond seven (7) calendar days that District continues its review, prior to indicating "No Exception Taken" to such Submittal. If the District deems to "Take Exception" to such Submittal and the DBE disagrees with the District's assessment, a mutually acceptable third party shall mediate between the Parties to assist them in reaching accord as to whether the substitution of materials/equipment meets the Scope of Work. DBE shall not perform any portion of the Work requiring a Submittal or which is affected by a required Submittal until the entirety of the required Submittal or other related required Submittal has been fully processed. Such Work shall be in accordance with the final action taken by the District in their review of Submittals and other applicable portions of the Contract Documents.

4.6.16.3. District Review of Submittals for Substitutions of Materials Equipment. The purpose of the review by the District of Submittals relating to substitutions of materials/equipment indicated in the Construction Documents is for conformity of the proposed substitution of materials/equipment with the design intent of the Construction Documents, conformity in all material respects with the Contract Documents, and conformity with the performance and other requirements of the Project. If a Submittal is returned to DBE as rejected or requiring correction(s) with re-submission, DBE, so as not to delay the progress of the Work, shall promptly thereafter resubmit a Submittal conforming with the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in accordance with comments accompanying the rejected Submittal. When professional certification of performance criteria of materials, Projects or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals. Acceptance of substitute materials/equipment reflected in a Submittal shall not result in an increase in the Contract Time or the Contract Price.

4.6.16.4. Deferred Approval Items. In the event that any portion of the Work is designated in the Contract Documents as a "Deferred Approval" item, DBE shall be solely and exclusively responsible for the preparation of Submittals for such item(s) in a timely manner so as not to delay or hinder the completion of the Work within the Contract Time.

4.6.17. Materials and Equipment.

4.6.17.1. Specified Materials, Equipment. DBE acknowledges that the Construction Documents for the

Work are prepared by or under the direction of DBE and that the Construction Documents as prepared by or under the direction of DBE are in conformity with applicable laws.

- 4.6.17.2. No Substitutions or Alternatives. DBE shall furnish and install the materials and equipment specified in the Construction Documents without material substitutions or alternatives thereto, unless DBE shall have notified the District in writing of its intent to substitute materials/equipment and the proposed substituted materials/equipment are accepted by the District pursuant to the Submittal process described in this Section.
- 4.6.17.3. Placement of Material and Equipment Orders. DBE shall, after issuance of the Notice to Proceed, promptly and timely place all orders for materials and/or equipment necessary for completion of the Work so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. DBE shall require that any Subcontractor or Sub-Subcontractor performing any portion of the Work similarly place orders for all materials and/or equipment to be furnished by any such Subcontractor or Sub-Subcontractor in a prompt and timely manner so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Upon request of the District, DBE shall furnish reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, including without limitation, orders for materials and/or equipment to be provided, furnished or installed by any Subcontractor or Sub-Subcontractor.
- 4.6.17.4. District's Right to Place Orders for Materials and/or Equipment. Notwithstanding any other provision of the Contract Documents, in the event that DBE shall, upon request of the District, fail or refuse, for any reason, to provide reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, or should the District reasonably determine, in its sole and reasonable discretion, that any orders for materials and/or equipment have not been placed in a manner so that such materials and/or equipment will be delivered to the Site so the Work can be completed without delay or interruption, the District shall have the right, but not the obligation, to place such orders on behalf of DBE. If the District exercises the right to place orders for materials and/or equipment pursuant to the foregoing, the District's conduct shall not be deemed to be an exercise, by the District, of any control over the means, methods, techniques, sequences or procedures for completion of the Work, all of which remain the responsibility and obligation of DBE. Notwithstanding the right of the District to place orders for materials and/or equipment pursuant to the foregoing, the election of the District to exercise, or not to exercise, such right shall not relieve DBE from any of DBE's obligations under the Contract Documents, including without limitation, completion Project construction within the Contract Time and the Contract Price. If the District exercises the right hereunder to place orders for materials and/or equipment on behalf of DBE pursuant to the foregoing, DBE shall reimburse the District for all costs and fees incurred by the District in placing such orders; such costs and fees may be deducted by the District from the Contract Price then or thereafter due DBE.

4.6.18. Safety.

- 4.6.18.1. Safety Programs. DBE shall be solely responsible for initiating, maintaining and supervising all safety programs required by applicable law, ordinance, regulation or governmental orders in connection with the performance of the Contract, or otherwise required by the type or nature of the Work. DBE's safety program shall include all actions and programs necessary for compliance with California or federally statutorily mandated workplace safety programs, including without limitation, compliance with the California Drug Free Workplace Act of 1990 (California Government Code §§ 8350 et seq.). Prior to commencement of construction activities at the Site, an authorized representative of DBE shall execute the Drug-Free Workplace Certification and deliver the executed Drug-Free Workplace Certification to the District, attached hereto as Exhibit F. Without limiting or relieving DBE of its obligations hereunder, DBE shall

require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs. Prior to commencement of Work at the Site, DBE shall provide the District Representative with DBE's proposed safety program for the Work for the District Representative's review and acceptance. Without adjustment of the Contract Price or the Contract Time, DBE shall modify and re-submit its proposed safety plan to incorporate modifications thereto requested by the District Representative.

- 4.6.18.2. Safety Precautions. DBE shall be solely responsible for initiating and maintaining reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of DBE or DBE's Subcontractors or Sub-Subcontractors; and (iii) other property or items at the site of the Work, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. DBE shall take adequate precautions and measures to protect existing roads, sidewalks, curbs, pavement, utilities, adjoining property and improvements thereon (including without limitation, protection from settlement or loss of lateral support) and to avoid damage thereto. Without adjustment of the Contract Price or the Contract Time, DBE shall repair, replace or restore any damage or destruction of the foregoing items beyond ordinary wear and tear as a result of performance or installation of the Work.
- 4.6.18.3. Safety Signs, Barricades. DBE shall erect and maintain, as required by existing conditions and conditions resulting from performance of the Contract, reasonable safeguards for safety and protection of property and persons, including, without limitation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.
- 4.6.18.4. Safety Notices. DBE shall give or post all notices required by applicable law and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- 4.6.18.5. Safety Coordinator. DBE shall designate a responsible member of DBE's organization at the Site whose duty shall be the prevention of accidents and the implementation and maintenance safety precautions and programs. This person shall be DBE's superintendent unless otherwise designated by DBE in writing to the District.
- 4.6.18.6. Emergencies; First Aid. In an emergency affecting safety of persons or property, DBE shall act, to prevent threatened damage, injury or loss. DBE shall maintain stocked emergency first aid kits at the Site which comply with applicable law, rule or regulation.

4.6.19. Hazardous Materials.

- 4.6.19.1. General. In the event that DBE, any Subcontractor or anyone employed directly or indirectly by them shall use, at the Site, or incorporate into the Work, any material or substance deemed to be hazardous or toxic under any law, rule, ordinance, regulation or interpretation thereof (collectively "Hazardous Materials"), DBE shall comply with all laws, rules, ordinances or regulations applicable thereto and shall exercise all necessary safety precautions relating to the use, storage or disposal thereof.
- 4.6.19.2. Prohibition on Use of Asbestos Construction Building Materials ("ACBMs"). It is the intent of the District that ACBMs not be used or incorporated into any portion of the Work. DBE warrants to the District that the Construction Documents do not incorporate

therein any ACBMs. If the Work depicted in the Construction Documents require materials or products which DBE knows, or should have known with reasonably diligent investigation, to contain ACBMs, DBE shall promptly notify the District Representative of the same so that an appropriate alternative can be made in a timely manner so as not to delay the progress of the Work. DBE warrants to the District that there are no materials or products used or incorporated into the Work which contain ACBMs. Whether before or after completion of the Work, if it is discovered that any product or material forming a part of the Work or incorporated into the Work contains ACBMs, DBE shall at its sole cost and expense remove such product or material in accordance with any laws, rules, procedures and regulations applicable to the handling, removal and disposal of ACBMs and to replace such product or material with non-ACBM products or materials and to return the affected portion(s) of the Work to the finish condition depicted in the Drawings and Specifications relating to such portion(s) of the Work. DBE's obligations under the preceding sentence shall survive the termination of the Contract, the warranty period provided under the Contract Documents, DBE's completion of the Work or the District's acceptance of the Work. In the event that DBE shall fail or refuse, for any reason, to commence the removal and replacement of any material or product containing ACBMs forming a part of, or incorporated into the Work, within ten (10) days of the date of the District's written notice to DBE of the existence of ACBM materials or products in the Work, the District may thereafter proceed to cause the removal and replacement of such materials or products in any manner which the District determines to be reasonably necessary and appropriate; all costs, expenses and fees, including without limitation fees and costs of consultants and attorneys, incurred by the District in connection with such removal and replacement shall be the responsibility of DBE and DBE's Performance Bond Surety.

- 4.6.19.3. Disposal of Hazardous Materials. DBE shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about Site resulting from DBE's performance of Work, unless such Hazardous Materials were present on or about the Site prior to DBE's performance of Work or were brought onto the site by District or District's representatives during DBE's performance of the Work. DBE's obligations hereunder shall include without limitation, the transportation and disposal of any Hazardous Materials in strict conformity with any and all applicable laws, regulations, orders, procedures or ordinances.

4.6.20. Maintenance of Documents.

- 4.6.20.1. Documents at Site. DBE shall maintain at the Site: (i) one record copy of the Drawings, and Specifications; (ii) Change Orders approved by the District and all other modifications to the Contract Documents; (iii) Record Drawings; (iv) Material Safety Data Sheets accompanying any materials, equipment or products delivered or stored at the Site or incorporated into the Work; (v) all building and other codes or regulations applicable to the Work, including without limitation, Title 24, Part 2 of the California Code of Regulations; and (vi) all documents required by the Federal Provisions incorporated herein including, without limitation, documents evidencing jobs created and job retained. During performance of the Work, all documents maintained by DBE at the Site shall be available to the District review, inspection or reproduction. Upon completion of the Work, all documents maintained at the Site by DBE pursuant to the foregoing shall be assembled and transmitted to the District Representative upon Substantial Completion of the Work.
- 4.6.20.2. Maintenance of Record Drawings. During its performance of the Work, DBE shall maintain Record Drawings consisting of a set of the Drawings which are marked to indicate all field changes made to adapt the Work depicted in the Construction Documents to adapt to field conditions, changes resulting from Change Orders and all

concealed or buried installations, including without limitation, piping, conduit and utility services (the "Record Drawings"). All buried or concealed items of Work shall be completely and accurately marked and located on the Record Drawings. The Record Drawings shall be clean and all changes, corrections and dimensions shall be marked in a neat and legible manner in a contrasting color. Record Drawings relating to the Structural, Mechanical, Electrical and Plumbing portions of the Work shall indicate without limitation, circuiting, wiring sizes, equipment/member sizing and shall depict the entirety of the as built conditions of such portions of the Work. The Record Drawings shall be continuously maintained by DBE during the performance of the Work. At any time during DBE's performance of the Work, upon the request of the District, DBE shall make the Record Drawings maintained here under available for the District's review and inspection. The District's review and inspection of the Record Drawings during DBE's performance of the Work shall be only for the purpose of generally verifying that DBE is continuously maintaining the Record Drawings in a complete and accurate manner; any such inspection or review shall not be deemed to be the District's approval or verification of the completeness or accuracy thereof. The failure or refusal of DBE to continuously maintain complete and accurate Record Drawings or to make available the Record Drawings for inspection and review by the District may be deemed by the District to be DBE's default of a material obligation hereunder. Without waiving, restricting or limiting any other right or remedy of the District for DBE's failure or refusal to continuously maintain the Record Drawings, the District may, upon reasonably determining that DBE has not, or is not, continuously maintaining the Record Drawings in a complete and accurate manner, take appropriate action to cause the continuous maintenance of complete and accurate Record Drawings, in which event all fees and costs incurred or associated with such action shall be charged to DBE and the District may deduct the amount of such fees and costs from any portion of the Contract Price then or thereafter due DBE. Prior to receipt of the Final Payment, DBE shall deliver the As-Built Drawings to the District.

- 4.6.21. Use of Site. DBE shall confine operations at the Site to areas permitted by law, ordinances or permits, subject to any restrictions or limitations set forth in the Contract Documents. DBE shall not unreasonably encumber the Site or adjoining areas with materials or equipment. DBE shall be solely responsible for providing security at the Site with all such costs included in the Contract Price. The District and agencies with jurisdiction over the Work shall at all times have access to the Site.
- 4.6.22. Clean-Up. DBE shall at all times keep the Site and all adjoining areas free from the accumulation of any waste material or rubbish caused or generated by performance of the Work. Without limiting the generality of the foregoing, DBE shall maintain the Site in a "broom-clean" standard on a daily basis. Notwithstanding the foregoing, DBE shall not be responsible for cleaning the Site areas of any waste materials or rubbish generated by other than DBE or its employees, Subcontractors, agent or representatives. DBE agrees to promptly notify the District in the event that vandals or other third persons damage or leave waste material or rubbish in or about the Site. In the event that the Work of the Contract Documents includes painting and/or the installation of floor covering, prior to commencement of any painting operations or the installation of any flooring covering, the area and adjoining areas of the Site where paint is to be applied or floor covering is to be installed shall be in a "broom-clean" condition. Prior to completion of the Work, DBE shall remove from the Site all rubbish, waste material, excess excavated material, tools, Construction Equipment, machinery, surplus material that were generated by DBE or its employees, Subcontractors, agent or representatives that are not the property of the District under the Contract Documents. As directed by the District, DBE shall remove temporary fencing, barricades, planking, temporary sanitary facilities, temporary utility distributions and other temporary facilities. Subject to the foregoing exclusions, upon completion of the Work, the Site and all adjoining areas shall be left in a neat and broom clean condition satisfactory to District. If DBE fails to clean up as provided for in the Contract Documents, the District may do so, and all costs incurred in connection therewith shall be charged to DBE; the District may deduct such costs from any portion of the Contract Price then or thereafter due DBE.

- 4.6.23. Patents and Royalties. DBE and the Surety shall defend, indemnify and hold harmless the District and its agents, employees and officers from any claim, demand or legal proceeding arising out of or pertaining, in any manner, to any actual or claimed infringement of patent rights arising as a result of DBE's performance of the Work under the Contract Documents. Notwithstanding the foregoing, DBE shall not have any indemnity or liability obligation to the extent that the subject infringements pertain to materials specifically required by the District under the Contract Documents.
- 4.6.24. Cutting and Patching. DBE shall be responsible for cutting, fitting or patching required to complete the Work or to make the component parts thereof fit together properly. DBE shall not damage or endanger any portion of the Work, or the fully or partially completed construction of the District or separate DBEs by cutting, patching, excavation or other alteration. When modifying new Work or when installing Work adjacent to an existing structure/facility, DBE shall use reasonable efforts under the existing circumstances to match, as closely as conditions of the Site and materials will allow the finishes, textures and colors of the existing structure/facility and refinish elements of the existing structure/facility. DBE shall not cut, patch or otherwise alter the construction by the District or separate DBE without the prior written consent of the District or separate DBE thereto, which consent shall not be unreasonably withheld. DBE shall not unreasonably withhold consent to the request of the District or separate DBE to cut, patch or otherwise alter the Work.
- 4.6.25. Encountering of Hazardous Materials. In the event DBE encounters Hazardous Materials at the Site which have not been rendered harmless or for which there is no provision in the Contract Documents for containment, removal, abatement or handling of such Hazardous Materials, DBE shall immediately stop the Work in the affected area, but shall diligently proceed with the Work in all other unaffected areas. Upon encountering such Hazardous Materials, DBE shall immediately notify the District Representative, in writing, of such condition. DBE shall proceed with the Work in such affected area only after such Hazardous Materials have been rendered harmless, contained, removed or abated by the District. In the event such Hazardous Materials are encountered, DBE shall be entitled to an adjustment of the Contract Time to the extent that the Work is stopped and Substantial Completion of the Work is affected thereby and an adjustment to the Contract Price.
- 4.7. Wage Rates; Employment of Labor.
- 4.7.1. Determination of Prevailing Rates. Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2 of the California Labor Code at §§ 1770 et seq., the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the prevailing rate for holiday and overtime work in the locality in which the Work is to be performed. Holidays shall be as defined in the collective bargaining agreement applicable to each particular craft, classification or type of worker employed under the Contract. Per diem wages include employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided in California Labor Code § 1773.8, apprenticeship or other training programs authorized by California Labor Code § 3093, and similar purposes when the term "per diem wages" is used herein. Holiday and overtime work, when permitted by law, shall be paid for at the rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. The DBE shall post, at appropriate and conspicuous locations on the Site, a schedule showing all determined general prevailing wage rates.
- 4.7.2. Payment of Prevailing Rates. There shall be paid each worker of the engaged in the Work, not less than the general prevailing wage rate for the classification of Work performed, regardless of any contractual relationship which may be alleged to exist between the DBE or any Subcontractor and such worker.
- 4.7.3. Prevailing Rate Penalty. The DBE 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 DBE 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 DBE 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 DBE or Subcontractor; and (ii) whether the DBE or Subcontractor has a prior record of failing to meet its prevailing wage obligations. The penalty may not be less than forty dollars (\$40.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the DBE 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 (\$80.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the DBE 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 DBE or Subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that DBE or Subcontractor shall be satisfied before applying that amount to the penalty imposed on that DBE 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 DBE.

- 4.7.4. Payroll Records. Pursuant to California Labor Code § 1776, the DBE 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. The payroll records shall be certified and available for inspection at all reasonable hours at the principal office of the DBE 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 and the Division of Apprenticeship Standards of the Department of Industrial Relations; (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, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. 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 DBE, 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 DBE; (iv) the DBE 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 Division of Apprenticeship Standards or the 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 the DBE or any Subcontractor, of any tier, performing a part of the Work shall not be marked or obliterated. The DBE 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 requirements of this Article 4.18.4, the DBE shall have ten (10) days in which to comply, subsequent to receipt of written notice specifying in what respects the DBE must comply herewith. Should noncompliance still be evident after such 10-day period, the DBE 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 Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from any portion of the Contract Price then or thereafter due the DBE. The DBE is solely responsible for compliance with the foregoing provisions.
- 4.7.5. Labor Code Compliance. This Project will be subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each DBE and Subcontractor shall furnish the records specified in

Labor Code § 1776 directly to the Labor Commissioner in accordance with Labor Code § 1771.4(a)(3), on at least on a monthly basis (or more frequently if required by the District or the Labor Commissioner) and in a format prescribed by the Labor Commissioner. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/ Department of Labor Standards Enforcement.

- 4.7.6. The Parties agree and acknowledge that the provisions of Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815 have been attached hereto, and are incorporated as though fully set forth herein, by this reference. DBE shall include in each subcontract for or related to the Work these same provisions of Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815 as an attachment thereto, incorporated therein.
- 4.7.7. Davis-Bacon federal prevailing wage compliance. DBE shall further, concurrently comply with the requirements set forth in the Davis-Bacon Compliance attachment hereto, incorporated as though fully set forth herein, as Exhibit H.
- 4.7.8. Hours of Work.
 - 4.7.8.1. Limits on Hours of Work. Pursuant to California Labor Code § 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code § 1811, the time of service of any worker employed at any time by the DBE or by a Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of DBE or any Subcontractor, of any tier, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (12) times the basic rate of pay.
 - 4.7.8.2. Penalty for Excess Hours. The DBE shall pay to the District a penalty of Twenty-five Dollars (\$25.00) for each worker employed on the Work by the DBE or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the DBE is not less than one and one-half (12) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.
- 4.7.9. Apprentices.
 - 4.7.9.1. Employment of Apprentices. Any apprentices employed to perform any of the Work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code § 3077 who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code §§ 3070 et seq. are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.
 - 4.7.9.2. Apprenticeship Certificate. When the DBE or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade, the DBE and such Subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the Work for a certificate approving the DBE or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected, provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of Apprenticeship. The

Joint Apprenticeship Committee or Committees, subsequent to approving the DBE or Subcontractor, shall arrange for the dispatch of apprentices to the DBE or such Subcontractor in order to comply with California Labor Code § 1777.5. The DBE and Subcontractors shall submit contract award information to the applicable Joint Apprenticeship Committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the Joint Apprenticeship Committee or Committees, administering the apprenticeship standards of the crafts or trades in the area of the site of the Work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. DBEs or Subcontractors shall not be required to submit individual applications for approval to local Joint Apprenticeship Committees provided they are already covered by the local apprenticeship standards.

4.7.9.3. Ratio of Apprentices to Journeymen. The ratio of Work performed by apprentices to journeymen, who shall be employed in the Work, may be the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five hours of labor performed by a journeyman, except as otherwise provided in California Labor Code § 1777.5. The minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen. Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the Joint Apprenticeship Committee, is employed at the site of the Work and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The DBE shall employ apprentices for the number of hours computed as above before the completion of the Work. The DBE shall, however, endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the site of the Work. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a Joint Apprenticeship Committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification. The DBE or any Subcontractor covered by this Article and California Labor Code § 1777.5, upon the issuance of the approval certificate, or if it has been previously approved in such craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the DBE that it employs apprentices in such craft or trade in the State of California on all of its contracts on an annual average of not less than one apprentice to each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the DBE from the 1-to-5 ratio as set forth in this Article and California Labor Code § 1777.5. This Article shall not apply to contracts of general contractors, or to contracts of specialty contractors not bidding for work through a general or prime contractor, involving less than Thirty Thousand Dollars (\$30,000.00) or twenty (20) working days. The term "Apprenticeable Craft or Trade," as used herein shall mean a craft or trade determined as an Apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

4.7.9.4. Exemption From Ratios. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the DBE from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions are met: (i) unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%) or; (ii) the number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen, or; (iii) the Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis, or; (iv) if assignment of an apprentice to any Work performed under the Contract

Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

4.7.9.5. Contributions to Trust Funds. The DBE or any Subcontractor, of any tier, who, performs any of the Work by employment of journeymen or apprentices in any Apprenticeable Craft or Trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Work, to which fund or funds other contractors in the area of the site of the Work are contributing, shall contribute to the fund or funds in each craft or trade in which it employs journeymen or apprentices in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept such funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Division of Labor Standards Enforcement is authorized to enforce the payment of such contributions to such fund(s) as set forth in California Labor Code § 227. Such contributions shall not result in an increase in the Contract Price.

4.7.9.6. DBE's Compliance. The responsibility of compliance with this Article for all Apprenticeable Trades or Crafts is solely and exclusively that of the DBE. All decisions of the Joint Apprenticeship Committee(s) under this Article are subject to the provisions of California Labor Code § 3081. In the event the DBE willfully fails to comply with the provisions of this Article and California Labor Code § 1777.5, pursuant to California Labor Code § 1777.7, the DBE shall: (i) be denied the right to bid on any public works contract for a period of one (1) year from the date the determination of non-compliance is made by the Administrator of Apprenticeship; and (ii) forfeit, as a civil penalty, Fifty Dollars (\$50.00) for each calendar day of noncompliance. Notwithstanding the provisions of California Labor Code § 1727, upon receipt of such determination, the District shall withhold such amount from the Contract Price then due or to become due. Any such determination shall be issued after a full investigation, a fair and impartial hearing, and reasonable notice thereof in accordance with reasonable rules and procedures prescribed by the California Apprenticeship Council. Any funds withheld by the District pursuant to this Article shall be deposited in the General Fund or other similar fund of the District. The interpretation and enforcement of California Labor Code §§ 1777.5 and 1777.7 shall be in accordance with the rules and procedures of the California Apprenticeship Council.

4.8. Employment of Independent DBEs. Pursuant to California Labor Code § 1021.5, DBE shall not willingly and knowingly enter into any agreement with any person, as an independent contractor, to provide any services in connection with the Work where the services provided or to be provided requires that such person hold a valid contractors' license issued pursuant to California Business and Professions Code §§ 7000 et seq. and such person does not meet the burden of proof of his/her independent contractor status pursuant to California Labor Code § 2750.5. In the event that DBE shall employ any person in violation of the foregoing, DBE shall be subject to the civil penalties under California Labor Code § 1021.5 and any other penalty provided by law. In addition to the penalties provided under California Labor Code § 1021.5, DBE's violation of this Article 4.18.7 or the provisions of California Labor Code § 1021.5 shall be deemed an event of DBE's default under Article 15.1 of these General Conditions. The DBE shall require Subcontractors performing or providing any portion of the Work to adhere to and comply with the foregoing provisions.

4.9. Assignment of Antitrust Claims. Pursuant to California Government Code § 4551, the DBE and its Subcontractor(s), of any tier, hereby offers and agrees to assign to the District all rights, title and interest in and to all causes of action

they may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (California Business and Professions Code § 16700 *et seq.*), arising from purchases of goods, services or materials hereunder or any Subcontract. This assignment shall be made and become effective at the time the District tenders Final Payment to the DBE, without further acknowledgment by the parties. If the District receives, either through judgment or settlement, a monetary recovery in connection with a cause of action assigned under California Government Code § 4550 *et seq.*, the assignor thereof shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the Contract Price, less the expenses incurred by the District in obtaining that portion of the recovery. Upon demand in writing by the assignor, the District shall, within one year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose: and (i) the District has not been injured thereby; or (ii) the District declines to file a court action for the cause of action.

- 4.10. **DBE Responsibility.** Any Work performed by workers necessary to be performed after regular working hours, as established by the city and/or county) or on Sundays or other holidays shall be performed only with prior approval from the District and without adjustment to the Contract Price or any other additional expense to the District. The DBE shall be responsible for costs incurred by the District which arise out of Work performed by the DBE at times other than the District's regular working hours of 7 am to 5 pm and regular working days of Monday through Friday. Upon determination of such costs, the District may deduct such costs from the Contract Price then or thereafter due the DBE.

4.11. Subcontractors

- 4.11.1. Subcontracts. Any Work performed for DBE by a Subcontractor shall be pursuant to a written agreement between DBE and such Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required by the terms of this Agreement and the termination provisions hereof, and obligates the Subcontractor to assume toward DBE all the obligations and responsibilities of DBE which by the Contract Documents DBE assumes toward the District. The foregoing notwithstanding, no contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the District, unless the Contract is terminated and District, in writing, elects to assume the Subcontract. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to the terms of this Agreement, subject to the prior rights of the Surety obligated under a bond relating to the Contract. If this Agreement is terminated for any reason, DBE shall provide to the District copies of all executed Subcontracts and Purchase Orders to which DBE is a party. During performance of the Work, DBE shall, from time to time, as and when requested by the District and mutually agreed upon, provide copies of any and all Subcontracts or Purchase Orders relating to the Work and all modifications thereto. DBE's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders in accordance with the two preceding sentences is DBE's default of a material term of the Contract Documents.

- 4.11.2. Subcontractors' Work. Whenever the Work of a Subcontractor is dependent upon the Work of DBE or another Subcontractor, DBE shall require the Subcontractor to: (a) coordinate its Work with the dependent Work; (b) provide necessary dependent data and requirements; (c) supply and/or install items to build into the dependent Work of others; (d) make appropriate provisions for dependent Work of others; (e) carefully examine and understand the portions of the Contract Documents (including without limitation, the Construction Documents) and required Submittals, if any, relating to the dependent Work; and (f) examine the existing dependent Work and verify that the dependent Work is in proper condition for the Subcontractor's Work. If the dependent Work is not in a proper condition, the Subcontractor shall notify DBE in writing and not proceed with the Subcontractor's Work until the dependent Work has been corrected or replaced and is in a proper condition for the Subcontractor's Work.

4.12. Correction or Completion of the Work After Substantial Completion.

- 4.12.1. Substantial Completion. Substantial Completion means that each of the following has been achieved in accordance with the requirements of the Agreement and each of the documents described herein and as otherwise reasonably required to achieve Substantial Completion of the Project (as defined below) on or before [REDACTED], 202X, (the "Guaranteed Substantial Completion Date") and Final Completion of the Project (as defined below) on or before [REDACTED]:
- 4.12.1.1. Mechanical Completion, defined as the point of which Work, defined as the point at which all work of every kind necessary to make the Project usable for its intended function is actually complete and any and all fire/life safety Projects are completely installed and fully operational.
- 4.12.2. Punchlist. Upon achieving Substantial Completion of the Work, the District Representative and DBE shall jointly inspect the Work and prepare a comprehensive list of items of the Work to be corrected or completed by DBE ("the Punchlist"). Substantial Completion is that stage in the progress of the Work when the Work is complete in accordance with the Contract Documents so that the District can use and occupy the Work for its intended purposes. The exclusion of, or failure to include, any item on the Punchlist shall not alter or limit the obligation of DBE to complete or correct any portion of the Work in accordance with the Contract Documents.
- 4.12.3. Time for Completing Punchlist Items. In addition to establishing the Punchlist, DBE and the District Representative shall, after the joint inspection, establish a reasonable time for DBE's completion of all Punchlist items. DBE shall promptly and diligently proceed to complete all Punchlist items within the time established. In the event that DBE shall fail or refuse, for any reason, to complete all Punchlist items within the time established, DBE shall be subject to assessment of Liquidated Damages for delayed completion of Punchlist.
- 4.12.4. Final Completion. Final Completion shall be deemed to have been achieved when all Work has been fully and completed in strict accordance with the Contract Documents, including without limitation, all of the following as applicable: all applicable DSA requirements have been met and the Project has been certified as complete; the satisfactory cure or performance of all correction or completion items noted by the District; the Project has successfully passed all requisite testing, inspection, and commissioning. Final Completion shall be verified by the District Representative upon request of DBE. The good faith and reasonable determination of Final Completion by the District Representative shall be controlling and final.
- 4.12.5. Final Acceptance. Final Acceptance of the Work shall occur upon approval of the Final Completion of the Work by the District's Governing Board. The commencement of any warranty or guarantee period under the Contract Documents, with the exception of the Performance Guarantee, shall be deemed to be the date upon which Final Completion was achieved pursuant to Section 4.12.4. The commencement of the Performance Guarantee shall be the date of Final Completion.
- 4.13. Construction Schedule.
- 4.13.1. Submittal of Preliminary Construction Schedule. Within five (5) days following issuance of the Notice to Proceed, DBE shall prepare and submit to the District Representative a Preliminary Construction Schedule indicating, in graphic form, the estimated rate of progress and sequence of all Work required under the Contract Documents. The purpose of the Preliminary Construction Schedule is to assure adequate planning and execution of the Work so that it is completed within the Contract Time, in material conformance with the Contract Documents, and to permit evaluation of the progress of the Work. The Preliminary Construction Schedules shall; (i) be prepared utilizing an electronic format reasonably acceptable to the District; (ii) indicate the date(s) for commencement and completion of various portions of the Work including without limitation, procurement, fabrication and delivery of major items, materials or equipment. If the Preliminary Construction Schedules required hereunder incorporate therein any "float" time, such float shall be deemed to jointly belong to and owned by the District and DBE. As used herein, "float time" shall be deemed to refer to the time between earliest

finish date and the latest finish date of each activity shown on the Preliminary Construction Schedule.

- 4.13.1.1. Review of Preliminary Construction Schedule. The District Representative shall review the Preliminary Construction Schedule submitted by DBE for conformity with the requirements of the Contract Documents. Within seven (7) working days of the date of receipt of the Preliminary Construction Schedule, the Preliminary Construction Schedule will be returned to DBE with comments to the form or content thereof. Review of the Preliminary Progress Schedule and any comments thereto by the District Representative shall not be deemed to be the assumption of construction means, methods or sequences by the District, all of which remain DBE's obligations under the Contract Documents.
- 4.13.1.2. Preparation and Submittal of Contract Construction Schedule. Within seven (7) working days of the District's return of the Preliminary Construction Schedule to DBE, DBE shall prepare and submit to the District Representative a Construction Schedule which incorporates therein the comments to the Preliminary Construction Schedule. Upon DBE's submittal of such Construction Schedule, the District Representative shall review the same for purposes of determining conformity with the requirements of the Contract Documents. Within ten (10) days of the receipt of the Construction Schedule, the District Representative will approve such Construction Schedule or will return the same to DBE with comments to the form or content. In the event there are comments to the form or content thereof, DBE, shall within seven (7) days of receipt of such comments, revise and resubmit to the District Representative the Construction Schedule incorporating therein such comments. Upon the District's approval of the form and content of a Construction Schedule, the same shall be deemed the "Approved Construction Schedule." The District's approval of a Construction Schedule shall be for the sole and limited purpose of determining conformity with the requirements of the Contract Documents. By approving the Approved Construction Schedule, the District shall not be deemed to have exercised control over, or approval of, construction means, methods or sequences, all of which remain the responsibility and obligation of DBE in accordance with the terms of the Contract Documents. Further, the Approved Construction Schedule shall not operate to limit or restrict any of DBE's obligations under the Contract Documents nor relieve DBE from the full, faithful and timely performance of such obligations in accordance with the terms of the Contract Documents. The activities, commencement and completion dates of activities, and the sequencing of activities depicted on the Approved Construction Schedule shall not be modified or revised by DBE without the prior consent, or direction, of the District. Updates to the Approved Construction Schedule shall not be deemed revisions to the Approved Construction Schedule. In the event that the Approved Construction Schedule shall depict completion of the Work in a duration shorter than the Contract Time, the same shall not be a basis for an adjustment of the Contract Time or the Contract Price in the event that actual completion of the Work shall occur after such the time depicted in such Approved Construction Schedule. In such event, the Contract Price shall not be subject to adjustment on account of any additional costs incurred by DBE to complete the Work prior to the Contract Time, as adjusted in accordance with the terms of the Contract Documents. Any adjustment of the Contract Time or the Contract Price shall be based upon the Contract Time set forth in the Contract Documents and not any shorter duration which may be depicted in the Approved Construction Schedule.
- 4.13.1.3. Revisions to Approved Construction Schedule. In the event that the progress of the Work or the sequencing of the activities of the Work shall materially differ from that indicated in the Approved Construction Schedule, as determined by the District in its reasonable discretion and judgment, the District may direct DBE to revise the Approved Construction Schedule; within fifteen (15) days of the District's direction, DBE shall

prepare and submit to the District Representative a revised Approved Construction Schedule, for review and acceptance by the District Representative. DBE may request consent of the District to revise the Approved Construction Schedule. Any such request shall be considered by the District only if in writing setting forth DBE's proposed revision(s) to the Approved Construction Schedule and the reason(s) therefor. The District may consent to, or deny, any such request of DBE to revise the Approved Construction Schedule in its reasonable discretion.

4.13.1.4. Updates to Approved Construction Schedule. DBE shall monitor and update the Approved Construction Schedule on a monthly basis, or more frequently as required by the conditions or progress of the Work, or as may be requested by the District. DBE shall provide the District Representative with updated Approved Construction Schedules indicating progress achieved and activities commenced or completed within the prior updated Approved Construction Schedule. Updates to the Approved Construction Schedule shall not include any revisions to the activities, commencement and completion dates of activities or the sequencing of activities depicted on the Approved Construction Schedule. Any such revisions to the Approved Construction Schedule shall result in the District's rejection of such update and DBE shall, within seven (7) days of the District's rejection of such update, submit to the District Representative an Updated Approved Construction Schedule which does not incorporate any such revisions. If requested by the District, DBE shall also submit, with its updates to the Approved Construction Schedule a narrative statement including a description of current and anticipated problem areas of the Work, delaying factors and their impact, and an explanation of corrective action taken or proposed by DBE. If the progress of the Work is behind the Approved Construction Schedule, DBE shall indicate what measures will be taken to place the Work back on schedule. The District may, from time to time, and in the District's sole and exclusive discretion, transmit to DBE's Performance Bond Surety the Approved Construction Schedule, any updates thereof and the narrative statement described hereinabove. The District's election to transmit, or not to transmit such information, to DBE's Performance Bond Surety shall not limit DBE's obligations under the Contract Documents.

4.13.1.5. DBE Responsibility for Construction Schedule. DBE shall be responsible for the preparation, submittal and maintenance of the Construction Schedules required by the Contract Documents, and any failure of DBE to do so may be deemed by the District as DBE's default in the performance of a material obligation under Contract Documents. Any and all costs or expenses required or incurred to prepare, submit, maintain, and update the Construction Schedules shall be solely that of DBE and no such cost or expense shall be charged to the District. The Contract Price shall not be subject to adjustment on account of costs, fees or expenses incurred or associated with DBE's preparation, submittal, and maintenance or updating of the Construction Schedules.

4.13.2. Adjustment of Contract Time. If Substantial Completion is delayed, adjustment, if any, to the Contract Time on account of such delay shall be in accordance with the following:

4.13.2.1. Excusable Delays. If Substantial Completion of the Work or Final Completion, as applicable, is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such reasonable period of time as determined by the District Representative; Excusable Delays shall not result in any increase in the Contract Price except as provided in this Section, or otherwise in the Contract Documents. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of DBE, any Subcontractor, Material Supplier or other person directly or indirectly engaged by DBE in performance of any portion of the Work. Excusable Delays include unanticipated and unavoidable labor

disputes, unusual and unanticipated delays in transportation of equipment, materials or Construction Equipment reasonably necessary for completion and proper execution of the Work, unanticipated unusually severe weather conditions, Force Majeure Events, changes in applicable law after the date hereof that affect DBE's performance under this Agreement, DSA delayed approval of plans and specifications or DSA directive to stop the Work. Neither the financial resources of DBE or any person or entity directly or indirectly engaged by DBE in performance of any portion of the Work shall be deemed conditions beyond the control of DBE. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if DBE establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for DBE's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for DBE's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of DBE or any person or entity directly or indirectly engaged by DBE in performance of any portion of the Work; and (iii) that the event(s) forming the basis for DBE's request to adjust the Contract Time directly and adversely impacted the progress 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. There shall be no adjustment to the Contract Price for delays, interruptions, hindrances or disruptions to the progress of the Work relating to unanticipated unusually severe weather conditions, Force Majeure Events, DSA delayed approval of plans and specifications or DSA directive to stop the Work, as such events shall be deemed excusable, non-compensable delays. 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

4.13.2.2. Compensable Delays. If Substantial Completion or Final Completion, as applicable, of the Work is delayed and such delay is caused by the acts or omissions of the District, or separate DBE employed by the District, Work required or expenses or costs incurred as a result or in connection with any of the exclusions set forth in this Agreement (including Exhibit A hereto) and any change to the Specifications requested by the District (collectively "Compensable Delays"), upon DBE's request and notice, in strict conformity with applicable provisions of the Contract Documents, the Contract Time will be adjusted by Change Order for such reasonable period of time as determined by the District Representative and the DBE, taking into consideration all intervening and interfering events, including without limitation competing uses for the Project Site, work by other unrelated DBEs, and other matters not within the control of DBE. In accordance with California Public Contract Code § 7102, if DBE's progress is delayed by any of the events described in the preceding sentence, DBE shall not be precluded from the recovery of damages directly and proximately resulting therefrom, to the extent that DBE and its employees, Subcontractors, agents or representative are not responsible for the delay and the delay was not within the reasonable contemplation of the District and DBE at the time of execution of the Agreement. In such event, DBE's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or Construction Equipment directly resulting from such delay, and shall exclude indirect or other consequential damages. Except as expressly provided for herein, DBE 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.

4.13.2.3. Unexcusable Delays. Unexcusable Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in Sections

4.13.2.1 and 4.13.2.2 above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcusable Delays.

4.13.3. Adjustment of Contract Time.

4.13.3.1. Procedure for Adjustment of Contract Time. The Contract Time shall be subject to adjustment only in strict conformity with applicable provisions of the Contract Documents. Failure of DBE to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed DBE's waiver of the same.

4.13.3.2. 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. 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 which ends last. If an Unexcusable 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 Unexcusable Delay. In addition to the foregoing limitations upon extension of the Contract Time, no adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless such 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 such 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 any request by DBE for an adjustment of the Contract Time for any delay which does not actually and directly impact Work or Work activities on the critical path of the then current and updated Approved Construction Schedule.

4.14. Liquidated Damages.

4.14.1. **SHOULD THE DBE NEGLECT, FAIL OR REFUSE TO ACHIEVE SUBSTANTIAL COMPLETION OF THE WORK WITHIN THE CONTRACT TIME, (SUBJECT TO ADJUSTMENTS AUTHORIZED UNDER THE CONTRACT DOCUMENTS), THE DBE AGREES TO PAY TO THE DISTRICT THE AMOUNT OF Five Hundred Dollars (\$500.00) PER DAY AS PER DIEM LIQUIDATED DAMAGES, NOT AS A PENALTY BUT AS LIQUIDATED DAMAGES, FOR EVERY DAY BEYOND THE CONTRACT TIME (OR SUCH LATER DATE AS ADJUSTED TO IN ACCORDANCE WITH THE CONTRACT DOCUMENTS) THE DATE OF SUBSTANTIAL COMPLETION OCCURS.**

4.14.2. Generally. The Liquidated Damages amounts set forth herein are agreed upon by and between the DBE and the District because of the difficulty of fixing the District's actual damages in the event of delayed Final Completion. The DBE and the District specifically agree that said amounts are a reasonable estimate of the District's damages in such event, and that such amounts do not constitute a penalty. Liquidated Damages may be deducted from the Contract Price then or thereafter due the DBE. The DBE and the Surety shall be liable to the District for any Liquidated Damages exceeding any amount of the Contract Price then held or retained by the District. In the event that the DBE shall fail or refuse to complete the Project and the District elects to exercise its right to cause completion or correction of such items pursuant to Sections 4.14.1 and 4.14.2 hereof, the District's assessment of Liquidated Damages pursuant to the foregoing shall be in addition, and not in lieu of, the District's right to charge DBE with the cost of completing or correcting such items of the Work. The DBE and the District acknowledge and agree that the provisions of this Section are reasonable under the circumstances existing at the time of the DBE's execution of the Agreement.

4.14.3. District's Right to Take-Over Work. Unless caused by the District, if DBE fails or refuses, for any reason and at any time, to furnish adequate materials, labor, equipment or services to maintain progress of the

Work in accordance with the then current Construction Schedule after one (1) week advance written notice from the District Representative to DBE of its failure or refusal, the District may thereafter, without terminating this Agreement or waiving/limiting any right or remedy arising therefrom, furnish or cause to be furnished such materials, labor, equipment or services necessary to maintain progress of the Work in accordance with the then current Construction Schedule. All reasonable costs, expenses or other charges (whether direct, indirect and administrative) incurred by the District in furnishing such materials, labor, equipment or services shall be at the sole cost of DBE and the District may deduct the same from the Contract Price then or thereafter due DBE. The District's exercise of rights pursuant to the foregoing shall not be deemed a waiver or limitation of any other right or remedy of the District under the Contract Documents or arising by operation of law.

4.15. Payment of Contract Price.

- 4.15.1. No Adjustment to Contract Price. Except for Reimbursable Expenses for permit fees and reproduction of the Design Documents and Construction Documents for Subcontractors and except as adjusted through a Change Order, the Contract Price is the full and complete amount due from the District to the DBE for DBE's completion of its obligations hereunder.
- 4.15.2. Reimbursable Expenses. There are no Reimbursable Expenses due from the District to DBE in connection with DBE's Design Services and Construction Services, except for the actual direct costs of permits or approvals of the Design Documents for construction of the Project or if the District directs DBE to reproduce the Design Documents for use by Subcontractors during construction. Reimbursable Expenses, if any, shall be billed by DBE to the District at actual cost without mark-up.
- 4.15.3. DBE Billings for Payment of the Design Services and Construction Services Contract Price. During its performance of Design Services and Construction Services, DBE shall submit monthly billing statements for payment of portions of the Design Services and Construction Services of the Contract Price. Each monthly billing statement shall reflect the costs of the Design Services and Construction Services rendered in the immediately preceding month, provided that the monthly billing statements shall be limited the amount allocated to each phase of the Design Services and Construction Services. Billing statements shall be in such form and format and with such substantiating detail as required by the District.
- 4.15.4. District Payments for Design and Construction Services. Within thirty (30) days of receipt of DBE's billing statements for Design Services and Construction Services, District will make payment to DBE of undisputed amounts of the Contract Price. The District may, however, withhold or deduct from amounts otherwise due DBE for Design or Construction Services if DBE fails to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after DBE has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom. Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due DBE for Design Services under any billing statement for Design Services rendered by DBE under this Agreement, pursuant to Civil Code § 3320(a), the District may withhold from payment to DBE an amount not to exceed one hundred and fifty percent (150%) of the disputed amount.
- 4.15.5. Disbursement of Design Services Contract Price. For the Project, [REDACTED] Dollars (\$ [REDACTED]) of the Contract Price is allocated for Design Services (the "Design Services Contract Price").
 - 4.15.5.1. Initial Payment. Thirty (30) days after the date of the Agreement, the DBE may submit a billing for the Initial Payment of the Design Services Contract Price. Such billing shall be in an amount equal to ten percent (10%) of the Design Services Contract Price and shall be accompanied by a detailed statement of the Design Services completed by the DBE in the thirty (30) day period after the date of the Agreement. Provided that the DBE has diligently proceeded to complete Design Services obligations, as reflected in

4.15.5.2. Interim Payments. At such time as the DBE has completed preparation of the Design Documents and submitted the same to the District Representative for review and acceptance and the District Representative has accepted the Design Documents in accordance with Section 3.7.2 hereof, DBE may submit a billing for disbursement of the Interim Payment of the Design Services Contract Price. Such billing shall be an amount equal to thirty percent (30%) of the Design Services Contract Price. Within thirty (30) days of the District's receipt of the DBE's statement requesting disbursement of the Interim Payment, the District will disburse the Interim Payment. Thereafter, at such time as the DBE has completed preparation of the Construction Documents and submitted the same to DSA and other governmental or quasi-governmental agencies with jurisdiction over any portion of the Project for review and permitting, the DBE may submit a billing for disbursement of the Interim Payment of the Design Services Contract Price. Such billing shall be an amount equal to thirty percent (30%) of the Design Services Contract Price. Such billing shall be accompanied by written evidence of the DBE's submission of the Design Documents to DSA and other governmental and quasi-governmental agencies for review and permitting. Provided that the DBE has submitted complete Construction Document to DSA and other governmental and quasi-governmental agencies for review and permitting, within thirty (30) days of the District's receipt of the DBE's statement requesting disbursement of the Interim Payment, the District will disburse the Interim Payment.

4.15.5.3. Final Payment. At such time as DSA and other governmental and quasi-governmental agencies have completed their review of the Construction Documents and have issued their respective permits/approvals authorizing construction of the Project, the DBE may submit a billing statement for the Final Payment of the Design Services Contract Price, which shall be an amount equal to thirty percent (30%) of the Design Services Contract Price. Provided that DSA and other governmental and quasi-governmental agencies have issued a permit or other approval authorizing construction of the Project, within thirty (30) days of the date of the District's receipt of the DBE's Final Payment billing statement, the District will disburse the Final Payment of the Design Services Contract Price to the DBE.

4.15.5.4. Any withholding of disputed amounts from periodic payments for Design Services shall be in strict conformance with the provisions of Civil Code § 3320.

4.15.6.1. Allocation of Construction Services Contract Price. For the Project, _____ Dollars (\$) _____) of the Contract Price is allocated for Procurement and Construction Services; (referred to as the "Construction Services Contract Price"). The Construction Services Contract Price is allocated as follows:

\$

\$

\$

4.15.6.2. Disbursement of Construction Services. The portion of the Contract Price allocated for Construction Services shall be disbursed by Progress Payments reflecting the value of the Work actually installed at the time of the DBE's submission of an Application for Progress Payment. Each Application for Progress Payment shall be subject to review and verification pursuant to Section 4.15.6 through 4.15.10 hereof and the amount disbursed for Construction Services shall not exceed ninety percent (95%) of the amounts allocated in Section 4.15.6.1. The retained amount of five percent (5%) ("Retainage") shall be disbursed by the District upon Final Completion of the Work and acceptance by the District in accordance with Public Contract Code § 9203 and the DBE's submission of an application for Final Payment pursuant to Section 4.15.11.

4.15.7. Progress Payments for Construction Services Contract Price.

4.15.7.1. Applications for Progress Payments. During DBE's performance of Construction Services, DBE shall submit a monthly invoice to the District Representative, Application for Progress Payments, setting forth an itemized estimate of Work completed in the preceding month for the purpose of the District's making of Progress Payments of the Construction Services Contract Price. Within thirty (30) days after the District's receipt of invoice, District shall make payment to the DBE for the Work performed hereunder. Values utilized in the Applications for Progress Payments shall be based upon the Schedule of Values and the estimated percentage of Work completed as approved by the District ("Cost Breakdown"); such values shall be only for determining the basis of Progress Payments to DBE, and shall not be considered as fixing a basis for adjustments, whether additive or deductive, to the Construction Services Contract Price, or for determining the extent of Work actually completed.

4.15.7.2. 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 will review each Application for Progress Payment 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. 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 DBE and such completed Application for Progress Payment is accompanied by: (i) Certified Payrolls of DBE and all Subcontractors, of any tier, for laborers performing any portion of the Work for which a Progress Payment is requested; (ii) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code § 3262 of DBE, 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 § 3262 of DBE, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment received by DBE under the prior Application for Progress Payment; (iv) if applicable, a current union statement reflecting that DBE 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 DBE or any such Subcontractor is a party to or is otherwise bound by; and (v) a certification by DBE 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 prior to disbursement of the Progress Payment. 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 DBE as soon as is practicable after receipt

of the same from DBE, but in no event not more than seven (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.

- 4.15.7.3. Review of Applications for Progress Payments. Upon receipt of an Application for Progress Payment, the District Representative shall inspect and verify the Work to determine whether it has been performed in accordance with the terms of the Contract Documents and to determine the portion of the Application for Progress Payment which is properly due to DBE under the terms of the Contract Documents.

4.15.8. District's Disbursement of Progress Payments.

- 4.15.8.1. Timely Disbursement of Progress Payments. In accordance with Public Contract Code § 20104.50, within thirty (30) days after the District's receipt of a proper Application for Progress Payment, there shall be paid, by District, to DBE a sum equal to ninety-five percent (95%) of the value of the Work indicated in the Application for Progress Payment which is actually in place as of the date of the Application for Progress Payment and as verified and approved by the District Representative; provided, however, that the District's obligation to disburse any Progress Payment shall be subject to the District's receipt of all documents set forth above, each and all of which are conditions precedent to the District's obligation to disburse Progress Payments. If an Application for Progress Payment is determined not to be proper due to the failure or refusal of DBE to submit documents with the Application for Progress Payment, as required by the Contract Documents, or incompleteness or inaccuracies in any such documents submitted or if it is reasonably determined that the Record Drawings have not been continuously maintained to reflect the actual as built conditions of the Work completed in the period for which the Progress Payment is requested, the thirty (30) day period hereunder for the District's timely disbursement of a Progress Payment shall be deemed to commence on the date that the District is actually in receipt of documents not submitted with the Application for Progress Payment, or corrections to documents with the Application for Progress Payment so as to render them complete and accurate, or the date upon which DBE accurately and fully completes preparation of the Record Drawings relating to the Work for which the Progress Payment is requested.

- 4.15.8.2. Untimely Disbursement of Progress Payments. In accordance with Public Contract Code § 20104.50, in the event that the District shall fail to make any Progress Payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Progress Payment, the District shall pay DBE interest on the undisputed amount of such Application for Progress Payment equal to the legal rate of interest set forth in California Code of Civil Procedure § 685.010(a). The foregoing notwithstanding, in the event that the District shall determine that any Application for Progress Payment is not proper, and the District does not return such Application for Progress Payment within seven (7) days, the period of time for the District's disbursement of the Progress Payment on such Application for Progress Payment without incurring the interest liability shall be reduced by the number of days exceeding the seven (7) day return period.

- 4.15.8.3. District's Right to Disburse Progress Payments by Joint Checks. Provided that the District is in receipt of the applicable Subcontract or Purchase Order, the District, may in its sole discretion, issue joint checks to DBE and such Subcontractor or Material Supplier in satisfaction of its obligation to make Progress Payments or the Final Payment due hereunder.

- 4.15.8.4. No Waiver of Defective or Non-Conforming Work. The approval of any Application for

Progress Payment or the disbursement of any Progress Payment to DBE shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents.

4.15.8.5. Progress Payments for Changed Work. DBE's Applications for Progress Payment may include requests for payment on account of Changes in the Work which have been properly authorized and approved by the District Representative and all other governmental agencies with jurisdiction over such Change in accordance with the terms of the Contract Documents and for which a Change Order has been issued. Except as provided for herein, no other payment shall be made by the District for Changes in the Work.

4.15.8.6. Materials or Equipment Not Incorporated Into the Work.

4.15.8.6.1. Limitations Upon Payment. 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 which, at the time of DBE's submittal of an Application for Progress Payment, has/have not been incorporated into and made a part of the Work.

4.15.8.6.2. Materials or Equipment Delivered and Stored at the Site. The District may, in its sole and exclusive discretion, make payment for materials or equipment not yet incorporated into the Work if, at or prior to the time of DBE's submittal of an Application for Progress Payment incorporating therein a request for payment of such materials or equipment if all of the following are complied with: (a) the materials or equipment have been delivered to the Site; (b) adequate arrangements, reasonably satisfactory to the District, have been made by DBE to store and protect such materials or equipment at the Site including without limitation, insurance reasonably satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage if such coverage is not afforded under the policy of Builder's Risk insurance obtained pursuant to the Contract Documents; and (c) the establishment of procedures reasonably satisfactory to the District by which title to such materials or equipment will be vested in the District upon the District's payment therefor. DBE acknowledges that the discretion to make, or not to make, payment for materials or equipment delivered or stored at the site of the Work pursuant to the preceding sentence shall be exercised exclusively by the District; the District's exercise of discretion not to make payment for materials or equipment delivered or stored at the Site, but not yet incorporated into the Work shall not be deemed the District's default hereunder. If the District elects to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements of (b) and (c) above shall be borne solely and exclusively by DBE and no payment shall be made by the District on account of such costs and expenses.

4.15.8.6.3. Materials or Equipment Not Delivered or Stored at the Site. No payments shall be made by the District for materials or equipment to be incorporated into the Work where such materials or equipment have not been delivered or stored at the Site. The foregoing notwithstanding, the District may, in its sole and exclusive discretion, elect to make payment for materials or equipment not incorporated into the Work and which are not delivered or stored at the Site at or prior to the time of DBE's submittal

of an Application for Progress Payment incorporating therein a request for payment of such materials or equipment, provided that each and all of the following have been complied with: (a) adequate arrangements, reasonably satisfactory to the District, have been made by DBE to store and protect such materials or equipment which include without limitation, insurance reasonably satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage if coverage for the same is not afforded under the policy of Builder's Risk insurance obtained pursuant to the Contract Documents; and (b) the establishment of procedures reasonably satisfactory to the District by which title to such materials or equipment will be vested in the District upon the District's payment therefor. DBE acknowledges that the discretion to make, or not to make, payment for such materials or equipment pursuant to the preceding sentence shall be exercised exclusively by the District; the District's exercise of discretion not to make payment for such materials or equipment shall not be deemed the District's default hereunder. In the event that the District shall elect to make payment for materials or equipment not at the Site, the costs and expenses incurred to comply with the requirements of (a) and (b) above shall be borne solely and exclusively by DBE and no payment shall be made by the District on account of such costs and expenses.

4.15.8.6.4. Materials or Equipment in Fabrication or Transit. The District shall not make any payment on account of any materials or equipment which is in the process of being fabricated or which are in transit to the Site of or other storage location.

4.15.8.7. Exclusions From Progress Payments. In addition to the District's right to withhold disbursement of any Progress Payment provided for in the Contract Documents, neither DBE's Application for Progress Payment shall include, nor shall the District be obligated to disburse any portion of the Contract Price for amounts which DBE does not intend to pay any Subcontractor, of any tier, or Material Supplier because of a dispute or any other reason.

4.15.9. Title to Work. DBE warrants that title to all Work covered by an Application for Progress Payment will pass to the District no later than the time of payment. DBE further warrants that upon submittal of an Application for Progress Payment, all Work for which a Progress Payment has been previously issued and DBE has received payment from the District therefor shall, to the best of DBE's knowledge, information and belief, be free and clear of liens, claims, stop notices, security interests or encumbrances in favor of DBE, Subcontractors, Material Suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

4.15.10. Substitute Security for Retention. In accordance with the provisions of California Public Contract Code § 22300, eligible and equivalent securities may be substituted for any monies withheld by the District to ensure DBE's performance under the Contract Documents at the request and expense of DBE and in conformity with the provisions of California Public Contract Code § 22300. The foregoing and the provisions of California Public Contract Code § 22300 notwithstanding, failure of DBE to request the substitution of eligible and equivalent securities for monies to be withheld by the District within ten (10) days following issuance of the Notice to Proceed shall be deemed a waiver of such right.

4.15.11. Final Payment.

4.15.11.1. Application for Final Payment. When DBE has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, DBE

shall submit an Application for Final Payment on such form as approved by the District. Thereupon, the District Representative will promptly make a final inspection of the Work and when the District Representative finds the Work acceptable under the Contract Documents and that the Contract has been fully performed by DBE, the District Representative will thereupon promptly approve the Application for Final Payment. The Final Payment shall include the remaining balance of the Construction Services Contract Price and any retention from Progress Payments previously withheld by the District.

- 4.15.11.2. Conditions Precedent to Disbursement of Final Payment. Neither Final Payment nor any remaining Construction Services Contract Price shall become due until DBE submits to the District each and all of the following, the submittal of which are conditions precedent to the District's obligation to disburse the Final Payment: (i) an affidavit or certification by DBE that payrolls, bills for materials and other indebtedness incurred in connection with the Work for which the District or the District's property may or might be responsible or encumbered have been paid or otherwise satisfied; (ii) a certificate evidencing that general liability and design phase insurance required by Section 6.4 will remain in force for one year after DBE's receipt of Final Payment is currently in effect; (iii) a written statement that DBE knows of no substantial reason that the insurance will not be renewable to cover any period following Final Payment as required by the Contract Documents; (iv) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of DBE, Subcontractors of any tier and Material Suppliers in accordance with California Civil Code § 3262, with each of the same stating that there are, or will be, no claims for additional compensation after disbursement of the Final Payment; (v) Operations and Maintenance manuals and separate warranties provided by any manufacturer or distributor of any materials or equipment incorporated into the Work; (vi) the As-Built Drawings; (vii) any and all other items or documents required by the Contract Documents to be delivered to the District upon completion of the Work; (viii) the completion and submittal of all reports required by the Contract Documents, including without limitation, verified reports required by applicable provisions of the California Code of Regulations; and (ix) if required by the District, such other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, stop notices, claims, security interest or encumbrances arising out of the Contract to the extent and in such form as may be required by the District.
- 4.15.11.3. Disbursement of Final Payment. Provided that the District is then in receipt of all documents and other items required by the Contract Documents as conditions precedent to the District's obligation to disburse Final Payment, not later than thirty (30) days following Final Acceptance by the District's Governing Board, the District shall disburse the Final Payment to DBE. Pursuant to California Public Contract Code § 7107, if there is any dispute between the District and DBE at the time that disbursement of the Final Payment is due, the District may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute.
- 4.15.11.4. Waiver of Claims. DBE's acceptance of the Final Payment is a waiver and release by DBE of any and all claims against the District for compensation or otherwise in connection with DBE's performance of the Contract.
- 4.15.11.5. Claims Asserted After Final Payment. Any lien, stop notice or other claim filed or asserted after DBE'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 DBE who further agrees to indemnify, defend and hold harmless the District and its officers,

agents, representatives and employees from and against any claims, demands or judgments arising or associated therewith, including without limitation attorneys' fees incurred by the District in connection therewith. In the event any lien, stop notice or other claim of any Subcontractor, Laborer, Material Supplier or others performing Work under the Contract Documents remain unsatisfied after Final Payment is made, DBE shall refund to District all monies that the District may pay or be compelled to pay in discharging any lien, stop notice or other claim, including, without limitation all costs and reasonable attorneys' fees incurred by District in connection therewith.

4.15.11.6. Withholding of Payments. The District may withhold any Progress Payment or the Final Payment, in whole or in part, or backcharge DBE to the extent it may deem advisable to protect the District on account of: (i) defective Work or Work not in conformity with the requirements of the Contract Documents which is not remedied; (ii) failure of DBE to make payments when due Subcontractors or Material Suppliers for materials or labor; (iii) claims filed or reasonable evidence of the probable filing of claims by Subcontractors, laborers, Material Suppliers, or others performing any portion of the Work under the Contract Documents for which the District may be liable or responsible including, without limitation, Stop Notice Claims filed with the District pursuant to California Civil Code § 3179, et seq.; (iv) a reasonable doubt that the Contract can be completed for the then unpaid balance of the Contract Price; (v) tax demands filed in accordance with California Government Code § 12419.4; (vi) other claims, penalties and/or forfeitures for which the District is required or authorized to retain funds otherwise due DBE; (vii) any amounts due from DBE to the District under the terms of the Contract Documents; or (viii) DBE's failure to perform any of its obligations under the Contract Documents or its default under the Contract Documents or its failure to maintain adequate progress of the Work. In addition to the foregoing, the District shall not be obligated to process any Application for Progress Payment or Final Payment, nor shall DBE be entitled to any Progress Payment or Final Payment so long as any lawful or proper direction concerning the Work or the performance thereof or any portion thereof, given by the District, the District Representative and any public authority having jurisdiction over the Work, or any portion thereof, shall not be fully and completely complied with by DBE. When the District is reasonably satisfied that DBE has remedied any such deficiency, payment shall be made of the amount withheld. The District shall not be liable to DBE or others for its good faith decision to make or not make payment(s) of amounts withheld from DBE pursuant to the foregoing. If the District elects to make payments to other of amounts withheld from DBE, the District may do so without prior judicial determination; the District will render DBE a complete and accurate accounting of amounts withheld and paid to others on behalf of DBE.

4.15.11.7. Payments to Subcontractors. DBE shall pay all Subcontractors for and on account of Work of the Contract performed by such Subcontractors in accordance with the terms of their respective subcontracts and as provided for pursuant to California Public Contract Code § 10262, the provisions of which are deemed incorporated herein by this reference. In the event of DBE's failure to make payment to Subcontractors in conformity with California Public Contract Code § 10262, the provisions of California Public Contract Code § 10253 shall apply; by this reference, the provisions of California Public Contract Code § 10253 are incorporated herein in its entirety, except that the references in said Section 10253 to "the director" shall be deemed to refer to the District. DBE shall timely make payment of retention due Subcontractors in accordance with Public Contract Code § 7107.

4.16. Changes

4.16.1. Changes in the Work During Construction Phase. The District, at any time, by written order, may make

Changes within the general scope of the Work under the Contract Documents or issue additional instructions require additional Work or delete Work (each a "Change" and collectively, the "Changes"). DBE shall not proceed with any Change involving an increase or decrease in the Contract Price or the Contract Time without prior written authorization from the District. The foregoing notwithstanding, DBE shall promptly commence and diligently complete any Change to the Work subject to the District's written authorized issued pursuant to the preceding sentence unless DBE, in its sole discretion, has reasonable concerns with respect to such Changes requested by the District. DBE shall not be relieved or excused from its prompt commencement and diligent completion of any Change subject to the District's written authorization by virtue of the absence or inability of DBE and the District to agree upon the extent of any adjustment to the Contract Time or the Contract Price on account of such Change. The issuance of a Change Order in connection with any Change authorized by the District shall not be deemed a condition precedent to DBE's obligation to promptly commence and diligently complete any such Change authorized by the District hereunder. Any requirement of notice of Changes in the scope of Work to the Surety shall be the responsibility of DBE. Changes to the Work may be subject to approval by governmental and/or quasi-governmental agencies with jurisdiction over the Change or the Project.

- 4.16.2. DBE Submittal of Data. Within ten (10) days after receipt of a written order from the District directing a Change in the Work, DBE shall submit to the District Representative a detailed written statement setting forth the general nature of the Change, the amount of any adjustment to the Contract Price on account thereof, properly itemized and supported by sufficient substantiating data to permit evaluation of the same, and the extent of adjustment of the Contract Time, if any, required by such Change. No claim or adjustment to the Contract Price or the Contract Time shall be allowed if not asserted by DBE in strict conformity herewith or if asserted after Final Payment is made under the Contract Documents.
- 4.16.3. Adjustment to Contract Price and Contract Time on Account of Changes to the Work. Adjustments to the Contract Price due to Changes in the Work shall be determined by application of one of the following methods, in the following order of priority:
 - 4.16.3.1. Mutual Agreement. By negotiation and mutual agreement, on a lump sum basis, between the District and DBE on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change. DBE's estimate of increase or decrease in costs pursuant to the foregoing, if requested, shall be in sufficient detail and in such form as to allow the District Representative to review and assess the completeness and accuracy thereof. DBE shall be solely responsible for any additional costs or additional time arising out of, or related in any manner to, its failure to provide the estimate of costs within the time specified in the request of the District Representative for such estimate.
 - 4.16.3.2. Determination by the District. By the District, whether or not negotiations are initiated pursuant to the preceding Section based upon actual and necessary costs incurred by DBE as determined by the District on the basis of DBE's records. In the event that the procedure set forth in this Section is utilized to determine the adjustment to the Contract Price for Changes to the Work, promptly upon determining the extent of adjustment to the Contract Price, the District shall notify DBE in writing of the same; DBE 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 DBE shall notify the District Representative, 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. Notwithstanding any objection of DBE to the District's determination of the extent of any adjustment to the Contract Price, DBE shall diligently proceed to perform and complete any such Change.
 - 4.16.3.3. Basis for Adjustment of Contract Price. If Changes in the Work require an adjustment of the Contract Price, the basis for adjustment of the Contract Price shall be as follows:

- 4.16.3.3.1. Labor. DBE shall be compensated for the costs of field labor actually and directly utilized in the performance of the Change. Wage rates for labor shall not exceed the prevailing wage rates for the labor classification(s) necessary for the performance of the Change. Labor costs exclude costs incurred by DBE prepare estimate(s) of the costs of the Change, maintenance of records relating to the Change, coordination and assembly of materials and information relating to the Change or performance thereof, or the supervision, general overhead and administrative functions and general conditions costs associated with the Change or performance thereof.
- 4.16.3.3.2. Materials and Equipment. DBE shall be compensated for the actual costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. If, in the reasonable opinion of the District, the costs asserted by DBE for materials and/or equipment in connection with any Change is excessive, or if DBE fails to provide satisfactory evidence of the actual costs of such materials and/or equipment, the costs of such materials and/or equipment and the District's obligation for payment of the same shall be limited to the then lowest whole price at which similar materials and/or equipment are available in the quantities required to perform the Change. The District may elect to furnish materials and/or equipment for Changes to the Work, in which event DBE shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.
- 4.16.3.3.3. Construction Equipment. DBE shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power includes time required to move such Construction Equipment to the Site from the nearest available rental source. If Construction Equipment is not moved to the Site by its own power, DBE will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by DBE from the District Representative and the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. DBE shall not be entitled to an allowance or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of Five Hundred Dollars (\$500.00) or less. Construction Equipment costs claimed by DBE in connection with the performance of any Change to the Work shall not exceed commercial rental rates in the locality of the Site. The allowable rate for Construction Equipment in connection with Changes to the Work is full compensation to DBE for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by DBE incidental to the use of such Construction Equipment.
- 4.16.3.3.4. Mark-up on Costs of Changes to the Work. In determining the cost to the

District and the extent of increase to the Contract Price resulting from a Change adding to the Work, the allowance for mark-ups on the costs of the Change for all overhead (including home office and field overhead), general conditions costs and profit associated with the Change shall not exceed the percentage set forth herein. For the portion of any Change performed by Subcontractors of any tier, the percentage mark-up on the allowable actual direct labor and materials costs cumulatively incurred by all Subcontractors of any tier shall be Ten Percent (10%). In addition, for the portion of any Change performed by Subcontractors of any tier, DBE may add an amount equal to Five Percent (5%) of the allowable actual direct labor and materials costs of Subcontractors performing the Change. For the portion of any Change performed by the DBE's own forces, the mark-up on the allowable actual direct labor and materials costs of such portion of a Change shall be Fifteen Percent (15%). If a Change to the Work reduces the Contract Price, no profit, general conditions or overhead costs shall be paid by the District to DBE for the reduced or deleted Work. In the event of deductive changes, the adjustment to the Contract Price shall be the actual cost reduction realized by the reduced or deleted Work.

4.16.3.3.5. DBE Maintenance of Records. In the event that DBE shall be directed to perform any Changes to the Work, or should DBE encounter conditions which DBE, believes would obligate the District to adjust the Contract Price and/or the Contract Time, DBE shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. If more than one Change to the Work is performed by DBE in a calendar day, DBE shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. If Subcontractors provide or perform any portion of Change to the Work, DBE shall require that each such Subcontractor maintain records in accordance with this Section. Each daily record maintained hereunder shall be signed by DBE's Superintendent or DBE's authorized representative; such signature shall be deemed DBE's representation and warranty that all information contained therein is true, accurate, and complete and relate only to the Change referenced therein. All records maintained by a Subcontractor, relating to the costs of a Change to the Work shall be signed by such Subcontractor's authorized representative or Superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District Representative upon request. If DBE fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Contract Price on account of any Change to the Work is determined by the district, the District's reasonable good faith determination of the extent of adjustment to the Contract Price shall be final, conclusive, dispositive and binding upon DBE. DBE's obligation to maintain records hereunder is in addition to, and not in lieu of, any other DBE obligation under the Contract Documents with respect to Changes to the Work.

4.16.3.3.6. Adjustment to Contract Time. In the event of Change(s) to the Work the Contract Time shall be extended or reduced by Change Order for a period of time commensurate with the time reasonably necessary to perform such Change.

4.16.4. Change Orders. If the District approves of a Change, a written Change Order prepared by the District

Representative on behalf of the District shall be forwarded to DBE describing the Change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of such Change. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Any claim or item relating to any Change incorporated into a Change Order not presented by DBE for inclusion in the Change Order shall be deemed waived. Once the Change Order has been prepared and forwarded to DBE for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, DBE shall not modify or amend the form or content of such Change Order, or any portion thereof. DBE's attempted or purported modification or amendment of any such Change Order, without the prior approval of the District, shall not be binding upon the District; any such unapproved modification or amendment to such Change Order shall be null, void and unenforceable. Unless otherwise expressly provided for in the Contract Documents or in the Change Order, any Change Order issued hereunder shall be binding upon the District only upon action of the District's Governing Board approving and ratifying such Change Order. Any Change Order issued hereunder shall be binding upon DBE only upon DBE's execution of the Change Order.

4.16.4.1. DBE Notice of Changes. If DBE should claim that any instruction, request, action, condition, omission, default, or other situation obligates the District to increase the Contract Price or to extend the Contract Time, DBE shall notify the District Representative, in writing, of such claim within ten (10) days from the date of its actual or constructive notice of the factual basis supporting the same. The District shall consider any such claim of DBE only if sufficient supporting documentation is submitted with DBE's notice to the District Representative. Time is of the essence in DBE's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to the address such instruction, request, action, condition, omission, default or other situation. Accordingly, DBE acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the District's review and evaluation) within ten (10) days of its actual or constructive knowledge of any instruction, request, action, condition, omission, default or other situation for which DBE believes there should an adjustment of the Contract Time or the Contract Price shall be deemed DBE'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 any such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. In the event that the District determines that the Contract Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with DBE's written notice under this Section, any such adjustment shall be determined in accordance with the Contract Documents.

4.16.4.2. Disputed Changes. In the event of any dispute or disagreement between DBE and the District regarding the characterization of any item as a Change to the Work or as to the appropriate adjustment of the Contract Price or the Contract Time on account thereof, DBE shall promptly proceed with the performance of such item of the Work, subject to a prompt resolution of such dispute or disagreement in accordance with the terms of the Contract Documents. DBE's failure or refusal to so proceed with such Work is DBE's default of a material obligation.

4.16.5. Emergencies. In an emergency affecting the safety of life, or of the Work, or of property, DBE, without special instruction or prior authorization from the District or the District Representative, is permitted to act at its discretion to prevent such threatened loss or injury.

4.16.6. Minor Changes in the Work. The District Representative may order minor Changes in the Work not involving an adjustment in the Contract Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by written order and shall be binding on

the District and DBE.

- 4.16.7. Unauthorized Changes. Any Work beyond the lines and grades shown on the Contract Documents, or any extra Work performed or provided by DBE without notice to the District Representative in the manner and within the time set forth in the Contract Documents. Work so done will not be measured or paid for, no extension to the Contract Time will be granted on account thereof and any such Work may be ordered removed at DBE's sole cost and expense. The failure of the District to order removal of such Work is not acceptance of such Work nor relieves DBE from any liability on account thereof.

4.17. Tests; Inspections; Observations.

- 4.17.1. Testing/Inspection Laboratory. The District shall select duly qualified person(s) or testing laboratory(ies) to conduct the tests and inspections to be paid for by the District and required by the Contract Documents. Tests and inspections required of the Work shall be as set forth in the Contract Documents and as required by the Laws, including without limitation, Title 24 of the California Code of Regulations. Test/inspection standards shall be as set forth in the Contract Documents or established by applicable law, rule or regulation. Where inspection or testing is to be conducted by an independent laboratory or testing agency, materials or samples thereof shall be selected by the laboratory, testing agency, the Project Inspector, the Construction Manager or other District representative and not by the DBE.

- 4.17.2. Additional Tests, Inspections and Approvals. If the Architect, the Construction Manager, the Project Inspector or public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval, the District Representative or Construction Manager will, upon written authorization from the District, instruct the DBE to make arrangements for such additional testing, inspection or approval by an entity acceptable to the District, and the DBE shall give timely notice to the District Representative, Construction Manager and the Project Inspector of when and where tests and inspections are to be made so the Project Inspector and the Construction Manager may observe such procedures. The District shall bear the costs of such additional tests, inspections or approvals, except to the extent that such additional tests, inspections or approvals reveal any failure of the Work to comply with the requirements of the Contract Documents, in which case the DBE shall bear all costs made necessary by such failures, including without limitation, the costs of corrections, repeat tests, inspections or approvals and the costs of the services, the Architect or its consultants, the Construction Manager and Project Inspector in connection therewith.

- 4.17.3. Delivery of Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the DBE and delivered to the Project Manager.

- 4.17.4. Timeliness of Tests, Inspections and Approvals. Tests or inspections required and conducted pursuant to the Contract Documents shall be made or arranged by DBE to avoid delay in the progress of the Work.

4.18. Correction of Work; Warranties.

- 4.18.1. Uncovering of Work. If any portion of the Work is covered contrary to the request of the District Representative or the requirements of the Contract Documents, it must, if required by the District Representative, be uncovered for observation by the District Representative and be replaced without adjustment of the Contract Time or the Contract Price.

- 4.18.2. Rejection of Work. Prior to the District's Final Acceptance of the Work, any Work which is defective or not in conformity with the Contract Documents may be rejected by the District Representative and DBE shall correct such rejected Work without adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected or even if they failed to observe the defective or non-conforming Work, materials or equipment. DBE shall, at its sole cost and expense,

remove from the Site all portions of the Work which are defective or are not in accordance with the requirements of the Contract Documents which are neither corrected by DBE nor accepted by the District.

- 4.18.3. Correction of Work. DBE shall promptly correct any portion of the Work properly rejected by the District Representative for failing to conform to the requirements of the Contract Documents, or which is determined by them to be defective, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. DBE shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the services and expenses made necessary thereby. DBE shall bear all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the District or separate DBEs, caused by DBE's correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective.
- 4.18.4. Failure of DBE to Correct Work. If DBE fails to commence to correct defective or non-conforming Work within five (5) days of notice of such condition and promptly thereafter complete the same within a reasonable time, the District may correct the same at DBE's expense.
- 4.18.5. Acceptance of Defective or Non-Conforming Work. The District may elect to accept Work which is defective or which is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price may be reduced as appropriate and equitable.
- 4.18.6. Workmanship and Materials. DBE warrants to the District that all materials and equipment (including any substitute or alternative items) furnished under the Contract Documents shall be new at the time of installation, of good quality and of the most suitable grade for the Site at the time of design approval by District, and the quality required for the purpose of compliance with the Design Specifications including generating the requisite power required by the District approved Specifications and the related Project construction work. All Work shall be of good quality and in conformity with the requirements of the Contract Documents at the time performed. If required by the District Representative, DBE shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work.
- 4.18.7. Warranty Requirements. Not less than two (2) years for labor and materials, in addition to assignment of all manufacturers' warranties to District.
- 4.18.8. Warranty Work. If, after the date of Final Acceptance, a claim arises under the warranties contained in the Contract Documents, DBE shall commence necessary corrective action not more than Five (5) business days after receipt of a written notice from the District to do so, and to thereafter diligently complete the same. If DBE fails or refuses to commence correction of any such item within said Five (5) business day period or to diligently prosecute such corrective actions to completion, the District may, with 24 hour notice to DBE, cause such corrective Work to be performed and completed. In such event, DBE shall be responsible for all costs in connection with such corrective Work, including without limitation, general administrative overhead costs of the District in securing and overseeing such corrective Work; provided that the warranties provided under this Contract Documents may not apply to such corrective Work unless such Work was performed by a third party previously approved by DBE. The obligations of DBE hereunder are in addition to, and not in lieu of, any guarantees or warranties provided by any manufacturer of any item or equipment forming a part of, or incorporated into the Work, or otherwise recognized, prescribed or imposed by law. Neither the District's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve DBE from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship provided pursuant to this Agreement. In any event that corrective Work is required under any Warranty provided to the District pursuant to this Agreement, including, without limitation, any manufacturer's warranties, DBE shall provide all labor for

the completion of such corrective Work at its sole cost and expense.

- 4.18.9. Survival of Warranties. DBE's warranty obligations survive DBE's completion of Work, the District's Final Acceptance of the Work and/or the termination of the Contract.

5. Post Construction Services

- 5.1. Final Completion. Upon request of the DBE, the District, Project Inspector and DBE 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 this Agreement. If Final Completion has been achieved, the DBE shall determine and certify the date of Final Completion of the Project or portions thereof. It shall be a material requirement for and condition of Final Completion that DBE shall have provided to District complete and accurate documentation that the Project has met all checklist criteria reflected in Exhibit A.

5.2. Close-Out Documents.

- 5.2.1. Assembly/Transmittal of Close-Out Documents. The DBE shall compile and assemble the DBE's close-out documents for delivery to the District, including without limitation, Record As-Built Drawings, Operations and Maintenance manuals, key schedules and warranties.
- 5.2.2. Governmental Agency Close-Out. The DBE shall prepare and submit for processing such documentation as required by governmental agencies, including DSA as applicable, in connection with completion of the construction of the Project. An express condition precedent to the DBE's right to receive the portion of the Contract Price for a Project allocated for the Post-Construction Services and an express condition precedent to the District's obligation to disburse the portion of the Contract Price allocated for the Post-Construction Services is the DBE's completion of all of its Post-Construction obligations, including without limitation the preparation and submission of Verified Reports to DSA.
- 5.2.3. As-Built Drawings. The District shall require the DBE for the Project to provide the District with As-Built 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 DBE shall be required to record such work on reproducible drawings prepared by the DBE and furnished to the District. The DBE's As-Built Drawings shall be delivered by the DBE to the District for the District's review. DBE shall bear sole responsibility for the accuracy and completeness of the As-Built Drawings.
- 5.2.4. Warranties. DBE shall deliver to District copies of all manufacturer warranties covering the equipment, together with all other documentation required to satisfy DBE's obligations identified in Section 4.15.

6. Insurance; Indemnity and Bonds.

- 6.1. Design and Construction Phase Insurance Requirements. At all times during performance of obligations under this Agreement, DBE and its Design Services sub-consultants and its Construction Services Subcontractors shall obtain and maintain the following insurance coverages:

- 6.1.1. Workers' Compensation Insurance; Employer's Liability Insurance. DBE and each of its Design Consultants and Subcontractors shall purchase and maintain Workers' Compensation Insurance as will protect them from claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed. DBE and each of its Design Consultants and Subcontractors shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by DBE. The Employer's Liability Insurance required of DBE and its Design Consultants and Subcontractors hereunder may be obtained as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained hereunder. Coverage amounts for DBE, its Design Consultants and Subcontractors under their respective Workers

Compensation insurance policies shall be in accordance with applicable law. The minimum coverage amount under Employer's Liability Insurance required hereunder for DBE, its Design Consultants and Subcontractors shall be One Million Dollars (\$1,000,000). Concurrently with execution of this Agreement, DBE shall execute and deliver to the District the form of Certificate of Workers' Compensation Insurance attached hereto as Exhibit E. The foregoing is a material obligation of DBE hereunder.

- 6.1.2. Commercial General Liability and Property Insurance. DBE and each of its Design Consultants and Subcontractors shall purchase and maintain Commercial General Liability and Property Insurance (at least as broad as Form CG 00 01 10 93 or Insurance Services Office (ISO) Form, CG 00 09 11 88 Owners, and Proposer's Protective Liability Coverage Form – Coverage Operations of Designated Proposer covering the types of claims set forth below which may arise out of or result from DBE's operations under the Contract Documents and for which they may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than their employees; (ii) claims for damages insured by usual personal injury liability coverage; (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; (v) contractual liability insurance applicable to their obligations under the Contract Documents; (vi) personal and advertising injury; and (vii) Products and Completed Operations. The minimum coverage under the Commercial General Liability insurance policies of DBE and its Design Consultants/Subcontractors shall be Two Million Dollars (\$2,000,000.00) per occurrence with a general aggregate that applies specifically to this Project, or else a \$5,000,000 aggregate limit.
- 6.1.3. Commercial Automobile Liability. Insurance Services Office (ISO) Business Auto Coverage (Form CA 00 01), covering Symbol 1 (any auto) with limit of one million dollars (\$1,000,000) for bodily injury and property damage each accident.
- 6.1.4. Professional Liability - Design Phase Insurance. In addition to the insurance coverage requirements set forth above, in connection with DBE's obligations under the Design Phase of this Agreement, DBE and each of its Design Services Consultants shall each obtain and maintain a policy of Professional Liability insurance covering their liabilities in completing its obligations in connection with the Design Services under this Agreement. The minimum coverage amounts of the Professional Liability insurance policies of DBE and each of its Design Phase Consultants shall be Two Million Dollars (\$2,000,000.00) per claim/Four Million Dollars (\$5,000,000.00) aggregate.

Professional Liability may be Claims Made policies, provided the following provisions: (1) the retroactive date must be shown and must be before the date of the contract or the beginning of the contract work; (2) insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work; and (3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

- 6.1.5. Builder's Risk "All-Risk" Insurance. Builders Risk insurance covering the risks of loss, damage or destruction of Work in progress or in place at the Site resulting from the perils of fire, malicious mischief, vandalism, and collapse will be obtained by the District as part of the scope of coverage under the District's property casualty insurance policy. If a claim is adjusted under the District obtained Builder's Risk Insurance, DBE shall be liable and responsible for payment of the deductible, subject to a maximum of \$10,000 any one event or loss. In lieu of DBE's direct payment of the deductible to the insurance carrier issuing the Builder's Risk Insurance policy, the District may deduct any portion of the deductible from the Contract Price then or thereafter due DBE. DBE shall bear full and sole responsibility for purchasing and maintaining any additional insurance coverage for risks not covered by the District by and through its Builder's Risk "All-Risk" Insurance policy, for which DBE requires or deems necessary.

6.2. Insurance Policy Requirements. Each policy of insurance required by the Contract Documents shall confirm the following requirements.

6.2.1. Minimum Coverage Amounts. The insurance required of DBE hereunder shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater. In the event of any loss or damage covered by a policy of insurance required to be obtained and maintained by DBE hereunder, DBE shall be solely and exclusively responsible for the payment of the deductible, if any, under such policy of insurance, without adjustment to the Contract Price on account thereof.

6.2.2. Required Qualifications of Insurers. Required policies of insurance under this Agreement will be accepted by the District only if the insurer(s) are: (a) A.M. Best rated A or better; (b) A.M. Best Financial Size Category VII or higher; and (c) authorized under California law to transact business in the State of California and authorized to issue insurance policies in the State of California, unless otherwise approved by the District. If at any time during performance of DBE obligations under this Agreement, the insurer(s) issuing a required policy of insurance is/are not A.M. Best rated A or better and is/are not A.M. Best Financial Size Category VII or higher, DBE or its Design Consultant/Subcontractor, as applicable shall within thirty (30) days of the District's written notice of the insufficiency of an insurer to obtain insurance coverage(s) from alternative insurer(s) who is/are then A.M. Best rated A or better and who is/are A.M. Best Financial Size Category VII or higher. If DBE fails to deliver Certificate(s) of Insurance from an alternative insurer(s) meeting or exceeding the A.M. Best rating and A.M. Best Financial Size Category set forth above, within thirty (30) days of the date of the District's issuance of a written notice pursuant to the preceding sentence, in addition to any other right or remedy of the District under the Contract Documents or arising by operation of law, the District may issue a non-compensable stop work directive and withhold disbursement of any payment otherwise due hereunder until DBE has delivered such Certificate(s) of Insurance from an alternative insurer(s).

6.3. Evidence of Insurance; Subcontractor's Insurance. Concurrently with execution of this Agreement, DBE shall provide to the District Representative documented evidence of Insurance for itself and all Design Phase Sub-Consultants evidencing the insurance coverages in at least the minimum coverage amounts required by this Agreement during performance of Design Services. The insurance policies required of DBE hereunder during Construction Services shall also name the District, as an additional insured. Prior to commencing construction activities at the Site, DBE shall deliver to the District Representative documented evidence of Insurance evidencing the insurance coverages required of DBE and its Subcontractors during performance of Construction Services. Failure or refusal of DBE to so deliver documented evidence of Insurance may be deemed by the District to be a default of a material obligation of DBE under the Contract Documents, and thereupon the District may proceed to exercise any right or remedy provided for under the Contract Documents or at law. DBE shall forward to the District any and all written notices regarding the cancellation, expiration, lapse or material change in any of the required DBE insurance policies within 48 hours of DBE's receipt of such notices from the Insurer. Should any policy of insurance be canceled before Final Acceptance of the Work by the District and DBE fails to immediately procure replacement insurance as required, the District reserves the right to, but is not obligated to, procure such insurance and to deduct the premium cost thereof and other costs incurred by the District in connection therewith from any sum then or thereafter due DBE under the Contract Documents or issue a non-compensable stop work directive until DBE presents to the District proof of its replacement insurance. DBE shall, from time to time, furnish the District, when requested, with satisfactory proof of coverage of each type of insurance required by the Contract Documents; failure of DBE to comply with the District's request may be deemed by the District to be a default of a material obligation of DBE under the Contract Documents.

6.4. Maintenance of Insurance. General liability and design phase insurance shall be maintained after the District's Final Acceptance of all of the Work for the full one year correction of Work period and any longer specific guarantee or warranty periods set forth in the Contract Documents. Should such insurance be canceled before the end of any such periods and DBE fails to procure replacement insurance within 24 hours cancellation or lapse of insurance, the District reserves the right, but is not obligated, to procure such insurance and to charge the cost thereof to DBE or to issue a non-compensable stop work directive until DBE presents to the District proof of its replacement insurance. Nothing contained in these insurance requirements is to be construed as limiting the extent of DBE's responsibility for payment of damages resulting from its operations or performance of the Work under the Contract Documents, including without limitation DBE's obligation to pay Liquidated Damages. In no instance will the District's exercise of

its option to occupy and use completed portions of the Work relieve DBE of its obligation to maintain insurance required under this Section until the date of Final Acceptance of the Work by the District, or such time thereafter as required by the Contract Documents.

- 6.5. DBE's Insurance Primary. All insurance and the coverages thereunder required to be obtained and maintained by DBE hereunder, if overlapping with any policy of insurance maintained by the District, shall be deemed to be primary and non-contributing with any policy maintained by the District and any policy or coverage thereunder maintained by District shall be deemed excess insurance. To the extent that the District maintains a policy of insurance covering property damage arising out of the perils of fire or other casualty covered by DBE's Builder's Risk Insurance or the Comprehensive General Liability Insurance of DBE or any Subcontractor, the District, DBE and all Subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurances coverage required herein of DBE and its Subcontractors shall be included in the Contract Price.
- 6.6. Indemnity. Unless the liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arise out of the negligence or willful misconduct of the District or its Governing Board, officers, employees, Subcontractors, agents or representatives (the "District Indemnified Parties"), and in all cases subject to Section 6.8 hereof, DBE shall indemnify, defend and hold harmless the District Indemnified Parties to the extent arising from DBE's and/or its subcontractors' and suppliers' conduct as follows:
- 6.6.1. DBE shall defend, indemnify and hold harmless District and the State of California and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury or property damage to the extent caused by any act, omission, or breach of DBE connected with or arising from the progress of Work or performance of service under this Agreement or the Contract Documents. As part of this indemnity, and subject to the express limitations described herein, DBE shall protect and defend, at its own expense, District and State of California and their officers, employees, agents and independent contractors from any legal action including reasonable attorney's fees or other proceeding based upon such act, omission, breach or as otherwise required by this Section. DBE agrees to and does hereby defend, indemnify and hold harmless District and the State of California and their officers, employees, agents and independent contractors from every claim or demand made, and every liability, loss, damage, expense or attorney's fees of any nature whatsoever, which may be incurred by reason of:
- 6.6.1.1. Liability for (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; or (3) any failure or alleged failure to comply with any provision of law or the Contract Documents, except for liability to the extent resulting from the negligence or the willful misconduct of any District Indemnified Party.
- 6.6.1.2. Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of DBE or any person, firm or corporation employed by DBE, either directly or by independent contract, including all damages or injury to or death of persons, loss (including theft) or loss of use of any property, sustained by any person, firm or corporation, including the District, arising out of or in any way connected with Work covered by this Agreement or the Contract Documents, whether said injury or damage occurs either on or off District property, except to the extent caused by the negligence or willful misconduct of any District Indemnified Party.
- 6.6.1.3. Any dispute between DBE and DBE's subcontractors/supplies/ Sureties, including, but not limited to, any failure or alleged failure of the DBE (or any person hired or employed directly or indirectly by the DBE) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.
- 6.6.1.4. If arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the DBE in the performance of the professional obligations of a registered engineer, the DBE shall indemnify and hold the District harmless from any loss, injury to,

death of persons, or damage to property caused by such negligence, recklessness, or willful misconduct of the DBE, or any person, firm, or corporation employed by the DBE, either directly or by independent contract, including all such damages due to loss or theft, sustained by any person, firm, or corporation, including the District, arising out of, or in any way connected with, the Project, including injury or damage either on or off District property; but not to the extent any such loss, injury, death, or damages is caused by the negligence or willful misconduct of any District Indemnified Party. With regard to the DBE's obligation to indemnify for acts of professional negligence, such obligation does not include the obligation to provide defense counsel or to pay for the defense of actions or proceedings brought against the District, but rather to reimburse the District for reasonable attorneys' fees and costs incurred by the District in defending such actions or proceedings brought against the District that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the DBE.

- 6.6.2. DBE, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents or employees, on account of or founded upon any cause, damage, or injury identified in this Article 6.6.1, and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.
- 6.6.3. The DBE's obligation to defend, indemnify and hold harmless the District, District Architect, Inspector, the State of California and their officers, employees, agents and independent contractors hereunder shall include, without limitation, any and all claims, damages, and costs to the extent arising in connection with the Work for the following: (1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; (2) breach of any express warranty (3) failure of the DBE or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; and (4) any claims of violation of the Americans with Disabilities Act.
- 6.7. District Indemnity. Unless arising out of the negligence or willful misconduct of DBE or its officers, employees, Subcontractors, agents or representatives (the "DBE Indemnified Parties"), the District shall indemnify, defend and hold harmless the DBE Indemnified Parties to the extent arising from District's and/or its Governing Board', officers', employees', agents' or representatives' sole negligence, active negligence or wrongful misconduct as follows. District's obligations hereunder include indemnity, defense and hold harmless of the DBE Indemnified Parties from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation reasonable attorneys' fees and costs to the extent arising, in whole or in part, from the Contract Documents or the acts, omissions or other conduct of District or its Governing Board, officers, employees, agents or representatives in connection with (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property. The obligations of the District, as set forth above shall include, without limitation losses, costs, expenses, damages and other claims asserted by any other person or entity to DBE arising out of the acts, omissions or other conduct of the District or its Governing Board, officers, employees, agents or representatives. If any action or proceeding, whether judicial, administrative, binding arbitration to which District is a party, or otherwise, shall be prosecuted on account of any claim, demand or liability subject to the District's obligations hereunder, and such action or proceeding names any of the DBE Indemnified Parties as a party thereto, and District is determined in that proceeding to bear liability for which it agrees to indemnify the Indemnified Parties under this Section, District shall, at its sole cost and expense, reimburse named DBE Indemnified Parties in such action or proceeding in an amount directly proportional to District's and/or its Governing Board', officers', employees', agents' or representatives' degree of fault as determined in that proceeding. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the DBE Indemnified Parties are subject to, or bound by, the District shall pay, satisfy or otherwise discharge any such judgment to the extent adjudicated to have arisen from District's its Governing Board', officers', employees', agents' or representatives' negligence or wrongful conduct; the District shall indemnify and hold harmless the DBE Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, or relief adjudicated and determined by a court of competent jurisdiction.
- 6.8. Claims. Any Party seeking indemnification hereunder (the "Indemnified Party") shall deliver to the other Party (the

"Indemnifying Party") a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice an "Indemnification Claim Notice"). Such Indemnification Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced; *provided, however*, that failure to deliver the Indemnification Claim Notice as aforesaid shall not relieve the Indemnifying Party of its obligations under this Section, except to the extent that such Indemnifying Party has been prejudiced by such failure. The Indemnifying Party shall be entitled to control the defense of any claim, action, suit or proceeding for which it is obligated to indemnify hereunder, subject to conducting such defense with due diligence and in good faith the defense of any claim against the Indemnified Party, and the Indemnified Party shall cooperate with the Indemnifying Party in such defense. With the exception of claims under Section 6.6.1.4, the Indemnifying Party shall have charge and direction of the defense and settlement of such claim; *provided, however*, that the Indemnifying Party will not settle any such claim without first obtaining the express written acceptance of the District Indemnified Parties or DBE Indemnified Parties, as applicable, which acceptance shall not unreasonably be withheld or delayed. The Indemnified Party may elect to participate through separate counsel in the defense of any such claim, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party.

6.9. General Claims. Any claim for the following shall be submitted by DBE, and shall be processed by the Parties in accordance with Public Contract Code section 9204:

- 6.9.1. Claims for any time extension, including, without limitation, for relief from damages or penalties for delay.
- 6.9.2. Claims for payment of any moneys by District, damages arising from work done by, or on behalf of, DBE pursuant to this Agreement, and/or payment of any sums not otherwise expressly provided for or to which DBE is not expressly entitled under this Agreement.
- 6.9.3. Claims for payment of an amount that is disputed by District.

7. Termination; Suspension.

7.1. Termination for Default. Either the District or DBE may terminate this Agreement upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the twentieth (20th) day following the date of the written termination notice, unless during such twenty (20) day period, the Party receiving the written termination notice shall commence to cure its default(s) and diligently thereafter prosecute such cure to completion. In addition to the District's right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to DBE if: (a) DBE becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by DBE or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for DBE or any of DBE's property on account of DBE's insolvency; or (b) if DBE disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder prior to DBE's completion of the Work, the Contract Price due the DBE, if any, shall be based upon the Work completed prior the effective date of the District's termination of this Agreement, reduced by the District's prior payments of the Contract Price and losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. DBE shall remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of DBE's default hereunder, to the extent that such losses, damages or other costs exceed any amount due DBE hereunder for the Contract Price.

7.2. District's Right to Suspend. The District may, in its discretion, suspend all or any part of the design or construction of the Project or the DBE's services under this Agreement; *provided, however*, that if the District shall suspend design or construction of the Project or DBE's services for a period of thirty (30) consecutive days or more and such suspension is not caused by the DBE's default or the acts or omissions of DBE or its Design Consultants or Subcontractors, upon rescission of such suspension, the Contract Price will be subject to adjustment to reflect actual costs and expenses incurred by DBE, if any, as a direct result of the suspension and resumption of Project design/construction.

- 7.3. District's Termination for Convenience. The District may, at any time, upon seven (7) days advance written notice to DBE terminate this Agreement for the District's convenience and without fault, neglect or default on the part of DBE. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District's written notice to DBE or such other time as the District and DBE may mutually agree upon. In such event, the District shall make payment of the Contract Price to DBE for services provided through the date of termination, calculated in accordance with the Contract Price, plus actual costs incurred by DBE directly attributable to such termination, including a fifteen percent (15%) markup for overhead.
- 7.4. DBE Suspension of Services. If the District shall fail to make payment of the Design Services Phase of the Contract Price when due DBE hereunder, DBE may, upon seven (7) days advance written notice to the District, suspend further performance of the design services hereunder until payment in full is received.
- 7.5. DBE Obligations Upon Termination. Upon the District's exercise of the right of termination under pursuant to the foregoing, DBE shall take action as directed by the District relative to on-going preparation of the Design Documents or construction of the Project. If requested by the District, the DBE shall within five (5) days of such request, assemble and deliver to the District all work product, instruments of service and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the DBE under this Agreement. DBE shall deliver the originals of all work product, instruments of service and other items of a tangible nature requested by the District pursuant to the preceding sentence; provided, however, that DBE may, at its sole cost and expense, make reproductions of the originals delivered to the District.

8. District Responsibilities.

- 8.1. Access to Site. On the Commencement Date of the Work and for so long as any Work (including any Work related to the Warranty) is provided by DBE hereunder, District shall enable DBE or any of its subcontractors or agents to gain free, unobstructed, access to the Site for the purpose of performing the Work hereunder and shall keep the Site free and clear from any encumbrances, obstructions or Hazardous Materials introduced to the Site by District. In addition to the foregoing, District shall allow DBE to have access to the Site to: (a) inspect the Site to verify conditions and to construct and install the Project on the Site; (b) to access and maintain a data acquisition Project ("DAS") on the Project and collect data from such DAS, independent of any DAS owned by District; and (c) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by DBE, to carry out the activities and enjoy the rights set forth in this Agreement. District shall ensure that DBE has access to and use of lighting, power, and water while performing Work hereunder.
- 8.2. Compliance with Laws and Agreements. District shall comply with any express or implied obligation required at law or in equity or under any permits, financing documents or other agreements or understandings to which District is a party or under which it is bound that would have an effect on this Agreement or District's or DBE's obligations hereunder.
- 8.3. Cooperation. District shall fully and timely cooperate with DBE in DBE's performance of its obligations under this Agreement, including, without limitation, (a) timely review and, where applicable, approve drawings, specifications, Change Order requests and other DBE requirements, (b) timely negotiate and execute related agreements and timely provide all information and consents necessary for DBE to apply for the permits and fulfill its obligations hereunder, (c) comply with the Construction Schedule as it applies to District and (d) perform or cause to be performed any work, or pay or caused to be paid any amount, required hereunder in connection with any exclusion set forth herein.
- 8.4. Storage. District shall provide DBE with an area for storage space located near the Site for storage of materials, tools and equipment, and other purposes.

9. Miscellaneous

- 9.1. Governing Law; Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. The titles of the various Sections of this Agreement and elsewhere in the Contract Documents are used for convenience of reference only and are not intended to, and shall in no way, enlarge or diminish the rights

or obligations of the District or DBE and shall have no effect upon the construction or interpretation of the Contract Documents. The Contract Documents shall be construed as a whole in accordance with their fair meaning and not strictly for or against the District or DBE.

- 9.2. Ambiguities; Conflicting Terms/Provisions. In the event there is a discrepancy between the various Contract Documents, the more specific, more stringent, and greater quantity of Work shall apply. In the event that the foregoing provision does not resolve the discrepancy, the following order of precedence in the interpretation of Contract Documents or resolution of discrepancy therein shall prevail:
- (a) Amendments to this Agreement (including Change Orders) duly signed and issued after the signing of this Agreement, with those of a later date having precedence over those of an earlier date;
 - (b) this Agreement;
 - (c) Exhibit A; and
 - (d) other exhibits.
- 9.3. Successors and Assigns. Except as otherwise expressly provided in the Contract Documents, all terms, conditions and covenants of the Contract Documents shall be binding upon, and shall inure to the benefit of the District and DBE and their respective heirs, representatives, successors-in-interest and assigns.
- 9.4. Cumulative Rights and Remedies; No Waiver. Duties and obligations imposed by the Contract Documents and rights and remedies hereunder are in addition to, and not in lieu of nor a limitation of, duties, obligations, rights and remedies under law. No action or failure to act by the District is a waiver of a right or remedy under the Contract Documents or at law nor does the District's failure to act constitute approval of or acquiescence in a breach hereunder.
- 9.5. Severability. If any provision of the Contract Documents is deemed illegal, invalid, unenforceable and/or void, by a court or any other governmental agency of competent jurisdiction, such provision shall be deemed to be severed and deleted from the Contract Documents, but all remaining provisions hereof, shall in all other respects, continue in full force and effect.
- 9.6. No Assignment by DBE. DBE shall not sublet or assign the Contract, or any portion thereof, or any monies due thereunder, without the express prior written consent and approval of the District, which may be withheld or restricted in the sole discretion of the District.
- 9.7. Gender and Number. Whenever the context of the Contract Documents so require, the neuter gender includes the feminine and masculine, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular.
- 9.8. Independent DBE Status. DBE is an independent contractor to the District and not an agent or employee of the District.
- 9.9. Notices. Except as otherwise expressly provided for in the Contract Documents, all notices which the District or DBE may be required, or may desire, to serve on the other, shall be effective only if delivered by personal delivery or by postage prepaid, First Class Certified Return Receipt Requested United States Mail, addressed to the District or DBE at their respective address set forth below, or such other address(es) as either the District or DBE may designate from time to time by written notice to the other in conformity with the provisions hereof.

If to the District:

Hawthorne School District

Attn: [REDACTED]
[REDACTED]
[REDACTED]

If to DBE:

[REDACTED]
Attn: [REDACTED]
[REDACTED]

[REDACTED], In the event of personal delivery, such notices shall be deemed effective upon delivery, provided that such personal delivery requires a signed receipt by the recipient acknowledging delivery of the same. In the event of mailed notices, such notice shall be deemed effective on the third working day after deposit in the mail.

9.10. Disputes; Continuation of Work. Notwithstanding any claim, dispute or other disagreement between the District and DBE regarding performance under this Agreement or the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, this Agreement, the Contract Documents or the Work, DBE shall proceed diligently with performance of the Work in accordance with the District's written direction, pending any final determination or decision regarding any such claim, dispute or disagreement.

9.11. Dispute Resolution; Arbitration.

9.11.1. Claims Under \$375,000.00. Claims between the District and DBE of Three Hundred Seventy-Five Thousand Dollars (\$375,000.00) or less shall be resolved in accordance with the procedures established at Public Contract Code, §§ 20104, *et seq.*

9.11.2. Arbitration. Except as provided above, any other claims, disputes, disagreements or other matters in controversy between the District and DBE arising out of, or related, in any manner, to the Contract Documents, or the interpretation, clarification or enforcement thereof shall be resolved by arbitration conducted before a retired judge in accordance with the Construction Industry Arbitration Rules of 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. The award rendered by the Arbitrator(s) is final and binding upon the District and DBE. The discovery rights and procedures provided for in California Code of Civil Procedure § 1283.05 are applicable, and are incorporated herein by this reference. 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 made by either the District or DBE, all such controversies shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and DBE. DBE's Surety, a Design Sub-Consultant, Subcontractor or Material Supplier to DBE 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 DBE, 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 DBE, in which case an appropriate severance order shall be issued by the Arbitrator(s). The expenses and fees of the Arbitrator(s) shall be divided equally among 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 cost and expense 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. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for post-award proceedings shall be as set forth in California Code of Civil Procedure § 1285 et seq.

- 9.11.3. DBE Compliance with California Government Code § 900 et seq. The foregoing provisions relating to dispute resolution procedures notwithstanding, neither this Agreement nor such provisions shall be deemed to waive, limit or modify any requirements under California Government Code § 900 et seq. relating to the DBE's submission of claims to the District as a express condition precedent and prerequisite to filing a Demand for Arbitration, which shall be deemed a "claim" for money or damages under California Government Code § 900 et seq. The DBE's strict compliance with all applicable provisions of California Government Code § 900 et seq. in connection with any claim, dispute or other disagreement arising hereunder shall be an express condition precedent to the DBE's initiation of the binding arbitration procedures under Section 9.11.2.
- 9.12. Limitation on 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 DBE shall be limited to general damages which are directly caused by said breach or default of the District and shall exclude any and all special or consequential damages, if any, suffered by the DBE. By executing this Agreement, the DBE expressly acknowledges the foregoing limitation to the recovery only of general damages from the District if the District is in breach or default of its obligations under the Contract Documents. Each Party expressly waives any right to and foregoes the recovery of any indirect, special, exemplary or consequential damages from the other Party including, without limitation, damages for: (i) lost or impaired bonding capacity; (ii) business interruption; and/or (iii) lost profits arising out of or in connection with any past, present, or future work of improvement, except for the Project which is the subject of the Contract Documents. With the exception of claims related to (i) Section 4.6.23 (Patents and Royalties), (ii) third party indemnification claims, and (iii) DBE's fraud, gross negligence or willful misconduct, DBE's aggregate liability (including any liability of DBE's Subcontractors, vendors and related entities of DBE and any of their directors, officers, employees and agents) to the District arising out of, under or in relation to the Contract Documents shall be limited to that portion of the Contract Price that the District has paid to DBE under the Contract Documents.
- 9.13. Attorneys' Fees. Except as expressly provided for in the Contract Documents, or authorized by law, neither the District nor DBE shall recover from the other any attorneys' fees or other costs 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 Work.
- 9.14. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in the Contract Documents is deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause are included herein, and if through mistake, or otherwise, any such provision or clause is not inserted or if not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.
- 9.15. Days. Unless otherwise expressly stated, references to "days" in the Contract Documents shall be deemed to be calendar days.
- 9.16. Use of Design Documents.
- 9.16.1. Ownership. Subject to the provisions hereof, all of DBE's Instruments of Service, including without limitation, the originals and reproducible transparencies of the Drawings, Specifications and other Design Documents prepared by or on behalf of DBE under this Agreement (which include, but are not limited to, working drawings, and master plans, preliminary sketches, architectural presentation drawings, As-Built Drawings, structural and other engineering calculations or computations and estimates) are and shall remain the property of District as required under Education Code section 17316. The foregoing notwithstanding, if this Agreement is terminated for the default of DBE, in addition to any other right or remedy arising from DBE's default, the District may use any portion of the Design Documents (whether completed or in progress) for purposes of (i) completing the Project or (ii) repairing, maintaining, renovating, or modernizing the completed Project, but not

reuse for, expansion of the Project outside its existing footprint other than to eliminate conflicts with any planned adjacent development.

- 9.16.2. Electronic Files. At each stage of DBE's submission of Schematic Design Documents and Construction Documents to the District pursuant to the terms hereof, DBE shall also submit to the District electronic files of the same. Electronic files of the Drawings shall be prepared in the latest version of commercially available computed aided drafting software. Electronic text files shall be prepared in the latest version of MS Word and electronic spreadsheet files shall be prepared in the latest version of MS Excel

9.17. Definitions.

- 9.17.1. Design Consultant(s). Design Consultant(s) are individuals or entities retained by DBE to provide or perform a portion of the DBE's Design Services, including any portion of the Design Documents. Design Consultants shall be duly licensed as required by applicable law, rule or regulation and shall be qualified to perform or provide the portion of DBE's services or work product assigned by having previously provided design consulting services for California public school project design and construction. The District shall have the right to reasonably disapprove a Design Consultant. DBE shall be responsible for the adequacy, timeliness and quality of services or work product provided or performed by Design Consultants.
- 9.17.2. Submittals. Shop Drawings, Product Data or Samples prepared or provided by DBE or its Subcontractor(s) or supplier(s) illustrating some portion of the Work.
- 9.17.3. Site. The physical area for construction and related activities of the Project.
- 9.17.4. Drawings. The Drawings are the graphic and pictorial portions of the Design Documents showing generally the location, design and dimensions of the Work, including without limitation, plans, elevations, sections, details, schedules and diagrams.
- 9.17.5. Specifications. Specifications are the portion of the Design Documents which consist of written requirements for materials, equipment, construction Projects, standards, criteria and workmanship for the Work and related services. Prior to completion of the Design Documents, Specifications are the written requirements for materials, equipment, construction Projects, standards, criteria and workmanship for the Work and related services as provided in Exhibit A.
- 9.17.6. Work. All of the design, construction and other services required by the terms of the Agreement including all labor, materials, equipment and other services required of DBE to complete design and construction of the Project.
- 9.17.7. Construction Cost Estimate. Construction Cost Estimates are estimates prepared by or on behalf of the DBE of the current costs of labor, materials, equipment and services plus a reasonable allowance for DBE's profit, overhead and administrative cost as necessary to complete construction of the Project in accordance with the Design Documents.
- 9.17.8. District. The "District" refers to Hawthorne School District and unless otherwise stated, includes the District's authorized representatives, including the District's Governing Board and the District's officers, employees, agents and representatives.
- 9.17.9. Surety. The Surety is the person or entity that executes, as surety, DBE's Labor and Material Payment Bond and/or Performance Bond.
- 9.17.10. Subcontractors; Sub-Subcontractors. A Subcontractor is a person or entity under contract with DBE to perform a portion of DBE's Construction Services obligations. A Sub-Subcontractor is a person or entity under contract with a Subcontractor to perform DBE's Construction Services obligations. References to "Subcontractor" include Sub-Subcontractors unless otherwise stated or indicated by context.

- 9.17.11. Material Supplier. A Material Supplier is a person or entity who furnishes materials or equipment (including equipment rental) without fabricating, installing or consuming them in construction of the Project.
- 9.17.12. Division of State Architect ("DSA"). The DSA is the California Division of the State DBE including without limitation the DSA's Office of Construction Services, Office of Design Services and the Office of Regulatory Services; references to the DSA in the Contract Documents shall mean the DSA, its offices and its authorized employees and agents. The authority of the DSA over the Work and the performance thereof shall be as set forth in the Contract Documents and Title 24 of the California Code of Regulations ("CCR").
- 9.17.13. Project Inspector ("IOR"). The Project Inspector is the individual designated and employed by the District in accordance with the requirements of Title 24 of the California Code of Regulations. The Project Inspector shall be authorized to act on behalf of the District as provided for in the Contract Documents and the Laws, including without limitation, in Title 24 of the California Code of Regulations, as the same may be amended from time to time.
- 9.17.14. DBE's Superintendent. DBE's Superintendent is an individual employed by DBE whose principal responsibility is supervision and coordination of the Construction Services; DBE's Superintendent shall not perform routine construction labor.
- 9.17.15. Record Drawings. The Record Drawings are the Drawings marked by DBE during performance of its Construction Services to completely and accurately indicate the as-built condition of the Project.
- 9.17.16. As-Built Drawings. DBE's final submittal of Record Drawings to the District after final completion of the Project.
- 9.17.17. Construction Equipment. "Construction Equipment" is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.
- 9.17.18. Site. The Site is the physical area designated in the Contract Documents for DBE's performance, construction and installation of the Work.
- 9.17.19. Force Majeure Event. Any event or circumstance beyond the reasonable control of the Parties, including, without limitation, strikes, fires, floods, hurricanes, typhoons, winds in excess of 90 mph, volcanoes, earthquakes, tornados, vandalism, terrorism, war and acts or omissions of any governmental authority.
- 9.17.20. Defective or Non-Conforming Work. Defective or non-conforming Work is any Project construction which is unsatisfactory, faulty or deficient by: (a) not conforming to the requirements of the Contract Documents; (b) not conforming to the standards of workmanship of the applicable trade or industry; or (c) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents.
- 9.17.21. Delivery. "Delivery" is the unloading and storage of materials, equipment or other items in a protected condition pending incorporation into the Work.
- 9.17.22. Notice to Proceed. The Notice to Proceed is the written notice issued by or on behalf of the District to DBE authorizing DBE to proceed with commencement of construction of the Work and which establishes the date for commencement of the Contract Time.
- 9.17.23. Progress Reports; Verified Reports. Progress Reports, if required, are written reports prepared by DBE and periodically submitted to the District in the form and content as required by the Contract Documents.
- 9.17.24. The Contract Documents. The documents forming a part of the Contract Documents consist of the following, all of which are component parts of the Contract Documents: this Agreement, the Scope of Work (Exhibit A), Payment Bond (Exhibit B), Performance Bond (Exhibit C), Subcontractors List (Exhibit D),

Certificate of Workers' Compensation Insurance (Exhibit E), Drug Free Workplace Certificate (Exhibit F), Warranty (Exhibit G), Student Safety Certification (Exhibit H), as well as the Request for Proposals ("RFP") and Request for Qualifications ("RFQ") issued for the Project, each of which is incorporated herein in their entirety by reference. In the event of conflict between this Agreement and the RFP or RFQ, this Agreement shall control.

- 9.18. Entire Agreement. The Contract Documents contain the entire agreement and understanding between the District and DBE concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements or amendments, whether written or oral. No amendment or modification to any provision of the Contract Documents shall be effective or enforceable except by an agreement in writing executed by the District and DBE.
- 9.19. Authority to Execute. The individual(s) executing this Agreement on behalf of DBE is/are duly and fully authorized to execute this Agreement on behalf of DBE and to bind DBE to each and every term, condition and covenant of the Contract Documents.

In witness hereof, the District and DBE have executed this Agreement as of the date set forth above.

"District"
HAWTHORNE SCHOOL DISTRICT

"DBE"
:

By: _____
Mara Pagniano,
Associate Superintendent, Business Services

By: _____
Name: _____
Title: _____
Date: _____

Date: _____

EXHIBIT A
SCOPE OF WORK
[INSERT SCOPE OF WORK]

EXHIBIT B

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Hawthorne School District (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "DBE"), an agreement for the work described as follows: _____ (hereinafter referred to as the "Public Work or Project"); and

WHEREAS, said DBE is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code section 9550;

NOW, THEREFORE, We, _____, the undersigned DBE, as Principal; and _____, NAIC No. _____ a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Firebaugh-Las Deltas Unified School District and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code section 9100, or any person, company, or corporation entitled to make a claim on this bond, in the sum of _____ Dollars (\$ _____), such sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code section 9100; or fail to pay for any materials, provisions, or other supplies, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code section 9550 et seq.

This bond shall inure to the benefit of any person named in Civil Code section 9100 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, Plans, or specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the DBE or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code section 9100, and who has not been paid the full amount of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 20____.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____
Attorney-in-Fact

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for
service of process in California)

Telephone: _____

Telephone: _____

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) SS.

COUNTY OF

On _____, before me, _____, personally appeared _____, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of _____ (Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(SEAL)

Notary Public in and for said State

Commission expires: _____

EXHIBIT C

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the Hawthorne School District (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "DBE"), an agreement for the work described as follows: _____ (hereinafter referred to as the "Public Work or Project"); and

WHEREAS, the work to be performed by the DBE is more particularly set forth in that certain contract for said Public Work dated _____, (hereinafter referred to as the "Contract"), which Contract is incorporated herein by this reference; and

WHEREAS, the DBE is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we, _____, the undersigned DBE, as Principal, and _____, NAIC No. _____ a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Firebaugh-Las Deltas Unified School District in the sum of _____ Dollars (\$ _____), said sum being not less than one hundred percent (100%) of the total amount payable by said Obligees under the terms of said Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the bounded DBE, his or her 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 said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligees, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Obligees that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligees to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly take over and complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligees as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at Obligees's sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligees of the lowest responsible bidder, arrange for a contract between such bidder and the Obligees and make available as work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligees under the Contract and any modifications thereto, less the amount previously paid by the Obligees to the Principal, less any withholdings by the Obligees allowed under the Contract. Obligees shall not be required or obligated to accept a tender of a completion contractor from the Surety.

Surety expressly agrees that the Obligees may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Obligees, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Obligees and the DBE shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

The Surety shall remain responsible and liable for all patent and latent defects that arise out of or relate to the DBE's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the DBE remains.

DBE and Surety agree that if the Obligees is required to engage the services of an attorney in connection with enforcement of the bond, DBE and Surety shall pay Obligees's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including reasonable attorneys' fees to be fixed by the Court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this ____ day of _____, 20____.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

The rate of premium on this bond is _____ per thousand.

The total amount of premium charged: \$_____ (This must be filled in by a corporate surety).

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

Telephone: _____

(Name and Address of agent or representative for service for
service of process in California)

Telephone: _____

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared _____, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of _____ (Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(SEAL)

Notary Public in and for said State

Commission expires: _____

**EXHIBIT D
SUBCONTRACTORS LIST**

PROJECT:

: _____, declare, state and certify that:

2. I am aware that the provisions of California Labor Code § 3700 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 this Contract.

(Typed or printed name)

EXHIBIT F

DRUG-FREE WORKPLACE CERTIFICATION

I, _____, am the _____ of
(Print Name) (Title)

I declare, state and certify to all of the following:

1. I am aware of the provisions and requirements of California Government Code §§ 8350 et seq., the Drug Free Workplace Act of 1990.
2. I am authorized to certify, and do certify, on behalf of the Design-Build Entity ("DBE") that a drug free workplace will be provided by DBE by doing all of the following:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in DBE's workplace and specifying actions which will be taken against employees for violation of the prohibition;
 - B. Establishing a drug-free awareness program to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace;
 - ii. DBE's policy of maintaining a drug-free workplace;
 - iii. The availability of drug counseling, rehabilitation and employee-assistance programs; and
 - iv. The penalties that may be imposed upon employees for drug abuse violations;
 - C. Requiring that each employee engaged in the performance of the Contract be given a copy of the statement required by subdivision (A), above, and that as a condition of employment by DBE in connection with the Work of the Contract, the employee agrees to abide by the terms of the statement.
 - D. DBE agrees to fulfill and discharge all of DBE's obligations under the terms and requirements of California Government Code § 8355 by, inter alia, publishing a statement notifying employees concerning: (a) the prohibition of any controlled substance in the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the Work of the Contract be given a copy of the statement required by California Government Code § 8355(a) and requiring that the employee agree to abide by the terms of that statement.
3. DBE and I understand that if the District determines that DBE has either: (a) made a false certification herein, or (b) violated this certification by failing to carry out and to implement the requirements of California Government Code §§ 8355, the Contract awarded herein is subject to termination, suspension of payments, or both. DBE and I further understand that, should DBE violate the terms of the Drug-Free Workplace Act of 1990, DBE may be subject to debarment in accordance with the provisions of California Government Code §§ 8350, et seq.
4. DBE and I acknowledge that DBE and I are aware of the provisions of California Government Code §§ 8350, et seq. and hereby certify that DBE and I will adhere to, fulfill, satisfy and discharge all provisions of and obligations under the Drug-Free Workplace Act of 1990.

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

Executed at _____ this _____ day of _____
(City and State)

_____, 20____.

(Signature)

(Handwritten or Typed Name)

EXHIBIT G

WARRANTY

1. **Project Information.** This Standard Warranty (this "Warranty") applies to the Project installed by : [REDACTED] ("DBE") pursuant to the Agreement for the [REDACTED] Project ("ESC").
2. **Project Warranty.** DBE warrants that the Project shall conform to the Specifications on the date of Final Completion and shall be free from defects in materials, equipment and workmanship under normal operating conditions for a period of ten (10) years thereafter ("Warranty Term"). Upon a claim under the Warranty, DBE will, at its option, either repair or replace any defective parts and equipment at no cost to the District. DBE's Project Warranty shall also provide at no cost to the District all requisite labor and pay all necessary transportation and shipping costs. Unless this Warranty is extended by written agreement, the District shall pay for any repair costs incurred by DBE after the Warranty Term expires, provided that such repairs are not covered under another agreement between District and DBE expressly superseding this Warranty, or other separate warranty provisions provided by DBE. This Warranty does not include: (a) roof repair or maintenance or (b) site work, including but not limited to, grading and landscape maintenance, provided that DBE does not damage or destroy site work when repairing or replacing defective parts and equipment, and provided that such work is not covered under another agreement between District and DBE expressly superseding this Warranty, or other separate warranty provisions provided by DBE. Should DBE damage or destroy site in the performance of such warranty work, DBE shall, at its own cost, repair or replace the damaged or destroyed site work.
3. **Manufacturer Warranties.** DBE assigns to the District the applicable pass-through warranties from DBE's manufacturers ("Other Manufacturers"). The Other Manufacturers shall be stated in the Design Documents. Notwithstanding the foregoing, DBE acknowledges and incorporates by reference hereto the Warranty provisions set forth at Sections 4.14.7 and 4.14.8 of this Agreement requiring that DBE's warranty shall provide no-cost repair or replacement of the Project or Project components, including any associated labor, testing, inspection and transportation costs for a ten (10) year period commencing on the date of Final Completion of the Project. During the Project Warranty period, DBE, and not the District, shall be responsible for asserting any and all warranty claims on behalf of the District to Other Manufacturers and ensuring no-cost repair and/or replacement of any and all defects in materials, equipment and workmanship. DBE further warrants that its Services hereunder shall be performed and completed in a manner consistent with the Standard of Care so as to avoid or minimize hindrance or interruption to the generation of power and so as not to void or otherwise impact or impair Other Manufacturers' warranties. For purposes of this warranty and the ESC, the term "Standard of Care" shall mean, the skill knowledge, judgment and care possessed and used by contractors and architectural/engineering professionals in similar circumstances. DBE makes no representation or warranty, and the District shall seek no recourse from DBE, unless specifically provided to the contrary, regarding the warranties of Other Manufacturers extending beyond the scope of this Warranty.
4. **Warranty Exceptions.** This Warranty does not apply to:
 - 4.1 Damage, malfunction, or degradation of the Project caused by:
 - a. normal wear and tear, including expected degradation electrical output; or
 - b. environmental factors, including but not limited to corrosion, insects, animals, lightning, flooding, and winds in excess of design specifications;
 - 4.2 Damage, malfunction, or degradation of the Project, including electrical output and Project's supporting structure, without limit:
 - a. resulting from the District or third party abuse, accident, alteration, improper use, negligence, vandalism, theft, or a Force Majeure Event.
 - 4.3 Change in usage of the building or site, including neighboring surroundings, which may affect building or site permits and related requirements, without the written approval of DBE.

For purposes of this Section, "Properly Operate and Maintain the Project" shall mean that the District, or qualified party on District's behalf, shall:

 - a. perform all initial troubleshooting and diagnostics, including photographic evidence when applicable, prior to submitting a warranty claim; and
 - b. otherwise operate and maintain the Project in full accordance with the printed manuals and instructions provided with the Project to the District.

Resetting of any protective devices and replacement of any fuses or other consumables within the Project are assumed to be included within Proper Operation and Maintenance and not included within the scope of this Warranty.

4.4 The manufacturer of the equipment is not able or willing to honor its product warranty to District and District does not remedy by procuring replacement material, parts, or equipment at its own expense, provided that DBE used its best efforts to assist the Owner in its attempts to oblige the manufacturer to comply with its warranty obligations.

5. **Ambiguities; Conflicting Terms/Provisions.** To the extent there are any ambiguities and/or conflicting terms and provisions as between this Project Warranty and warranty provisions contained in the any other agreement between District and DBE expressly superseding this Warranty, DBE hereby acknowledges and agrees that this : [REDACTED] Warranty shall govern and no other warranty shall serve as a limitation to or otherwise reduce DBE's warranty obligations to the District under this no cost repair and replacement Project Warranty.

6. **Successors and Assigns.** This Warranty shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns (including, without limitation, any owner or tenant of the Site). No assignment by a party shall relieve such party of any of its obligations under this Warranty. Nothing in this Warranty, expressed or implied, is intended to confer any rights, remedies, obligations or liabilities under or by reason of this Warranty upon any person or entity other than the Parties. In the event that there is a change in ownership of the Site, the District shall cause the new owner to execute and deliver to DBE an assumption of the District's obligations under this Warranty in a form reasonably acceptable to DBE.

7. **Disclaimer.** Except as expressly provided herein, DBE expressly disclaims any and all warranties of any kind, express, implied or statutory, including without limitation any implied warranties of merchantability and/or fitness for a particular purpose. Neither this Agreement nor any document furnished under it, unless explicitly stated, is intended to express or imply any warranty or guarantee with regard to the performance of the Project, including, but not limited to, (i) electricity output, (ii) reduction in energy costs or environmental savings, (iii) financial savings or return on investment and (iv) public recognition.

: _____
By: _____
Name: _____
Title: _____
Date: _____

**EXHIBIT H
STUDENT SAFETY CERTIFICATION**

TO: Hawthorne School District
FROM: : _____
RE: _____ Project
_____ Contract # _____

I am authorized to certify, and do certify, on behalf of : _____, a _____ corporation ("DBE"), all of the statements made hereinafter.

EITHER

DBE, at its sole expense, shall provide and maintain the following measures to ensure student safety:

1. The installation of a physical barrier at the worksite to limit contact between all DBE's' employees and personnel, and the employees and personnel of all subcontractors, and any pupils; and,
2. Continual supervision and monitoring of all DBE's employees and personnel, and the employees and personnel of all subcontractors, by an employee of DBE whom the California Department of Justice has ascertained has not been convicted of a violent or serious felony, as that term is defined in Education Code section 45122.1.

OR:

DBE (i) has complied with the fingerprinting and criminal background investigation requirements of California Education Code section 45125.1 with respect to DBE's employees and personnel who may have contact with Washington USD pupils in the course of performance of the Contract, and (ii) has caused its subcontractors to comply with the fingerprinting and criminal background investigation requirements of California Education Code section 45125.1 with respect to the employees and personnel of such subcontractors who may have contact with Washington USD pupils in the course of performance of the Contract.

The California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1.

DBE certifies that the above information is correct and is in compliance with Education Code section 45122.1 and AB 2102.

WHEREFORE

The undersigned declares, under penalty of perjury according to the laws of the State of California, that the foregoing certification is true and correct to the personal knowledge of the undersigned.

S

(DBE Name)

By: _____

(Signature)

(Typed or printed name)