# ALTERNATIVE DESIGN-BUILD PROJECT:

## WORKFORCE HOUSING PROJECT

## BY AND BETWEEN

## ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT

## AND

## CORE GENERAL CONTRACTOR INC.
## dba CORE BUILDERS

Dated as of January 29, 2026

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EXHIBIT A – CRITERIA DOCUMENTS

EXHIBIT B – PROJECT MILESTONE SCHEDULE

EXHIBIT C – GUARANTEED MAXIMUM PRICE

## ALTERNATIVE DESIGN-BUILD AGREEMENT

This Alternative Design-Build Agreement ("Contract"), dated as of January 29, 2026 ("Effective Date"), is made and entered into by and between CORE GENERAL CONTRACTOR INC. dba CORE Builders ("Design/Builder"), a corporation duly organized and existing under the laws of the State of California, and the ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT ("District"), a school district duly organized and validly existing under the laws of the State of California (each a "Party" and, together, "Parties").

### RECITALS

**WHEREAS,** the District is authorized under Education Code section 17250.60 et seq. to contract for the design and construction of school facility projects in excess of $5 million using a design-build project delivery method;

**WHEREAS,** the District wishes to provide for the design and construction of certain work to be known as Workforce Housing Project ("Project"), located at 2050 Kammerer Avenue, San Jose, CA ("Site");

**WHEREAS,** it is the intent of this Contract that the Design/Builder assume full responsibility for administering, managing, designing, constructing, and commissioning the Project to the requirements established by the Criteria Documents;

**WHEREAS,** the Design/Builder is CORE Builders, and represents that it is able to provide appropriately licensed contracting, architectural, and engineering services, as needed, pursuant to this Contract.

**WHEREAS,** the Design/Builder was selected for the Project based on a fair and impartial competitive selection process, in accordance with Education Code section 17250.60 et seq.;

**WHEREAS,** the Governing Board of the District ("Board") has determined that Design/Builder's proposal offered the best value to the public, in accordance with the District's best value selection methodology;

**WHEREAS,** Design/Builder has reviewed the Contract;

**WHEREAS,** Design/Builder represents that it has the expertise and experience to perform the services set forth in this Contract;

**WHEREAS,** the Parties acknowledge that the District, with the support of Design/Builder as needed, will be completing the California Environmental Quality Act ("CEQA") process and the entitlements process that there may be changes to the Project resulting therefrom;

**WHEREAS,** notwithstanding the foregoing, the Parties have performed all other acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Contract and all those conditions precedent do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Contract; and

**NOW, THEREFORE,** in consideration of the above recitals and of the mutual covenants hereinafter contained, the Parties hereto do hereby agree as follows:

## TERMS

1. **DEFINITIONS**

In addition to the terms and entities defined above or in subsequent provisions, and unless the context otherwise requires, the terms defined in this Article shall, for all purposes of this Contract, have the meanings herein specified.

**1.1 Adverse Weather:** Shall be only weather that satisfies all of the following conditions: (1) unusually severe precipitation, sleet, snow, hail, or extreme temperature conditions in excess of the norm for the location and time of year it occurred based on the closest weather station data averaged over the past five years, (2) that is unanticipated and would cause unsafe work conditions and/or is unsuitable for scheduled work that should not be performed during inclement weather (i.e., exterior finishes), and (3) at the Project.

**1.2 Agreement or Contract:** The agreement between the District and Design/Builder contained in the Contract Documents.

**1.3 Allowance(s):** The Allowance Item(s) identified in the GMP approved by District. Any unused portion of the Allowance will revert to District documented by a deductive Change Order. Design/Builder hereby authorizes District to execute a unilateral deductive Change Order at or near the end of the Project for all or any portion of the Allowance not allocated.

**1.4 Allowance Expenditure Directive:** Written authorization for expenditure of an Allowance, if any. Design/Builder shall not bill for or be due any portion of an Allowance unless District has identified specific work, Design/Builder has submitted a price for that work or District has proposed a price for that work, District has accepted the cost for that work, and District has executed an Allowance Expenditure Directive incorporating that work.

**1.5 Approval, Approved, and/or Accepted:** Written authorization, unless stated otherwise.

**1.6 Architect of Record:** Steinberg Hart, who is licensed in the State of California and employed or contracted as a member of Design/Builder to design and prepare Construction Documents for the Project and to provide construction phase services during the Project.

**1.7 As-Builts:** Reproducible blue line prints of drawings to be prepared on a monthly basis pursuant to the Contract Documents, that reflect changes made during the performance of the Work, recording differences between the original design of the Work and the Work as constructed since the preceding monthly submittal. See Record Drawings.

**1.8 Authority Having Jurisdiction ("AHJ"):** Any governmental entity with authority over the design and/or construction of the Project including, without limitation, approvals, permitting, and enforcement of codes, standards, and regulations. There may be more than one AHJ for the Project.

**1.9 Authorized Representatives:** District's Representative(s) as communicated to the Design/Builder.

**1.10 Beneficial Occupancy:** District's occupancy or use of any completed or partially completed portion of the Work.

**1.11 Board:** The Governing Board of the Alum Rock Union Elementary School District.

**1.12 Change Order:** A change to the Contract and/or Contract Documents signed by the Design/Builder and the District authorizing a change in the Work, which may also adjust the GMP and/or the Contract Time. The GMP and/or Contract Time may be changed only by Change Order.

**1.13 Claim:** A Design/Builder Claim within the meaning of Public Contract Code sections 9204 and/or 20104 et seq.

**1.14 Commissioning:** A quality assurance process for achieving, validating and documenting that the new facility and its systems are planned, designed, installed, tested and capable of being operable and maintained to perform in conformity with the Criteria Documents.

**1.15 Construction Documents:** The drawings and specifications prepared and sealed by the Architect of Record on behalf of the Design/Builder for construction of the Project.

**1.16 Construction Manager:** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.

**1.17 Contract Documents:** The Contract Documents consist exclusively of the documents evidencing the agreement of the District and Design/Builder. The Contract Documents consist of the following documents:

**1.17.1** Non-Collusion Declaration

**1.17.2** Iran Contracting Act Certification

**1.17.3** Design-Build Agreement, including all Exhibits

**1.17.4** Performance Bond

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

**1.17.6** DIR Registration Verification

**1.17.7** Hazardous Materials Procedures and Requirements

**1.17.8** Workers' Compensation Certification

**1.17.9** Prevailing Wage Certification

**1.17.10** Drug-Free Workplace Certification

**1.17.11** Tobacco-Free Environment Certification

**1.17.12** Drug and Alcohol-Free Schools Certification

**1.17.13** Hazardous Materials Certification

**1.17.14** Lead-Based Materials Certification (if applicable)

**1.17.15** Imported Materials Certification (if applicable)

**1.17.16** Criminal Background Investigation/Fingerprinting Certification

**1.17.17** Roofing Project Certification (if applicable)

**1.17.18** Skilled and Trained Workforce Certification

**1.17.19** Escrow Agreement for Security Deposits in Lieu of Retention (if used)

**1.17.20** Guarantee Form

**1.17.21** Agreement and Release of Any and All Claims

**1.17.22** All Plans, Technical Specifications, and Drawings

**1.17.23** Any and all addenda to any of the above documents

**1.17.24** Any and all change orders or written modifications to the above documents if approved in writing by the District.

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

**1.19 Criteria Documents:** The documents setting forth design requirements including, without limitation, the size, type, and desired design character of the Project, attached hereto as **Exhibit A**, provided by District to Design/Builder during the RFP and incorporated by reference into the Contract, except as may be otherwise expressly identified in writing, including without limitation in the Memorandum of Understanding re: Changes Between the Criteria Documents and RFP included in Exhibit A.

**1.20 Day(s):** Calendar day(s), unless otherwise specifically designated as a business or working day(s). If a day requiring notice or action falls on a weekend or national or state holiday, then the next non-weekend or non-holiday shall be applicable. Business day(s) are days other than weekend days or federal or state holidays.

**1.21 Design/Builder:** CORE GENERAL CONTRACTOR INC. dba CORE BUILDERS able to provide appropriately licensed construction contracting, and professional architectural and engineering services required hereunder.

**1.22 District:** The school district for which the Work is performed. The governing board of the District or its designees will act for the District in all matters pertaining to the Contract. The District may, at any time:

**1.22.1** Direct the Design/Builder to communicate with or provide notice to the Construction Manager on matters for which the Contract Documents indicate the Design/Builder will communicate with or provide notice to the District; and/or

**1.22.2** Direct the Construction Manager to communicate with or direct the Design/Builder on matters for which the Contract Documents indicate the District will communicate with or direct the Design/Builder.

**1.23 Encumbered**: The labor rate for Design/Builder or any Subcontractor inclusive of any and all burden costs including, but not limited to, health and welfare pay, vacation and holiday pay, pension contributions, training rates, benefits of any kind, insurance of any kind, workers' compensation, liability insurance, truck expenses, supply expenses of any kind, payroll taxes, and any other taxes of any kind.

**1.24 Final Completion:** The earliest of the date of acceptance by the District or the cessation of labor thereon for a continuous period of sixty (60) days.

**1.25 Guaranteed Maximum Price ("GMP"):** The price established as the maximum compensation to the Design/Builder for the design and construction of the Project after AHJ approval of the Project.

**1.26 Job Cost Reports:** Any and all reports or records detailing the costs associated with work performed on or related to the Project that Design/Builder shall maintain for the Project. Specifically, Job Cost Reports shall contain, but are not limited by or to, the following information: a description of the work performed or to be performed on the Project; quantity, if applicable, of work performed (hours, square feet, cubic yards, pounds, etc.) for the Project; Project budget; costs for the Project to date; estimated costs to complete the Project; and expected costs at completion. The Job Cost Reports shall also reflect all Contract cost codes, change orders, elements of non-conforming work, back charges, and additional services.

**1.27 Notice to Proceed with Construction:** The notice given by the District to the Design/Builder, following completion of the design phase and approval of the plans by the AHJ, stating that the Design/Builder is authorized to commence construction of the Project. Additionally, the District shall not issue the Notice to Proceed with Construction, and Design/Builder shall not commence construction, until the District has completed its CEQA process for the Project.

**1.28 Notice to Proceed with Design:** The notice given by the District to the Design/Builder stating that the Design/Builder is authorized to commence design of the Project.

**1.29 NTE Amount:** The not-to-exceed amount established by the Contract as the maximum compensation to the Design/Builder for the design and construction of the Project.

**1.30 Program Manager:** The individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If no Program Manager is designated for the Project that is the subject of the Contract Documents, then all references to Program Manager herein shall be read to refer to District.

**1.31 Project:** The planned undertaking as provided for in the Contract Documents.

**1.32 Project Inspector:** The individual(s) retained by the District, at its option, to monitor and inspect the Project at the District's expense.

**1.33 Project Labor Agreement (PLA also known as Community Workforce Agreement):** A prehire collective bargaining agreement in accordance with Public Contract Code section 2500 et seq. that establishes terms and conditions of employment for a specific construction project or projects and/or is an agreement described in Section 158(f) of Title 29 of the United States Code. The District has entered into a Community Workforce Agreement dated April 5, 2017, and amended on August 11, 2023.

**1.34 Proposed Change Order:** A Proposed Change Order ("PCO") is a written request prepared by the Design/Builder requesting that the District, the Construction Manager issue a Change Order based upon a proposed change to the Work.

**1.35 Qualified SWPPP Practitioner ("QSP"):** Certified personnel that attended a State Water Resources Control Board sponsored or approved training class and passed the qualifying exam.

**1.36 Site:** The Project site as shown on the Drawings.

**1.37 Standard of Care:** The Design/Builder shall perform its services consistent with the standard of care expected of similarly-situated Design/Builder performing similar services in the same geographic location.

**1.38 Subcontractor:** A contractor and/or supplier who is under contract with the Design/Builder or with any other subcontractor, regardless of tier, to perform a portion of the Work of the Project.

**1.39 Substantial Completion:** Substantial Completion shall have the meaning set forth in Section 9.16.4.

**1.40 Surety:** The person, firm, or corporation that executes as surety the Design/Builder's Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.

**1.41 Unforeseen Conditions:** Concealed physical conditions at the Site with an adverse impact on the Work or schedule that are materially different from those conditions (i) indicated in or reasonably inferred from the Contract Documents and (ii) ordinarily found to exist and generally recognized in construction activities of the type required by the Contract Documents.

**1.42 Work:** All labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for the construction and completion of the Project.

## 2. GENERAL PROVISIONS

### 2.1 Scope of Work

**2.1.1** The Design/Builder shall be responsible for the performance of all design and construction services. The Design/Builder shall provide all materials, labor, tools, and equipment necessary to complete, in a good and workmanlike manner, the Work described in and reasonably inferable from the Contract Documents, except as may be expressly excluded, in accordance with the Criteria Documents, attached hereto as **EXHIBIT A**, for the NTE Amount, which will be superseded by the GMP.

**2.1.2** Design/Builder shall be responsible for achieving the Milestones Dates in the Project Milestone Schedule as shown in **EXHIBIT B**. The Project Milestone Schedule may only be modified pursuant to the provisions of the Contract Documents.

**2.1.3** Except as otherwise noted, Design/Builder shall provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities, transportation, taxes, bonds and insurance, and services necessary for the proper execution and completion of the Work.

## 2.2 Status of Design/Builder

**2.2.1** Design/Builder represents and warrants that Design/Builder is an independent contractor or business entity that is: (i) free from the control and direction of District in connection with the performance of the Services, (ii) performing Services that are outside the usual course of District's business, and (iii) customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the Services performed, District being interested only in the results obtained. Design/Builder understands and agrees that it and all of its employees and its Subcontractors shall not be considered officers, employees, agents, partner, or joint venture of District, and are not entitled to benefits of any kind or nature normally provided employees of District and/or to which District's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. Design/Builder shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes with respect to Consultant's employees. Design/Builder is and shall at all times be wholly responsible for the manner in which it, its agents, and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between District, or any of District's employees or agents, and Design/Builder or any of Design/Builder's Subcontractors, agents or employees. District shall be permitted to monitor Design/Builder's activities to determine compliance with the terms of this Contract.

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

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

**2.2.4** Design/Builder represents that Design/Builder and all Subcontractors shall not be presently debarred, suspended, proposed for disbarment, declared ineligible or excluded pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7.

**2.2.5** Design/Builder represents that it has no existing interest and will not acquire any interest, direct or indirect, which could conflict in any manner or degree with the performance of Work required under this Contract and that no person having any such interest shall be employed by Design/Builder.

**2.2.6** If Design/Builder intends to make any change in the name or legal nature of the Design/Builder's entity, Design/Builder must first notify the District in writing prior to making any contemplated change. The District shall determine in writing if Design/Builder's intended change is permissible while performing this Contract.

## 2.3 Execution, Correlation and Intent:

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

**2.3.2** Execution of the Contract by Design/Builder is a representation that the Design/Builder has the expertise and experience for and understands and accepts the methodology under which the Work is to be performed and the requirements of the Contract Documents.

**2.3.3** The intent of the Contract Documents is to include all necessary criteria to establish the scope, quality and performance requirements for completion of the Work by Design/Builder. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

**2.3.4** Unless otherwise stated in the Contract Documents, words and phrases shall be interpreted consistent with construction and design industry standards for California school districts.

**2.3.5** Work shall be in compliance with applicable laws, codes, ordinances and regulations, including but not limited to Title 24 of the California Code of Regulations. Higher levels of performance, material, and or function, may be required or reasonably inferred from the Contract Documents.

## 2.4 Conflicts in the Contract Documents

**2.4.1** The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict. However, if Design/Builder observes any conflict in the Contract Documents, Design/Builder shall promptly notify District in writing. In the event of conflict in the Contract Documents, the precedence shall be as follows:

**2.4.1.1** Addenda shall govern over other sections of the Contract Documents to the extent specifically noted; subsequent Addenda shall govern over prior Addenda only to the extent specified.

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

**2.4.1.3** In case of conflict between the Criteria Document drawings, Technical Specification Sections 2-49, and the Division 0 and 1 Specifications, the Specifications reviewed and approved by the District prior to GMP shall govern.

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

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

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

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

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

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

**2.4.2** The District and Design/Builder acknowledge that the Contract Documents may differ in some respects from other documents upon which Design/Builder based its proposal. The District and Design/Builder agree that the Contract Documents shall supersede any prior or inconsistent versions.

### 2.5 Clarifications and Additional Instructions

**2.5.1** Conflicts, omissions, errors, interpretation or clarification, insufficiency of detail or explanation in the Contract Documents relative to the timely or material execution of the Work shall be immediately brought to the attention of the District in writing to request interpretation, clarification, or furnishing of additional detailed instructions. Such questions shall be resolved and instructions to the Design/Builder issued within a reasonable time by the District. The District's decision shall be final and conclusive. Should the Design/Builder proceed with the work before receipt of instructions from the District, the Design/Builder shall make adjustments to conform to the District's instructions and Design/Builder shall be solely responsible for any resultant damage, defect or added costs.

**2.5.2** The District may furnish additional written instructions to explain the work more fully, and such instructions shall become, upon issuance, a part of the Contract Documents requirements. Should additional instructions, in the opinion of the Design/Builder, constitute work in excess of the scope of the Work, the Design/Builder shall submit written notice to the District within ten (10) calendar days following receipt of such instructions, and in any event prior to commencement of the work on that scope of work. After considering the notice, and if justified in the District's judgment, the District will authorize the extra work.

## 3. DESIGN/BUILDER'S DUTIES AND RESPONSIBILTIES: ENTITLEMENT

### 3.1 Entitlement Phase Responsibilities

**3.1.1** The Entitlement Phase includes the preparation of the schematic design and the application package for entitlement approval and CEQA certification using SB 35 and AB 2295 legislation.

### 3.2 Designer/Builder's Responsibilities

### 3.2.1 General Responsibilities

**3.2.1.1** Prepare schematic design and application package in coordination with District and District's representatives.

**3.2.1.2** Manage design team.

**3.2.1.3** Monitor predevelopment schedule and budget.

**3.2.1.4** Update due diligence materials and studies to support application, as needed.

**3.2.1.5** Review and approve all requests for payment by the design team.

**3.2.1.6** Provide monthly update reports and draw requests.

**3.2.1.7** Make recommendations regarding retaining additional consultants and contractors as necessary.

### 3.2.2 Schematic Design

**3.2.2.1** Following receipt of a Notice to Proceed, the Design/Builder shall meet as necessary to prepare a schematic design for entitlement purposes, inform District of the Project schematic design status, and obtain District input and approval regarding design issues. The Design/Builder shall be responsible for scheduling and coordinating the participation in these meetings. Design/Builder's documents shall depict massing/stacking plans, floor plans, unit plans, detailed site plan including a landscape plan and utility layout, elevations, and other related materials as required.

### 3.2.3 Entitlement

**3.2.3.1** The Design/Builder shall assist District in the entitlement process with the City of San Jose including design review, and tentative map (as required).

**3.2.3.2** The Design/Builder shall notify District of all material meetings with the community, government or quasi-governmental bodies in order that District may attend if desired.

**3.2.3.3** The Design/Builder shall assist District in the evaluation and execution of any required easements, dedications, covenants and required documents for city review and approval.

**3.2.3.4** The Design/Builder shall assist District and District's representatives in the preparation and submittal of the entitlement application package (preliminary and full) to the City of San Jose and applications to obtain "will-serve" commitments for water, gas, sewer, electric and telephone service.

**3.2.3.5** The Design/Builder shall provide support to the District during the CEQA process as needed.

**3.2.3.6** The Design/Builder shall coordinate submissions to the City of San Jose with District and District's representatives.

**3.2.3.7** The Design/Builder shall attend City of San Jose and design team meetings.

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

### 4.1 Design Phase Responsibilities

**4.1.1** The Design Phase includes the preparation of the design and Construction Documents for the Project including, but not limited, to all necessary architectural design, specialty consultant services, civil engineering, structural engineering, mechanical engineering, plumbing and HVAC design, fire protection system engineering, landscape architecture, electrical engineering, security system design, telecommunications, data and low-voltage, signaling design, geotechnical engineering, topographic and boundary surveying, furniture, fixtures, and equipment as and to the extent set forth below, and acoustical engineering. The Design Phase shall also include all plan check and permitting activities required for the construction activities.

**4.1.1.1** Appliances in Unit – Refrigerator, Range, Dishwasher, Microwave, Stacked Washer & Dryer

**4.1.1.2** Appliances in Community Room - Refrigerator, Range, Dishwasher, Microwave;

**4.1.1.3** Window Coverings for units but not common areas;

**4.1.1.4** Site Furnishings – Benches, Table & Chairs, Bike Racks

### 4.2 Design/Builder's Responsibilities

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

#### 4.2.2 General Responsibilities

**4.2.2.1** Upon receipt of the Notice to Proceed with Design, the Design/Builder shall instruct the Architect of Record to commence with the design of the building systems and the preparation of the Construction Documents. In accordance with the Criteria Documents, the Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality.

**4.2.2.2** The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. The Design/Builder shall be responsible to design,

prepare Construction Documents and coordinate all disciplines for the entire Project including, but not limited to all structural elements, building enclosure, roofing, waterproofing, site work, public right-of-way improvements, new parking lots, hardscape, landscape, utilities, and all building systems.

**4.2.2.3** The Project's design shall meet or exceed the design and performance criteria stipulated in the Criteria Documents.

**4.2.2.4** Deliver to the District any and all design materials. These materials include, but are not limited to calculations, preliminary drawings, construction drawings, shop drawings, samples, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock-ups, and other information developed, prepared, furnished, or delivered in the prosecution of the design work.

**4.2.2.5 Design Confirmation Phase**

**4.2.2.5.1** Following receipt of a Notice to Proceed with Design, the Design/Builder shall meet as necessary to inform District of the Project design status and obtain District input and approval regarding design issues. The Design/Builder shall be responsible for scheduling and coordinating the participation in these meetings. Design/Builder's documents shall depict the materials, equipment, design, layout and general coordination of each major building system (i.e.: structural, exterior closure, mechanical, plumbing, electrical, etc.) in sufficient detail to confirm compliance with the Criteria Documents.

**4.2.2.5.2** Conduct value engineering analysis on building components to determine best value based on initial cost, life expectancy, cost of operation and maintenance. The value engineering analysis shall be performed concurrent with the Design Confirmation effort.

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

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

**4.2.2.6 Construction Documents Phase**

**4.2.2.6.1** Prepare Construction Documents for the entire Project in full compliance with all applicable laws, building codes, ordinances, and other requirements by regulatory authorities. The completed Construction Documents are to be delivered to the District and shall consist of the following:

**4.2.2.6.1.1 Drawings.** Provide latest version of CAD and/or Revit models, and two (2) printed copies of all approved construction document drawings. Provide

access to all approved construction document drawings on a digital file using Computer-Aided Design (CAD) software, using AutoCAD 2010 or later.

**4.2.2.6.1.2 Specifications.** Provide latest version of CAD and/or Revit models, and two (2) printed copies of all approved specifications, bound and organized. Provide approved specifications in electronic format for all sections for all work applicable to the Project, using a format that complies with the current edition of the Construction Specifications Institute's "Master Format" as directed by the District and in accordance with the following:

**4.2.2.6.1.2.1** Electronic computer software in Microsoft Word, latest version for Windows, AutoCAD, 2010 or later.

**4.2.2.6.1.2.2** Where articles, materials, and equipment are identified by brand names, at least two brand names shall be specified, and shall be followed by the words "or equal". Specifications shall not contain restrictions that will limit competitive bids. Exceptions shall only be as permitted by California Public Contract Code section 3400.

**4.2.2.6.1.2.3** All electronic files provided shall be indexed and clearly labeled to indicate files contained thereon and the date that the electronic file was produced. All electronic files shall use fonts and formats used by the District and the files shall be formatted for easy printing.

**4.2.2.6.1.3** Specifications shall not contain restrictions that will limit competitive bids. Where articles, materials, and equipment are identified by brand names, at least two brand names shall be specified, and shall be followed by the words "or equal". Exceptions shall only be as permitted by California Public Contract Code section 3400.

**4.2.2.6.2** Review meetings between the Design/Builder and the District to review the Construction Document packages shall be scheduled and held so as not to delay the Work. Such review shall not relieve the Design/Builder from its responsibilities under the Contract. Such review shall not be deemed an approval or waiver by the District of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted by the Design/Builder and approved in writing by the District.

**4.2.2.6.3** The Design/Builder shall submit completed packages of the Construction Documents, in the quantities required by the District to all applicable AHJs, at the times indicated on the Design/Builder's Baseline Schedule. Design/Builder is responsible for completing the designs and submitting them to the AHJ in a timely fashion in order to obtain AHJ approval and complete all Work according to the Project Milestone Schedule. All Work is to be performed in accordance with the requirements of the AHJ and, except as expressly provided in section 11.3 herein, the Design/Builder shall be solely responsible for obtaining all approvals from the AHJ at no additional cost to District.

**4.2.2.6.4** The parties acknowledge that during the collaborative Design Phase, different design and construction options may be discussed, negotiated, accepted, and rejected. During the Construction Phase, Design/Builder shall build to, and be held to the written standards set forth in, only the agreed-upon and approved "Ready-for-Construction" Construction Documents.

### 4.2.2.7 Ownership of Design Materials

**4.2.2.7.1** Contingent on proper payment of all undisputed fees owed for their creation all materials and documents developed in the performance of this Contract shall be the property of the District. The District shall have unlimited rights, for the benefit of the District, in all drawings, designs, specifications, notes, and other work developed in the performance of this Contract, including the right to use same on any other District project at no additional cost to the District.

**4.2.2.7.2** Design/Builder agrees to and does grant to the District a royalty-free license to all such data developed in the performance of this Contract that Design/Builder may cover by copyright and to all designs as to which Design/Builder may assert any rights or establish any claim under United States patent or copyright laws. The Design/Builder for a period of three (3) years after completion of the Project agrees to furnish and to provide access to the originals or copies of all such materials upon the request of the District.

**4.2.2.7.3** The District agrees to make no demand on Design/Builder and indemnifies the Design/Builder for any damages caused by the District's use of such materials for any other District project that is not the subject of an agreement between the District and Design/Builder for such use.

**4.2.2.7.4** The Design/Builder shall perform the work required under this Contract with Computer-Aided Design (CAD) software, using the latest version of Revit, and shall deliver to the District the electronic files of all approved Construction Document drawings, in both Revit and AutoCAD 2010 format As

well as PDF format. The format of electronic documents delivered to the District will be determined in conjunction with the District in order to facilitate retrieval of information.

**4.2.2.7.5** The District does not assume any obligation to retain the Design/Builder's services or pay Design/Builder royalties of any type as to future programs.

**4.2.2.7.6** To the extent the Work and related materials include or reflect Design/Builder's preexisting intellectual property rights, Design/Builder shall retain all ownership and title to such preexisting intellectual property rights. However, Design/Builder grants the District a perpetual, worldwide, royalty-free, and fully paid-up license to use such preexisting intellectual property rights to the extent reflected or incorporated into the Work and related materials.

### 4.2.2.8 Design Errors

The Design/Builder shall be solely responsible for all design errors and for correction of the same at no additional cost to District, including, but not limited to errors, inconsistencies or omissions in the Construction Documents, and errors, omissions and inconsistencies that do not conform to the standards established in the Contract Documents and the Criteria Documents. The Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and other information known to the Design/Builder from the Contract Documents and the Criteria Documents before commencing Design activities.

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

### 5.1 Construction Phase Design Responsibilities

The Design/Builder shall meet weekly at the field offices of the Design/Builder and shall provide all labor, materials, equipment, temporary utility services and facilities necessary to construct the entire Project as required by the Contract Documents, including, but not limited to:

**5.1.1** Prepare an existing conditions survey of all surrounding and adjacent properties, including streets and observable and recorded utilities, prior to the start of construction. Design/Builder will endeavor to gain access to non-District owned properties as necessary.

**5.1.2** The Design/Builder shall provide modular buildings for use as a Project Field Office for the Design/Builder.

**5.1.3** All portions of the construction Work awarded by the Design/Builder to a Subcontractor not listed in the Design/Builder's proposal shall be awarded by the Design/Builder in conformity with the requirements of California Education Code section 17250.65 and the District's bidding procedures. All Subcontractors bidding on work to be awarded by the Design/Builder shall be afforded the protections contained in Division 2, Part 1, Chapter 4 of the California Public Contract Code Section 4100 et seq. The Design/Builder shall provide public notice of the availability of work to be subcontracted in

accordance with state law applicable to the competitive bidding process and provide a fixed date and time on which the subcontracted work will be awarded. Any Subcontractor awarded a subcontract for this Project in this manner is then afforded the protections as set forth in California Public Contract Code Section 4107.

**5.1.4** If a discovery is made of items of archaeological interest on site during excavation activities, the Design/Builder shall immediately cease excavation in the area of discovery and shall not continue until directed by the District. Design/Builder shall cooperate with and provide access to the archaeologist or the county coroner pursuant to California Health and Safety Code Section 7050.5.

**5.1.5** The District's furniture vendor/installer will utilize the Design/Builder's drawings to prepare installation drawings

**5.1.6** The Design/Builder shall be required to take daily job site photos with a high-quality camera. The Design/Builder shall provide a fixed webcam mounted appropriately for good visibility throughout the duration of the construction.

Except as otherwise specifically approved by the District, Design/Builder will prepare and submit the photographs monthly from groundbreaking through Project completion, within three (3) calendar days of the date of the Design/Builder's application for progress payment. To the maximum extent practicable, Design/Builder will make photographs at approximately the same time of day throughout the progress of the work. When inclement weather is anticipated, Design/Builder will consult with the District to determine acceptable alternative arrangements.

Design/Builder will identify each location by word description, by marked drawing, or by such other means as acceptable to the District, to enable future photographs to be taken from the same position.

## 5.2 Standards of Performance.

**5.2.1** The Work on the Project shall be performed in accordance with the professional standards and quality of care applicable to projects, buildings or work of similar size, complexity, quality and scope constructed within a similar California environment.

**5.2.2** The Design/Builder has been selected to perform the Work herein because of the skills and expertise of key individuals. The Design/Builder agrees that the following key people shall be utilized by Design/Builder on the Project in the following capacities:

Principal In Charge: Keith Craw – CORE Builders

Project Director: Payal Prasad

Project Architect(s): Katia McClain – Steinberg Hart

Major Consultants:

Electrical: MDE Electric

Mechanical: AirSystems

Structural: DCI Engineers

Civil: HMH

Landscape: HMH

Other: Daley's Drywall/Massframe Solutions

**5.2.2.1** Design/Builder shall not change any of the key personnel listed above without prior written approval by the District, unless said personnel are unavailable due to medical or other legally required leave or cease to be employed by Design/Builder. In either case, the District shall be allowed to interview and approve replacement personnel.

**5.2.2.2** If any designated lead or key person fails to perform to the satisfaction of the District, then upon written notice Design/Builder shall have five (5) calendar days to remove that person from the Project and replace that person with one acceptable to the District.

**5.2.3** The Design/Builder shall employ full-time, competent on-site Project management, including but not limited to the Project Manager or superintendent(s), who shall be in attendance at the Project Site during the construction of the Project. The Project Manager shall represent the Design/Builder and communications given to and by the Project Manager shall be as binding as if given directly to and by the Design/Builder. The Design/Builder shall confirm all communications in writing.

**5.2.4** At any time when the Project Manager is absent from the Project Site, either when work is being performed or when no work is being performed, the Project Manager, or his or her designated representative acceptable to the District, shall be readily reachable and available for consultation at the Project Site at any time.

**5.2.5** Any persons that the District may deem incompetent or disorderly shall be promptly removed from the Project by the Design/Builder upon written notice from the District and shall not be reemployed for the duration of the Project.

## 5.3 Applicable Laws and Codes

**5.3.1** The Design/Builder shall comply with all applicable laws, codes, and ordinances ("Applicable Laws and Codes") and shall give notices as applicable. Design/Builder shall prepare and file all documents required to obtain the necessary approvals of governmental authorities having jurisdiction over the work and shall secure and pay as part of the GMP those plan check, permits, fees, licenses, and inspections set forth in section 5.3.1.1 below, with all other plan check, permits, fees, licenses, and inspections to be reimbursed by the District on a dollar-for-dollar, pass-through basis outside of the GMP. Notwithstanding the foregoing, the Project Inspector and the third-party special inspection and materials testing laboratory services, if utilized, will be paid for by the District.

**5.3.1.1**

| | |
|---|---|
| San Jose Planning Fees | $55,000.00 |
| San Jose Building Fees | $352,872.85 |
| Affordable Housing Impact Fees | Exempt |
| School Fees | $385,785.40 |
| San Jose Public Works | $52,949.20 |
| Parkland In-lieu Fees | Excluded |
| San Jose Water Company | $205,000.00 |
| Santa Clara Valley Habitat Agency | $22,000.00 |
| San Jose Public Library | $1,000.00 |
| Total | $1,074,607.45 |

**5.3.2** Design/Builder shall promptly notify the District, in writing, of variances observed between the Contract Documents and applicable laws. If no notice is provided to the District, the Design/Builder shall bear responsibility for any costs for work performed known to be contrary to applicable laws.

**5.3.3** Design/Builder is subject to all laws, rules, or regulations pertaining to building permits or regulating the design or construction of buildings upon District property and shall be solely responsible for meeting these requirements.

## 5.4 Project Inspector

No Work shall be carried on except with the knowledge and under the inspection of the Project Inspector(s). The Project Inspector(s) shall have free access to any or all parts of Work at any time. Design/Builder shall furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials. Inspection of Work shall not relieve Design/Builder from an obligation to fulfill this Contract. Project Inspector(s) and the AHJ are authorized to suspend work whenever the Design/Builder and/or its Subcontractor(s) are not complying with the Contract Documents. Any work stoppage by the Project Inspector(s) and/or the AHJ shall be without liability to the District. Design/Builder shall instruct its Subcontractors and employees accordingly.

## 5.5 Permits, Fees and Notices

**5.5.1** Unless otherwise provided in the Contract Documents, the Design/Builder shall be responsible for required permits, governmental fees, licenses, registrations, inspections, approvals, notices and actions necessary to complete the Work and to prepare all documents customarily required for regulatory agency approvals, including the AHJ. Design/Builder shall be responsible for the cost of all permits, fees and licenses required for the proper execution and completion of the Work as and to the extent set forth in section 5.3.1.1 herein, with additional such costs to be reimbursed by the District on a dollar-for-dollar, pass-through basis outside of, the GMP.

**5.5.2** Design/Builder shall assume responsibility for all utility assessments and connection fees levied by all utility service providers as and to the extent set forth in section 5.3.1.1 herein, with additional such costs to be reimbursed by the District on a dollar-for-dollar, pass-through basis outside of, the GMP. In addition, Design/Builder shall coordinate all applications with the District to ensure the lowest cost, including utilizing any special rate structures available to the District.

## 5.6 Use of Project Site

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

**5.6.2** Design/Builder shall perform no operations of any nature on or beyond the limits of the Work or premises, except as such operations are authorized in the Contract Documents or authorized by the District.

**5.6.3** Design/Builder shall provide and maintain a temporary construction fence and suitable temporary barriers to prevent public entry; protect the work and existing facilities, persons, trees and plants from damage or injury from construction operations, or trespassers. Temporary barriers shall be maintained in a structurally sound condition and neat appearance.

**5.6.4** Should regulatory requirements necessitate construction of temporary barriers, barricades, or pedestrian walkways not indicated or specified, Design/Builder shall construct such barriers, other than as expressly set forth in Section 11.3, at no increase to the GMP. If required, Design/Builder will paint such items in a color selected by the District.

## 5.7 Cutting and Patching

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

**5.7.2** Design/Builder shall not damage or endanger the existing property or facilities, including but not limited to utilities, by cutting, patching or otherwise altering the construction, and shall not cut nor otherwise alter the construction without prior written consent of District.

## 5.8 Cleaning

**5.8.1** Design/Builder shall keep the Project Site safe and surrounding areas free from waste materials and/or rubbish caused by operations under the Contract and at other times when directed by the District. At all times while finish work is in progress, floors shall be kept clean, free of dust, construction debris and trash. Prior to issuance of the Notice of Completion, Design/Builder shall remove from the Project Site the Design/Builder's tools, construction equipment, machinery, and any waste materials not previously disposed of, leaving the Project site thoroughly clean, and ready for District's final inspection.

**5.8.2** If Design/Builder fails to clean up as provided in the Contract Documents, the District may do so, and the cost thereof deducted from the final payment due to Design/Builder.

## 5.9 Site Availability

**5.9.1** The District shall turn over the Site to the Design/Builder as described in the Notice to Proceed with Construction and as further described in **EXHIBIT B** – Project Milestone Schedule, at which time the Design/Builder shall be obligated to take control and responsibility. The Design/Builder shall provide the District, Construction Manager and other District consultants with continuous access to the Site.

**5.9.2** Temporary parking facilities shall meet all applicable regulatory requirements applicable to design and construction. Design/Builder shall be responsible for all permits, design, and construction required including, but not limited to lighting, access, signage, handicap accessibility, and maintenance. At the end of the Project, all temporary parking and utilities shall be removed and those areas of the Project Site restored to its previous condition.

## 5.10 Site Conditions

**5.10.1** From the time that the notice to proceed with construction is issued forward, the Design/Builder represents that it has taken the necessary steps to ascertain the nature, location and extent of the Work, and that it has investigated and satisfied itself as to the general and local conditions which are applicable to the Work, such as:

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

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

**5.10.1.3** normal weather conditions;

**5.10.1.4** physical conditions at the Site;

**5.10.1.5** the conditions of the ground; and

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

**5.10.2** To the extent the Design/Builder encounters subsurface conditions or hazardous materials which differ materially from that actually known by the Design/Builder, or from those ordinarily known to exist or could have been reasonably discovered, or generally recognized as inherent in the area, then notice by the Design/Builder shall be immediately given to the District, before conditions are disturbed, and in no event later than two (2) business days after the first observance of the conditions. If such conditions could not have been reasonably identified by Design/Builder's site investigations and available existing data, and the Design/Builder incurs significant additional costs or delays as a result of such concealed conditions, such conditions may be the subject of a Change Proposal.

Should any existing utilities or services be disturbed, disconnected or damaged by Design/Builder or parties for which it is responsible during construction, the Design/Builder shall be responsible, at no additional cost or time to the District, for all expenses of whatever nature arising directly from

such disturbance or the replacement or repair thereof and shall repair such items as required to maintain continuing service, including emergency repairs.

**5.10.3** The Design/Builder is responsible for foreseeable site conditions and hazardous materials to the extent described in the Contract Documents and/or could be reasonably inferred by Design/Builder based on its experience and expertise on similar Projects in similar areas.

## 5.11 Hazardous Materials

**5.11.1** The Design/Builder agrees that it is solely responsible for investigating and performing remedial actions on all hazardous materials and other related environmental requirements located on the Project as can be reasonably implied from previous testing and inspections of the site included or referred to in the Contract Documents.

**5.11.2** Any hazardous materials that are encountered beyond those described in the Contract Documents, or which reasonably could not have been discovered by the Design/Builder before executing this Contract, may properly be the subject of a Change Proposal. The District agrees that the Design/Builder cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site.

**5.11.3** "Hazardous materials" means any substance, the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 et seq. ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or order petroleum hydrocarbons; which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality or the District; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by the Design/Builder or the District; or as defined in the California Health and Safety Code.

**5.11.4** "Environmental Requirements" means all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentality's of the State of California and United States and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: all requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases

or threatened releases of hazardous materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials; and all requirements pertaining to the protection of the health and safety of employees or the public.

## 5.12 Shop Drawings, Product Data, Samples, Materials, and Equipment.

**5.12.1** Shop drawings means drawings, submitted to Design/Builder by, Subcontractors, manufacturers, supplier or distributors showing in detail the proposed fabrication and assembly of building elements and the installation (i.e., form, fit, and attachment details) of materials or equipment.

**5.12.2** Design/Builder shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design/Builder's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.

**5.12.3** Materials and equipment incorporated in the Work shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.

**5.12.4** Prior to placement of material orders or start of component fabrication, the Design/Builder shall submit to the District all shop drawings approved by the Architect of Record and samples of submittals that relate to finish materials and products. The Design/Builder is to issue a submittal schedule to the District for comment and the District shall designate the submittals that the Design/Builder is to submit to the District to review for contract compliance.

**5.12.5** Wherever the name or brand of manufacturer or an article is listed in the Contract Documents, it is to be used in the Work as the standard. Any variation in quality must be approved by the District.

## 5.13 Field Engineering

**5.13.1** The Design/Builder shall retain and pay expenses of a qualified civil engineer or land surveyor to establish on the Site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be licensed in the State of California. Design/Builder shall be responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed.

**5.13.2** The Design/Builder shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction and shall require the engineer or surveyor to replace control points which become lost or destroyed.

**5.13.3** Design/Builder shall follow best practices, including but not limited to pot holing to avoid utilities. District shall not be liable for any claim for

allowances because of Design/Builder's error, failure to follow best practices, or negligence in acquainting itself with the conditions at the Site.

**5.13.4** Design/Builder shall protect and preserve established benchmarks and monuments and shall make no changes in locations without the prior written approval of District. Design/Builder shall replace any benchmarks or monuments that are lost or destroyed subsequent to proper notification of District and with District's approval.

## 5.14 Geotechnical Data and Existing Site Conditions

**5.14.1** The District has provided the Design/Builder with a geotechnical report. The Design/Builder accepts such report in its "as-is" condition. To the extent that the Design/Builder uses such geotechnical report it shall be at Design/Builder's risk. The District has provided the Design/Builder with preliminary survey information and Title Reports. Design/Builder shall be entitled to reasonably rely on the accuracy of such information provided.

**5.14.2** Design/Builder shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation work and provide a drawing that documents these verified conditions as part of their Construction Documents.

**5.14.3** The Design/Builder shall obtain, and pay for, the services of geotechnical engineers licensed in the State of California and other consultants to provide services deemed necessary by the Design/Builder. Such services may include reports, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, and other necessary operations for determining subsoil, air and water conditions, with reports and appropriate professional interpretations and recommendations thereof.

**5.14.4** By executing this Contract, Design/Builder agrees that District has responded to and resolved any conflict, error or ambiguity in the Existing Conditions data and Contract Documents that Design/Builder has brought to District's attention. During performance of the Contract, and subject to the standard set forth in section 4.2.2.6.4, Design/Builder will be charged with knowledge of all information that under the terms of the Contract Documents it should have learned in performing its expressly required preconstruction services and preconstruction investigations and other obligations and shall not be entitled to Change Orders (time or compensation) due to any information, error, inconsistency, omission, or conditions that Design/Builder should have known as a part of this Work. Design/Builder shall be responsible for the resultant losses, including, without limitation, the cost of correcting defective work.

## 5.15 Meetings and Reports

**5.15.1** Prior to commencement of the Work, the Design/Builder shall attend a Project Kick-off meeting, at a time and a place selected by the District's Representative, to discuss procedures to be followed during the course of the work. Design/Builder shall follow the procedures as set forth by the District's Representative and as provided in the Design/Builder's procedure manual to be supplied at the Kick-off conference. The purpose of the meeting will be to

introduce the District's key personnel and to review the contract provisions and any other items pertaining to the Project.

**5.15.2** Once a week, or at such interval as mutually agreed to by the parties, the District's Representative will meet with the Design/Builder to review the overall Project progress, the status of the design and/or construction, and to discuss any problems that may arise. Design/Builder and its Architect shall attend all progress meetings. Subconsultants, Subcontractors and vendor representatives shall attend the progress meetings as appropriate to the particular stage of the work.

**5.15.3** Each month the Design/Builder shall attend a payment meeting with the District's Representative to agree on the percentage of the work completed during the current month to establish an amount to be requested in the Application for Payment.

**5.15.4** The Design/Builder shall prepare and submit to the District, during design completion, the Construction Document phase, and the construction phase, monthly reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by the District.

**5.15.5** Thirty (30) days prior to the estimated Completion, the Design/Builder shall hold a meeting to review maintenance manuals, guarantees, warranties, close-out submittals, bonds, and service contracts for materials and equipment. Design/Builder shall also implement repair and replacement of defective items and extend service and maintenance contracts as desired by the District.

## 5.16 Other Reports

**5.16.1** The Design/Builder will cooperate with the District, and as may be requested, assist in preparing periodic Project reports required by the District's Board, the District's Citizens' Bond Oversight Committee, or other District committees or boards.

## 5.17 Notices of Labor Disputes

**5.17.1** If Design/Builder has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Work, Design/Builder shall immediately give notice including all relevant information to the District. Design/Builder shall refer to the Project Labor Agreement for additional requirements.

**5.17.2** Design/Builder agrees to insert the substance of this Article including this Clause in any subcontract to which a labor dispute may delay the timely performance of the Work, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay, by any actual, or potential labor dispute, the Subcontractor shall immediately notify the next higher tier Subcontractor or Design/Builder, as the case may be, of all relevant information concerning the dispute.

## 5.18 Guarantee

**5.18.1** The Design/Builder unconditionally guarantees the building systems and equipment, including but not limited to the fire and life safety systems and equipment, were installed and will work in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a minimum period of two (2) years from the date of Completion. Some extended guarantees may be required. For such equipment or building components started in operation prior to Completion, the Design/Builder's guarantee shall, be in force for two (2) full years after Completion is declared by the District notwithstanding the components' operation began prior to the District's declaration of Completion. The completion of incidental administrative completion items identified by the District shall be completed no later than six (6) months following the date for Completion.

**5.18.2** The Design/Builder shall repair or replace any and all guaranteed building systems and equipment, including but not limited to the specialty equipment, fire and life safety systems and equipment, together with any adjacent work that may have been damaged or displaced by the guaranteed systems or equipment, that may be defective in its workmanship or material or becomes inoperable within the guarantee period specified in the Contract Documents, without any expense whatsoever to the District; ordinary wear and tear excepted.

**5.18.3** The Design/Builder further agrees, within seven (7) days after being notified in writing by the District, of any work not in accordance with the requirements of the Contract Documents or any defects in the Work, that the Design/Builder shall commence and execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If the District finds that the Design/Builder fails to perform any of the work under the guarantee, the District will proceed to have the work completed at the Design/Builder's expense and the Design/Builder will pay costs of the work upon demand. The District will be entitled to all costs, including reasonable attorney's fees necessarily incurred upon the Design/Builder's refusal to pay the above costs.

**5.18.4** Notwithstanding the foregoing subparagraph, in the event of an emergency constituting an immediate danger to health or safety of District employees, property, or invitees, the District may undertake, at the Design/Builder's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by work of the Design/Builder not being in accordance with the requirements of the Contract Documents.

## 5.19 Warranty

The Design/Builder warrants, for a minimum period of two (2) years from the date of Completion to the District that any and all materials, equipment and furnishings incorporated in the Work will be of good quality and new unless otherwise required or permitted by the Contract Documents. Some extended warranties may be required. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes improper operation, or normal wear and tear under normal usage under the control of the District.

## 5.20 Patents, Trademarks, and Copyrights

The Design/Builder shall pay, as part of the GMP, all applicable royalties and license fees on any and all matters arising in connection with the Work. The Design/Builder shall defend the District for all suits or claims for infringement of patent, trademark, and copyrights against the District, and shall indemnify, defend, and hold harmless the indemnified parties from any claims, causes of action, losses, or costs related to any and all matters arising in connection with Work on the Project (such costs to be paid as part of the GMP), except with respect to any particular design process or the product of a particular manufacturer or manufacturers specified or required by the District, other than pursuant to the recommendation or suggestion of the Design/Builder; provided, however, if the Design/Builder has reason to believe that the design, process, or product so specified is an infringement of a patent, the Design/Builder shall be responsible for any loss resulting unless the Design/Builder has provided the District with prompt written notice of the Design/Builder's belief, and the District has nevertheless elected to go forward with such design, process, or product so specified.

## 5.21 Taxes

The Design/Builder shall pay all applicable taxes for the Work, or portions thereof provided by the Design/Builder, whether or not yet effective or merely scheduled to go into effect. Any federal, state, or local taxes payable on any materials, labor or any other thing to be furnished by Design/Builder under the Contract Documents shall be included in the GMP and paid by Design/Builder.

If a new tariff or duty on the importation of a tariff material ("Tariff Event") is implemented after the date that the GMP is established and such Tariff Event results in an increase in the cost of such tariff material, Design/Builder shall be entitled to be paid the additional cost as demonstrated by reasonable documentation (showing the difference between the material cost budgeted in the GMP and the material cost actually paid) from the New Tariff Allowance. After the New Tariff Allowance is exhausted, additional impacts of Tariff Events shall be at Design/Builder's risk. Any Tariff Allowance funds not used at Project completion shall be returned to the District.

## 5.22 Tests and Inspections

**5.22.1** The Design/Builder shall be responsible for requesting and scheduling all tests and inspections necessary to ensure the quality of the Work are in accordance with the terms of the Contract Documents. The Design/Builder shall at all times permit the District and its agents, inspectors, officers, and employees access to the Project Site and inspect the Work and such other locations where the Work is in preparation. This obligation shall include maintaining proper facilities and safe access for such inspection. When the Contract Documents require a portion of the work to be tested, such portion of work shall not be covered up until inspected and approved. The Design/Builder shall be solely responsible for notifying the District and the Project Inspector where and when the work is ready for inspection and testing at least twenty-four (24) hours in advance of the commencement and completion of construction of each and every aspect of the Work. The District shall provide inspectors to review and verify compliance of the Design/Builder's quality control and assurance teams with the contract documents.

**5.22.2** Should any work be covered without the required testing or witnessed by the District, such work shall be uncovered at the Design/Builder's expense. Whenever the Design/Builder intends to perform work on Saturday, Sunday, or a legal holiday, the Design/Builder shall give written notice to the District of such intention at least forty-eight (48) hours prior to performing the work, so that the District may make necessary arrangements.

**5.22.3** If the District determines that portions of the Work require additional testing or inspection that is not included in the Contract Documents, the District will instruct the Design/Builder, in writing, to make arrangements for additional testing or inspection by an entity acceptable to the District, and the Design/Builder shall give forty eight (48) hours written notice to the District of where and when tests and inspections will be conducted so that the District may observe the procedures.

**5.22.4** If procedures for testing, inspection or approval reveal failure of a portion(s) of the work to comply with the Contract Documents, the Design/Builder shall bear all costs and time made necessary by such failure(s) including those of repeated procedures and compensation for the District's services and expenses. The Design/Builder shall notify the District in writing within 24 hours of any test conducted by the independent testing agency that reveals work failing to comply with the Construction Documents. Inspection of Work shall not relieve Design/Builder from an obligation to fulfill this Contract. Project Inspector(s) and the AHJ are authorized to suspend work whenever the Design/Builder and/or its Subcontractor(s) are not complying with the Construction Documents. Any work suspension by the Project Inspector(s) and/or AHJ shall be without liability to the District.

**5.22.5** Required certificates of testing and inspection shall, unless otherwise required by the Contract Documents, be secured by the Design/Builder and delivered to the District within seven (7) days after each test.

**5.22.6** Provide qualified on-site personnel to review and record daily construction activities, including subcontract activities, to determine adequacy of work and compliance with the approved plans and specifications. Provide written daily reports including, but not limited to: Project title, date of work, contract day, weather and conditions (temperature, wind, humidity, etc.), a description of the work in progress by corresponding schedule activity number(s), name of each Subcontractor on site and work being performed, location of each trade on the Project site, total daily workforce per trade (including the Design/Builder's work force), material deliveries and quantities, equipment deliveries, potential delays and delays encountered, orders of instruction, unsatisfactory work, tests performed, safety concerns, visitors, and any other issues to document work performed and areas of concern.

**5.22.7** Daily reports shall be signed by the Design/Builders' Quality Assurance Manager and Project Manager and submitted to the Construction Manager no later than 12:00 p.m. following the day work was performed. The Design/Builder shall separately provide written reports to the Construction Manager of any noted deficiencies in the installed work and corrective measures taken, and test reports of work being installed.

## 5.23 General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities ("Construction Storm Water Permit")

**5.23.1** Design/Builder acknowledges that all California school districts are obligated to develop and implement the following requirements for the discharge of storm water to surface waters from its construction and land disturbance activities pursuant to the Clean Water Act and Porter Cologne Water Quality Act. District has determined that the construction of this Project requires enrollment in the Construction Storm Water Permit. District has filed certain submittals referred to as Permit Registration Documents (PRDS) with the Regional Water Control Board (Storm Water Pollution Prevention Plan or "SWPPP").

**5.23.2** Design/Builder shall comply with any District SWPPP that are approved by District and applicable to the Project at no additional cost to District. Design/Builder shall pay any fees and any penalties that may be imposed by a regulatory agency for its non-compliance with the SWPPP during the course of Work.

**5.23.3** Design/Builder shall provide a Qualified SWPPP Practitioner (QSP) at no additional cost to District, who shall be onsite and implement and monitor any and all SWPPP requirements applicable to the Project, including required visual observations, sampling, analysis, reporting and record keeping, including of Total Maximum Daily Loads ("TMDL") of pollutants and construction dewatering and discharge, and Best Management Practices ("BMPs").

**5.23.4** Design/Builder shall submit to District all electric and hard copy records required by the Construction Storm Water Permit, if applicable, within seven (7) days of Completion of the Project.

## 5.24 Air Pollution

The Design/Builder and each Subcontractor shall comply with all State, District and/or local air pollution control rules, regulations, ordinances, and statutes that apply to any work performed under the Contract. If there is a conflict between the State, District and local air pollution control rules, regulations, ordinances and statutes, the most stringent shall govern.

## 5.25 Unfair Business Practices

The Design/Builder agrees, and will require all of the Design/Builder's Subcontractors and suppliers to agree, to assign to the awarding body all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), or under the Cartwright Act (commencing with Section 16700 of the Business and Professions Code), arising from the purchase of goods, services or materials, pursuant to the Contract Documents or any subcontract there under. An assignment made by the Design/Builder, and all additional assignments made by Subcontractors and suppliers, shall be deemed to have been made and will become effective at the time the District tenders Final Payment to the Design/Builder, without further acknowledgment of the parties.

## 5.26 No Relief from Obligations Based on Review by Other Persons

Design/Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by act or omission of District, Construction Manager, Project Inspector, or AHJ or other entities having jurisdiction including, but not limited to, administration of the Contract, review of submittals, or by tests, observation, inspection, or permit/interconnection approvals.

## 6. DISTRICT'S DUTIES AND RESPONSIBILITIES

### 6.1 District's Representative

Functions for which this Contract provides to be performed by the District may be delegated by the District only by written notice to the Design/Builder from the District.

### 6.2 Communication with the Design/Builder

During the term of this Contract, the District shall communicate with the Design/Builder, Subcontractors, suppliers, and others performing any part of the Work only through the Design/Builder's authorized representatives, as may be amended, subject to any approvals required by the District as described in the Contract Documents.

### 6.3 District's Consent

The District shall furnish decisions, information, and/or reviews required by this Contract in a timely manner so as not to delay the Work, provided that the District shall have no less time for review than set forth in the Project Baseline Schedule as developed by the Design/Builder and accepted by the District.

## 7. SUBCONTRACTING

### 7.1 Subletting and Subcontracting

**7.1.1** The Design/Builder shall adhere to the rules governing subcontracting as set forth in the Subletting and Subcontracting Fair Practices Act, commencing with Public Contract Code Section 4100. Subcontractor substitutions shall be in accordance with the Subletting and Subcontracting Fair Practices Act. Any violation may subject the Design/Builder to penalties and disciplinary action as provided by the Subletting and Subcontracting Fair Practices Act, including termination of this Contract.

**7.1.2** The Design/Builder shall be responsible for all Work performed under this Contract, whether by itself or by parties for which it is responsible. The Design/Builder shall give personal attention to fulfillment of the Contract and shall keep the Work under the Design/Builder's control. If Design/Builder subcontracts any part of the Work called for by the Contract Documents, Design/Builder shall be as fully responsible to District for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by any Subcontractor, including Subcontractor caused Project delays, as it is for acts and omissions of persons directly employed by Design/Builder. When any Subcontractor fails to execute a portion of the work in a manner satisfactory to the District, the Design/Builder shall remove such Subcontractor pursuant to the requirements of law immediately upon written notice from the District.

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

**7.1.4** The District may not permit a Subcontractor who is ineligible to bid or work on, or be awarded, a public works Project pursuant to Sections 1777.1 or 1777.7 of the Labor Code.

**7.1.5** All Subcontractors of any tier performing any part of the Work shall be registered as a Public Works Contractor with the Department of Industrial Relations. The Design/Builder shall be responsible for removing, by requesting substitution or otherwise, any Subcontractors who are not in compliance.

**7.1.6** District's consent to, or approval of, or failure to object to, any Subcontractor under the Contract Documents shall not in any way relieve Design/Builder of any obligations under the Contract Documents and no such consent shall be deemed to waive any provisions of the Contract Documents.

## 7.2 Subcontracting Relations

**7.2.1** The Design/Builder shall, by Subcontractor agreement, require each Subcontractor, to the extent of the work to be performed by the Subcontractor, to be bound to the Design/Builder by terms of the Contract Documents, and to assume toward the Design/Builder all the obligations and responsibilities which the Design/Builder, by the Contract Documents, assumes toward the District. Each subcontract shall preserve and protect the rights of the District under the Contract Documents with respect to the work to be performed by the Subcontractor.

**7.2.2** The Design/Builder shall require each Subcontractor to enter into similar agreements with sub-subcontractors. The Design/Builder shall make available to each proposed Subcontractor, prior to the execution of the Subcontractor agreement, copies of those portions of the Contract Documents to which the Subcontractor will be bound. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed second and third tier Subcontractors.

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

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

## 7.3 Subcontractor Progress Payments

Within seven (7) days of receipt of each progress payment, the Design/Builder shall make payment to Subcontractors in accordance with Business and Professions Code Section 7108.5. The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.

## 7.4 No Obligation of District for Subcontractor Payment

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

### 7.5 Joint Checks

District shall have the right in its sole discretion, if necessary for the protection of the District, to issue joint checks made payable to the Design/Builder and Subcontractors and/or material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, or a material or equipment supplier, or any obligation from the District to such Subcontractor or a material or equipment supplier or rights in such Subcontractor against the District.

### 7.6 Contract Assignments

Performance of the Contract Documents may not be assigned except upon written consent of the District. Assignment without District's prior written consent shall be null and void. Consent will not be given to an assignment that would relieve the Design/Builder or the Design/Builder's surety of their responsibilities under the Contract Documents. Any assignment of money due or to become due under the Contract Documents shall be subject to a prior lien for services rendered or material supplied for performance of Work called for under the Contract Documents in favor of all persons, firms, or corporations rendering services or supplying material to the extent that claims are filed pursuant to the Civil Code, Code of Civil Procedure, Government Code, Labor Code, and/or Public Contract Code, and shall also be subject to deductions for liquidated damages or withholding of payments as determined by District in accordance with the Contract Documents. Design/Builder shall not assign or transfer in any manner to a Subcontractor or supplier the right to prosecute or maintain an action against the District.

## 8. STATE LABOR, WAGE AND HOUR, APPRENTICE, AND RELATED PROVISIONS

### 8.1 Labor Compliance and Enforcement

Since this Project is subject to labor compliance and enforcement by the Department of Industrial Relations ("DIR"), Design/Builder specifically acknowledges and understands that it shall perform the Work of this Contract while complying with all the applicable provisions of Division 2, Part 7, Chapter 1, of the Labor Code and Title 8 of the California Code of Regulations, including, without limitation, the requirement that the Design/Builder and all Subcontractors shall timely furnish complete and accurate electronic certified payroll records directly to the DIR. The District may not issue payment if this requirement is not met.

### 8.2 Wage Rates, Travel, and Subsistence

**8.2.1** Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute the Contract Documents are on file at the District's principal office and copies will be made available to any interested party on request or available online at

http://www.dir.ca.gov/. Design/Builder shall obtain and post a copy of these wage rates at the job site.

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

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

**8.2.4** If, prior to execution of the Contract, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract Documents is to be performed, such change shall not alter the wage rates in the Contract Documents subsequently awarded.

**8.2.5** Pursuant to Labor Code section 1775, Design/Builder shall, as a penalty, forfeit the statutory amount up to two hundred dollars ($200) to District for each calendar day, or portion thereof, for each worker paid less than the prevailing rates, determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Design/Builder or by any Subcontractor under it. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Design/Builder.

**8.2.6** Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and that minimum wage rate shall be retroactive to time of initial employment of the person in that classification.

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

**8.2.8** Design/Builder shall post at appropriate conspicuous points on the Project Site a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Design/Builder shall post a sign-in log for all workers and visitors to

the Site, a list of all Subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

## 8.3 Hours of Work

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

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

**8.3.3** Pursuant to Labor Code section 1813, Design/Builder shall, as a penalty, forfeit the statutory amount (believed by the District to be currently twenty-five dollars ($25)) to the District for each worker employed in the execution of the Contract Documents by Design/Builder or by any Subcontractor for each calendar day during which a worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

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

## 8.4 Payroll Records

**8.4.1** Design/Builder shall upload, and shall cause each Subcontractor performing any portion of the Work under this Contract to upload, an accurate and complete certified payroll record ("CPR") electronically using DIR's eCPR System by uploading the CPRs by electronic XML file online no less than every thirty (30) days while Work is being performed and within thirty (30) days after the final day of Work performed on the Project at http://www.dir.ca.gov/Public-Works/Certified/Payroll-Reporting.html or current application and URL, showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman,

apprentice, worker, or other employee employed by the Design/Builder and/or each Subcontractor in connection with the Work.

**8.4.1.1** If CPRs enumerated hereunder are not filed directly with the DIR by Design/Builder and/or each Subcontractor, District may not make any payment or delay payment to Design/Builder until Design/Builder and/or its Subcontractor(s) provide CPRs acceptable to the District and DIR.

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

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

**8.4.2.2** CPRs shall be made available for inspection or furnished upon request or as required by regulation to a representative of the District, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the DIR.

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

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

**8.4.4** Design/Builder shall inform District of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days of a change in location of the records, provide a notice of change of location and address.

**8.4.5** If the District seeks to obtain CPRs, Developer shall have ten (10) days to comply following receipt of a written notice requesting the CPRs. In the event that Developer or subcontractor fails to comply within the 10-day period, District shall notify the Division of Labor Standards Enforcement, who may request penalties be withheld from progress payments then due. As penalty for noncompliance, Design/Builder shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Design/Builder or subcontractor shall forfeit up to one hundred dollars ($100)

to District for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Labor Commissioner, these penalties shall be withheld from payments then due. Developer is not subject to a penalty assessment due to the failure of a subcontractor to provide CPRs.

## 8.5 [Reserved]

## 8.6 Apprentices

**8.6.1** Design/Builder acknowledges and agrees that, if the Contract Documents involve a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5 and 29 CFR part 5. It shall be the responsibility of Design/Builder to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

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

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

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

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

**8.6.6** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Design/Builder and any Subcontractor may be required to make contributions to the apprenticeship program.

**8.6.7** If Design/Builder or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

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

**8.6.7.2** Forfeit, as a penalty, to District the full amount stated in Labor Code section 1777.7. Interpretation and enforcement of these

provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

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

**8.6.7.4** Design/Builder shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and Title 8, California Code of Regulations, Section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, 9th Floor, San Francisco, California 94102.

## 8.7 Skilled and Trained Workforce

**1.1.1** Design/Builder and its Subcontractors at every tier hereby provides an enforceable commitment to comply with Public Contract Code section 2600 et seq., which requires use of a skilled and trained workforce to perform all work on the Contract or Project that falls within an apprenticeable occupation in the building and construction trades.

**1.1.1.1** "Apprenticeable Occupation" means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations ("Chief") had approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.

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

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

**1.1.1.1.2** That, for the applicable dates, either (A) the number of the skilled journeypersons employed to perform work on the Contract or Project by Design/Builder or its Subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief pursuant to Labor Code section 3075 or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor, or (B) the hours of work performed by skilled journeypersons who have graduated from an approved apprenticeship program meet at least the percentages set forth in the following chart:

| REQUIREMENT | OCCUPATIONS |
|---|---|
| At least 0% | Teamster |

| | |
|---|---|
| At least 30% | Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, and tile layer, setter, or finisher |
| At least 60% | Remaining apprenticeable occupations |

**1.1.1.1.3** For an apprenticeable occupation in which no apprenticeship program has been approved by the Chief before January 1, 1995, up to one-half of the above graduation percentage requirements set forth in the above chart may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the Chief's approval of an apprenticeship program for that occupation in the County in which the Project is located.

**1.1.1.1.4** Design/Builder or Subcontractor need not meet the apprenticeship graduation requirements if:

**1.1.1.1.4.1** During a calendar month, Design/Builder or subcontractor employs skilled journeypersons to perform fewer than 10 hours of work on the Contract or Project; or

**1.1.1.1.4.2** The Subcontractor was not a listed Subcontractor under Public Contract Code section 4104 or a substitute for a listed Subcontractor, and the subcontract does not exceed one-half of 1 percent (0.5%) of the price of the prime contract.

**1.1.1.3** "Skilled Journeyperson" means a worker who either:

**1.1.1.1.5** Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief or located outside of California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor; or

**1.1.1.1.6** Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the Chief.

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

**1.1.1.4** Provide monthly reports to District demonstrating that Design/Builder and its Subcontractors are complying with the

requirements of Public Contract Code section 2600 et seq., which shall be a public record under California Public Records Act, Government Code section 6250 et seq.; or

**1.1.1.5** Provide evidence that Design/Builder and its Subcontractors have agreed to be bound by: (1) a Project Labor Agreement entered into by District that binds all contractors and all its Subcontractors at every tier performing work on the Project to use a skilled and trained workforce; (2) the extension or renewal of a Project Labor Agreement entered into by District prior to January 1, 2017; or (3) a Project Labor Agreement that binds all contractors and all its Subcontractors at every tier performing work on the Project to use a skilled and trained workforce.

### 8.8 Non-Discrimination

**8.8.1** Design/Builder herein agrees to comply with the provisions of the California Fair Employment and Housing Act as set forth in Part 2.8 of Division 3 of Title 2 of the California Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246; and all administrative rules and regulations found to be applicable to Design/Builder and Subcontractor.

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

### 8.9 Labor First Aid

Design/Builder shall maintain emergency first aid treatment for Design/Builder's laborers and mechanics on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) and the California Occupational Safety and Health Act of 1973 (Lab. Code, § 6300 et seq.; 8 Cal. Code of Regs., § 330 et seq.).

## 9. PAYMENTS AND COMPLETION

### 9.1 NTE Amount

In consideration of Design/Builder's obligations under the Contract Documents, Design/Builder will be compensated in an amount not-to-exceed Fifty-Four Million, Six Hundred Twenty-Nine Thousand, Eight Hundred Thirty-Eight Dollars ($54,629,838), in accordance with the payment procedures set forth herein. Except as otherwise provided in the Contract Documents, the NTE Amount will fully compensate Design/Builder for all of the services required under the Contract Documents, including the scope of services described in this Contract, and Design/Builder will not seek additional compensation from District in excess of that amount.

**9.1.1** Any re-design or re-bidding to stay within the NTE Amount shall be at no additional cost to District.

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

**9.1.3** The NTE Amount shall be superseded by the GMP and an amendment of this Contract to incorporate the GMP.

## 9.2 Compensation for Design Services

District agrees to reimburse Design/Builder in the total amount not to exceed Three Million, Seven Hundred Thirty-Five Thousand Dollars ($3,735,000) ("Design Fee"), including contingency, for the performance of all design services contemplated under the Contract Documents. Use of design contingency shall be subject to agreement between the District and Design/Builder and shall not require Board approval. Design/Builder shall be paid monthly for the actual fees and allowed costs and expenses for all time and materials required and expended for work requested and specified by the District as completed. Said amount shall be paid within thirty (30) days upon submittal to and verification by the District of a monthly billing statement showing completion of the tasks for that month on a line-item basis. The Design Fee is included in, and not in addition to, the GMP.

### 9.2.1 Termination Before Construction Phase

**9.2.1.1** Before the Notice to Proceed with Construction is issued by the District, this Agreement may be terminated at any time without cause by District immediately upon written notice to Design/Builder. In the event of such a termination by District, the District shall pay Design/Builder an amount not to exceed the amount in Section 8.2 above for all undisputed services performed and expenses incurred per this Agreement, supported by documentary evidence, including, but not limited to, payroll records, invoices from third parties retained by Design/Builder pursuant to this Agreement, and expense reports up until the date of notice of termination.

**9.2.1.2** Without limiting the availability of termination without cause, the Parties specifically acknowledge and agree that the District can and will need to terminate the Agreement pursuant to this section in the event that the District's Project is not approved by the AHJ and/or in the event that the Parties do not reach an agreement on the GMP.

**9.2.1.3** Termination under this section is in addition to and not exclusive with the rights and remedies under Section 12.

## 9.3 Compensation for Construction Phase Services

After AHJ approval of plans and specifications, Design/Builder shall prepare and submit to District a GMP proposal, with all backup and subject to an open book policy. The GMP shall be established by the Parties at the completion of the negotiation and acceptance of the Design/Builder's GMP proposal. The GMP shall not exceed the NTE Amount unless mutually agreed in writing. Following District's issuance of the Notice to Proceed with Construction, District shall pay Design/Builder up to the GMP less the Design Fee for all construction phase services contemplated under the Contract Documents, in accordance with the payment procedures set forth herein.

## 9.4 Guaranteed Maximum Price

Pursuant to the Contract, Design/Builder will cause the Project to be constructed for the GMP. The GMP will consist of the amounts to be identified in **EXHIBIT C** (Guaranteed Maximum Price). Except as indicated herein for modifications to the Project approved by the District, Design/Builder will not seek additional compensation from District in excess of the GMP.

### 9.4.1 Cost of Work

The term Cost of the Work shall mean the costs necessarily incurred in the proper performance of the Work contemplated by the Contract Documents. Such costs shall be at rates no higher than the standard paid at the place of the Project except with the prior consent of the District. The Cost of the Work shall include only the items set forth in this Article and approved by the District.

#### 9.4.1.1 General Conditions

The General Conditions as set forth in **EXHIBIT C** shall be included in a progress billing as incurred. Said rates shall include all costs for labor, equipment and materials for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Design/Builder for insurance, permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, incentives to the extent contemplated in **Attachment 1 to EXHIBIT C**, whether required by law or collective bargaining agreements or otherwise paid or provided by Design/Builder to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the District shall be entitled to a reduction in the cost of General Conditions based on the rates set forth in Attachment 1.

#### 9.4.1.2 Subcontract Cost

Payments made by the Design/Builder to Subcontractors (inclusive of the Subcontractor's bonding, if required, and insurance costs, which shall be included in the subcontract amount), which payments shall be made in accordance with the requirements of the Contract Documents.

#### 9.4.1.3 Design/Builder Performed Work

Costs incurred by the Design/Builder for self-performed work at the direction of District or with the District's prior approval, as follows:

**9.4.1.3.1** Actual costs to the Design/Builder of wages of construction workers, excluding all salaried and/or administrative personnel, directly employed by the Design/Builder to perform the construction of the Work at the site.

**9.4.1.3.2** Wages or salaries and customary benefits, such as sick leave, medical and health benefits, holidays, vacations,

incentive programs, and pension plans of the Design/Builder's field supervisory, safety and administrative personnel when stationed at the site or stationed at the Design/Builder's principal office, only for that portion of their time required for the Work.

**9.4.1.3.3** Wages and salaries and customary benefits, such as sick leave, medical and health benefits, holidays, vacations, incentive programs and pension plans of the Design/Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**9.4.1.3.4** Costs paid or incurred by Design/Builder for taxes, insurance, contributions, assessments required by law or collective bargaining agreements and for personnel not covered by such agreements, and for customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work.

**9.4.1.3.5** Costs, including transportation and storage, of materials and equipment incorporated in the completed construction, including costs of materials in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the District's property at the completion of the Work or, at the District's option, shall be sold by the Design/Builder. Any amounts realized from such sales shall be credited to the District as a deduction from the Cost of the Work.

**9.4.1.3.6** Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, machinery and equipment not customarily owned by construction workers, that are provided by the Design/Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design/Builder. Cost for items previously used by the Design/Builder shall mean fair market value.

**9.4.1.3.7** Rental charges for temporary facilities, machinery, equipment, vehicles and vehicle expenses, and hand tools not customarily owned by construction workers that are provided by the Design/Builder at the site, whether rented from the Design/Builder or others, and the costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof and costs of Design/Builder's Project field office, overhead and general expenses including office supplies, parking, office equipment, and software. Rates and quantities of equipment rented shall be subject to the District's prior approval.

**9.4.1.3.8** Costs of removal of debris from the site, daily clean-up costs and dumpster charges not otherwise included in the cost of the subcontracts which exceeds the clean-up provided under the General Conditions.

**9.4.1.3.9** Costs of that portion of the reasonable travel, parking and subsistence expenses of the Design/Builder's personnel incurred while traveling and discharging duties connected with the Work.

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

### 9.4.1.4 Allowances

Because it is impossible at the time of execution of the Contract to determine the exact cost of performing certain tasks, the Cost of the Work shall include the following Allowances as noted here:

| Task/Work | Allowance Amount |
|---|---|
| Tariffs | $500,000 |
| Transformers | $495,000 |
| Site Security during Construction | $171,500 |
| Special Inspection | $75,000 |
| PV Panels | $330,000 |
| Fire Pump | $95,000 |
| Distributed Antenna System/ Emergency Responder Radio Communication System | $115,000 |
| Emergency Generator | $165,000 |
| Water Softener | $35,000 |
| Site Boundary Wall – Metal | $656,250 |
| Building Signage | $25,000 |
| Trash Enclosure | $60,000 |
| Owner Controlled Design Contingency | $1,000,000 |
| **Total Allowance Amount** | **$3,722,750** |

The Allowance Amount for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design/Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the GMP, and are not subject to adjustment regardless of the actual amount of the Allowance Item.

The District shall have sole discretion to authorize all expenditures from the Allowances. The District shall process expenditures from the Allowances in the form of an Allowance Expenditure Directive ("AED"). The Allowances are included in the GMP. Any unused Allowance or unused portion thereof shall be deducted from the Cost of the Work to the benefit of the District.

If there is an Allowance, then Design/Builder shall not bill for or be due any portion of an Allowance unless District has identified specific work, Design/Builder has submitted a price for that work or District has proposed a price for that work, District has accepted the cost for that work, and District has executed an Allowance Expenditure Directive incorporating that work. Allowance Expenditure Directives shall be based on Design/Builder's costs, without overhead and profit, for products, delivery, installation, labor, insurance, payroll, taxes, bonding and equipment rental will be included in Allowance Expenditure Directive authorizing expenditure of funds from the Allowance. No overhead and profit shall be added to the Allowance Expenditure Directive.

Any unused portion of the Allowance will revert to District documented by a deductive Change Order. Design/Builder authorizes District to execute a unilateral deductive Change Order at or near the end of the Project for all or any portion of the Allowance not allocated.

#### 9.4.1.5 Miscellaneous Costs

**9.4.1.5.1** Where not included in the General Conditions, and with the prior approval of District, costs of document reproductions (photocopying and blueprinting expenses), long distance telephone call charges, postage, overnight and parcel delivery charges, telephone costs including cellular telephone charges, facsimile or other communication service at the Project site, job photos and progress schedules, and reasonable petty cash expenses of the site office. Design/Builder shall consult with District to determine whether District has any vendor relationships that could reduce the cost of these items and use such vendors whenever possible.

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

**9.4.1.5.3** Fees and assessments for permits, plan checks, licenses and inspections for which Design/Builder is required by the Contract Documents to pay including, but not limited to,

permanent utility connection charges, street use permit, street use rental, OSHA permit and sidewalk use permit and fees.

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

**9.4.1.5.5** Deposits lost for causes other than the Design/Builder's or its Subcontractors' negligence or failure to fulfill a specific responsibility to the District as set forth in the Contract Documents.

**9.4.1.5.6** Expenses incurred in accordance with the Design/Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work if approved in advance by District.

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

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

**9.4.1.5.9** Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and/or property.

**9.4.1.5.10** Provided all other eligible costs have been deducted from the contingency and as part of the calculation of amounts due Design/Builder for Final Payment, costs of repairing and correcting damaged or non-conforming Work executed by the Design/Builder, Subcontractors or suppliers, providing that such damage or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design/Builder and only to the extent that the cost of repair or correction is not recovered by the Design/Builder from insurance, sureties, Subcontractors or suppliers.

### 9.4.1.6 Excluded Costs

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

**9.4.1.6.1** Salaries and other compensation of the Design/Builder's personnel stationed at Design/Builder's principal office or offices other than the Project Field Office, except as specifically provided in Article 8.4.1.3.

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

**9.4.1.6.3** Overhead and general expenses, except as may be expressly included in this Article 8.4.1.

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

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

#### 9.4.1.7 Design/Builder's Fee

Three percent (3.00%) of the Cost of the Work as described in Articles 8.4.1.1 to 8.4.1.5.

#### 9.4.1.8 Bonds and Insurance

For insurance and bonds required under this Contract (exclusive of those required by Subcontractors, which costs are included in the subcontract amounts), that portion of insurance and bond premiums which are directly attributable to this Contract, which shall be calculated at a rate of two percent (2.00%) of the Cost of the Work for insurance and seventy-three hundredths percent (0.73%) of the Cost of the Work for payment and performance bonds.

#### 9.4.1.9 Contingency

**9.4.1.9.1** The GMP includes a construction phase Contingency of three percent (3.00%) of the Cost of the Work, as well as design Contingency, for potential additional construction costs for unforeseen insurance costs, preconstruction cost overruns, General Conditions Costs overruns not otherwise compensated, unforeseen conditions that occur over the course of construction and/or scope gaps between the designer, subconsultant or subcontract categories of the Work.

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

**9.4.1.9.3** The Contingency shall not be used without the agreement of the District. Once the District Board approves the GMP, contingency approvals will be managed at the Project level without necessitating District Board action.

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

#### 9.4.1.10 District Contingency

The GMP includes a District Contingency of One Million Dollars ($1,000,000) for such things as scope changes, which the District may utilize in its discretion. The unused portion of the District Contingency shall be retained by the District at the end of the Project.

### 9.5 Open Book Policy

There will be an open book policy with Design/Builder and its construction team. District shall have access to all Subcontractor bids, value engineering back-up, contingency breakdown and tracking, and fees.

## 9.6 Changes to the GMP

**9.6.1** The Parties acknowledge that the GMP is full compensation for all Work required by the Contract Documents, including the plans and specifications.

**9.6.2** As indicated in Article 11, the Parties may add to or remove from the Project specific scopes of work. Based on these change(s), the Parties may agree to a reduction or increase in the GMP, or any Phase GMPs. If a cost impact of a change is agreed to by the Parties, it shall be paid upon the payment request from the Design/Builder for the work that is the subject of the change in accordance with Article 11. The amount of any change to the GMP shall be calculated in accordance with Article 11.

**9.6.3** The Parties agree to reduce the GMP for the unused portion of the Design/Builder Contingency or Allowances, if any.

### 9.6.4 Cost Savings

Design/Builder shall work cooperatively with Construction Manager, Subcontractors, and District, in good faith, to identify appropriate opportunities to reduce the Project costs and promote cost savings. Any identified cost savings from the GMP shall be identified by Design/Builder and approved in writing by the District. In the event Design/Builder realizes a savings on any aspect of the Project, such savings shall be added to the Contingency and expended consistent with the Contingency. If any cost savings require revisions to the Construction Documents, Design/Builder shall work with the District with respect to revising the Construction Documents and, if necessary, obtaining the approval of AHJ with respect to those revisions. Design/Builder shall be entitled to an adjustment of Contract Time for delay in completion caused by any cost savings adopted by District pursuant to Article 11, if requested in writing before the approval of the cost savings.

## 9.7 Schedule of Values

Within ten (10) days after the date of Notice to Proceed with Construction and prior to the first Application for Payment, the Design/Builder shall submit to the District a Schedule of Values to complete the Project, supported by such data to substantiate the accuracy as the District may require. This Schedule of Values, unless objected to by the District within fifteen (15) days of receipt, shall be used as a basis for progress payments.

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

## 9.8 Application for Payment.

**9.8.1** The Design/Builder shall deliver to the District on a monthly basis, or as otherwise agreed by both parties, an Application for Payment, in the format approved by the District, covering that portion of the GMP allocated to the Work completed during each month and in accordance with the Schedule

of Values. Invoices shall include the contract number, the Project number, the amendment number, Design/Builder's Federal Employer Identification Number (FEIN); and shall be submitted to the District in care of the District's Construction Manager.

**9.8.2** Application for payment shall not be submitted more frequently than once monthly. The application for payment shall be signed by an officer or designee of the Design/Builder's firm. Provided the Application for Payment is received and approved by the District, the District shall make payment to the Design/Builder not later than thirty (30) days after receipt by the District of a payment application that is strict conformance with the requirements herein. With each Application for Payment, the Design/Builder shall submit such evidence as may be necessary to demonstrate costs incurred or estimated to be incurred in accordance with the Schedule of Values during such month and the percentage of completion of each category of Work.

## 9.9 Progress Payments

The District shall pay the Design/Builder the progress payments through the period covered by the Application for Payment, as provided herein. Upon receipt of an Application for Payment from the Design/Builder, the District will promptly review the same to determine if it is a proper Application for Payment based on the approved Schedule of Values and pursuant to Public Contract Code Section 20104.50. Any Application for Payment determined by the District not to be in strict conformance with the requirements herein set for payment shall be rejected and returned to Design/Builder to be modified and processed per the Contract. The District's reason(s) for rejecting the Application for Payment shall be stated in writing.

## 9.10 Withholding of Payment

**9.10.1** The District shall withhold payment in whole, or in part, as required by statute. In addition, the District may withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's reasonable opinion, the representations to the District required herein cannot be made. Payment, in whole, or in part, will be withheld based on the need to protect the District from loss because of, but not limited to, any of the following:

**9.10.1.1** Defective Work not remedied within two (2) working days of written notice to Design/Builder.

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

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

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

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

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

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

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

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

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

**9.10.1.11** Failure of the Design/Builder to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, Schedule(s), Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports.

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

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

**9.10.1.14** Failure to provide acceptable electronic certified payroll records, as required by the Labor Code, by these Contract Documents or by written request for each journeyman, apprentice, worker, or other employee employed by the Design/Builder and/or by each Subcontractor in connection with the Work for the period of the Application for Payment or if payroll records are delinquent or inadequate.

**9.10.1.15** Failure to properly pay prevailing wages as required in Labor Code section 1720 et seq., failure to comply with any other Labor Code requirements, and/or failure to comply with labor compliance monitoring and enforcement by the DIR.

**9.10.1.16** [Reserved].

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

**9.10.1.18** Failure to timely indemnify, defend, or hold harmless the District as required by the Contract Documents

**9.10.1.19** Failure to perform any implementation and/or monitoring required by the General Permit, including without limitation any SWPPP for the Project and/or the imposition of any penalties or fines therefore whether imposed on the District or Design/Builder.

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

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

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

**9.10.1.23** Written notice to withhold payment from Design/Builder by payment and/or performance bond surety(ies); and

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

## 9.11 Payment for Stored Materials

Unless otherwise provided in the Contract Documents, payment will be made on account for materials or equipment not incorporated in the Work but delivered and suitably stored at the Site and/or if approved in advance by the District, and at the District's discretion on case-by-case basis, payments may be made for materials or equipment stored at some other bonded or otherwise secure location agreed upon in writing. Payments made for materials or equipment stored on or off-site shall be conditioned upon submission by the Design/Builder of bills of sale or such other procedures satisfactory to the District to establish District's title to such materials or equipment or otherwise protect the District's interest, including applicable insurance and transportation to the Site for those materials and equipment stored off-site.

## 9.12 Payments as Trust Funds

Any and all funds payable to the Design/Builder are hereby declared to constitute trust funds in the hands of the Design/Builder to be applied first to payment of claims of Subcontractors, sub-subcontractors, architects, engineers, surveyors, laborers, material men or employees arising out of the described Work, to obligations for utilities furnished, tax imposed or such to the payment of premiums on security or other bonds, and to payment of insurance premiums relating to the Project and to payments and contributions to union pension plans and trust funds before application to any other purpose.

## 9.13 Payment Not a Waiver

**9.13.1** No payment hereunder, including Final Payment to Design/Builder, nor District's use or Beneficial Occupancy of the Work, shall release Design/Builder with respect to design, construction, workmanship, materials, equipment or machinery incorporated in the Work that is found to be defective, unsound or improper.

**9.13.2** No payment made under the Contract, shall be evidence of performance thereof, either wholly or in part, nor shall it be construed to be acceptance of defective work or improper material, or an approval of any items in any application for payment.

## 9.14 Waiver of Stop Payment Notice and Payment Bond Rights

The Design/Builder shall attach to each application for payment, a waiver of all stop payment notice and payment bond rights as provided in Civil Code sections 8132, 8134, 8136 or 8138, with respect to all amounts requisitioned up to and including the then current requisition from the Design/Builder, which waiver of lien and payment bond rights covers all amounts requisitioned from the Design/Builder's Subcontractors and all tiers and suppliers. Design/Builder shall make available copies of similar waivers from its Subcontractors of all tiers and suppliers.

## 9.15 Retention

**9.15.1** The District will retain five percent (5%) of such estimated value of all Work completed (including design and other professional services) and a like percentage within limits established by law, of the value of materials so estimated to have been furnished, delivered and unused, as aforesaid, as part of security for fulfillment of the Contract Documents by the Design/Builder. The District will pay monthly to the Design/Builder while executing the Work the balance not retained after deducting all previous payments and all sums to be retained under provisions of the Contract Documents.

**9.15.2** No interest shall be paid on any retention, or on any amounts withheld due to a failure of the Design/Builder to perform, in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the District and the Design/Builder pursuant to Public Contract Code section 22300.

**9.15.3 Investment Alternative.**

**9.15.3.1** At the request and expense of the Design/Builder, and in accordance with Public Contract Code Section 22300, the District will make payment of the retention earned directly to a state or federally chartered bank in California, as the escrow agent.

**9.15.3.2** The escrow agreement shall be substantially similar to the form "Escrow Agreement for Security Deposits in Lieu of Retention" found in Public Contract Code Section 22300.

**9.15.3.3** Upon satisfactory completion of the Work, the Design/Builder shall receive from the escrow agent all securities, interest, and payments received by the escrow agent from the District, pursuant to the terms of the Escrow Agreement.

## 9.16 Final Payment, Occupancy, and Completion

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

**9.16.2** The District's occupancy does not constitute acceptance by the District of the Work, or any portion of the Work, nor will it relieve the Design/Builder of responsibility for correcting defective Work or materials found at any time before Completion, or during the guarantee period after District's acceptance. However, when the Project includes separate buildings, and one or more of the buildings is entirely occupied by the District, then upon written request by the Design/Builder and by written consent from the District, the guarantee period will commence to run for a building or buildings from the date of the District's Beneficial Occupancy of a building or buildings.

**9.16.3** Beneficial Occupancy. The District may occupy or use any completed or partially completed portion of the Work. Such partial occupancy or use may commence whether or not the portion is complete. Immediately prior to such occupancy, the District and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Work. Unless otherwise agreed, partial occupancy or use of a portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**9.16.4** The Project shall be considered substantially complete, including for purposes of section 11.1 (Liquidated Damages) herein, when the Work or designated portion thereof is sufficiently complete in accordance with the Contract so the District can occupy or utilize the Work for its intended use (the "Substantial Completion Date"). The Project or designated portion thereof may be substantially complete notwithstanding the existence of punch list items as hereinafter described, provided they do not interfere with the District's ability to occupy or utilize the Work for its intended use. When the Design/Builder considers the Work complete, the Design/Builder and the District shall collaboratively prepare a single comprehensive punch list. The Design/Builder shall then proceed promptly to complete and correct the punch list items. Failure to include an item on the punch list does not alter the responsibility of the Design/Builder to complete all work in accordance with the Contract Documents.

**9.16.5** Upon completion of the punch list the District will make an inspection to determine whether the work has been completed. The Notice of Completion shall be issued when all work is complete, and the District has formally accepted the Project.

**9.16.6 Waiver of Claims.** Acceptance of Final Payment by the Design/Builder shall constitute a waiver of affirmative claims by the Design/Builder, except those previously made in writing and identified as unsettled at the time of Final Payment.

**9.16.7 Final Payment.** Upon execution of the Notice of Completion, providing no stop notices have been filed that have not been discharged or bonded, all amounts unpaid under the Contract will be paid to Design/Builder. The District may withhold any reasonable sums payable to Design/Builder for the value of any Work, which the District found defective and ordered to be replaced. Final Payment of withholdings will be made when the Work is completed and/or defective Work replaced.

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

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

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

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

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

**9.16.8** The Design/Builder is required to pay Subcontractors from whom retention has been withheld within seven (7) days of receipt from the District of retention proceeds.

## 10. SCHEDULE

### 10.1 Contract Time

The "Contract Time" is the period from receipt by Design/Builder of written authorization to begin the Project in the form of a Notice to Proceed with Design from the District, until the scheduled date of Completion of the Work. The Design/Builder agrees to design and manage the Work in accordance with the Project Milestone Schedule and approved Baseline Schedule.

### 10.2 Completion

By executing this Contract, the Design/Builder confirms that the Contract Time and Milestone Dates, as stated in the Project Milestone Schedule (**EXHIBIT B**) of the Contract Documents, are of the essence of this Contract. The Design/Builder confirms that the Contract Time and Milestone Dates allow a reasonable period of time for achieving the Completion of the Work for the Project.

### 10.3 Schedules

**10.3.1** The Design/Builder shall be responsible for the development and maintenance of the Preliminary Baseline Schedule, the Baseline Schedule, the Progress Schedule and the Short-Term Schedule as described below. The Design/Builder shall submit, as indicated below, each schedule for the execution of the Work for the District's review and response. The District's review of and response to the schedule submissions shall not be construed as relieving the Design/Builder of its control over the means, methods, sequences and techniques for executing the Work. Each schedule shall provide an interrelated means for defining activities involved in the planning, design, construction, and completion of the Project, their sequences and elapsed completion time from the date of the Notice to Proceed.

**10.3.2** Each schedule shall utilize CPM (Critical Path Method) and shall be submitted in diagram and listed form. The computer-generated schedules shall permit the Design/Builder to obtain several print sorts that aid in identifying various activities and requirements. The Design/Builder shall utilize scheduling software acceptable to the District

**10.3.3** Design/Builder shall Design/Builder will provide all data files electronically in a native format by email or on flash drive.

**10.3.4** **Design/Builder's Preliminary Baseline Schedule.** Within fourteen (14) calendar days from the Notice to Proceed with Design, the Design/Builder shall submit a Preliminary Baseline Schedule to the District. This schedule shall show, but is not limited to, the general plan for the work to be completed in the first ninety (90) calendar days of the Contract. The Preliminary Baseline Schedule shall contain, but not be limited to:

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

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

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

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

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

**10.3.4.6** established Milestone Dates representing important events in the first 90 days and major milestones representing the completion of a group of activities in the first year.

**10.3.5** The Preliminary Baseline Schedule shall be in the form of a CPM schedule. The District will review the Design/Builder's Preliminary Baseline Schedule for conformance with the Project Milestone Schedule and interrelationships with other activities requiring coordination that may be outside the scope of this Contract. Upon completion of the review, the District may make recommendations to the Design/Builder as to adjustments to the Preliminary Baseline Schedule. These recommendations, if accepted by both the District and Design/Builder, will be incorporated into the development of the Design/Builder's Baseline Schedule.

**10.3.6 Design/Builder Baseline Schedule.** Within sixty (60) calendar days after the Notice to Proceed with Design, the Design/Builder, after an initial meeting with the District, shall prepare a proposed Baseline Schedule for the Project. Recognizing that planning activities and design activities need time control to no less degree than construction activities, this schedule shall include, but not be limited to:

**10.3.6.1** A CPM format that incorporates all activities with descriptions, sequence, logic relationships, duration estimates, and other information required for all design, preconstruction and construction activities. Each activity shall have a minimum of one predecessor and one successor, with the exception of the first and last activities. The first activity will be denoted as "Notice to Proceed" and the last activity will be denoted as "Completion". Both these activities shall be shown on the baseline and monthly updates as Project Milestones as stipulated in the Contract.

**10.3.6.2** The CPM format shall include all Project Milestones defined in this Contract and/or by the Design/Builder's proposed Baseline Schedule, as well as all engineering, fabrication and delivery dates required to support the Project Milestones.

**10.3.6.3** Activities indicating the start and finish dates for Project design, engineering, preparation of design development and Construction Documents, government agency plan check and District agency document review.

**10.3.6.4** Activities to be integrated and shown in the CPM network shall include all milestones representing the Design/Builder's submittal dates and activities representing the District's review period of each

submittal (which review period shall in no case be scheduled for less than ten (10) working days); Design/Builder's procurement of materials and equipment; submittals; manufacture and/or fabrication, testing and delivery to the job-site of special material and major equipment; equipment installation and preliminary, final and performance testing of equipment or systems. A standalone submittal schedule will be provided in lieu of all submittals being enumerated in the CPM Project Schedule. Only major equipment and long lead item submittals will be included in the Project Schedule.

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

**10.3.6.6** Activities showing start and finish dates of owner-furnished items and interface requirement dates with other contractors; regulatory agency approvals; and permits required for the performance of the work.

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

**10.3.6.8** Close-out activities, including activities required by the AHJ.

**10.3.6.9** The schedule shall consider all foreseeable factors or risks affecting, or which may affect the performance of the Work, including historical and predicted weather conditions, applicable laws in effect at the time the Contract is signed, regulations or collective bargaining agreements pertaining to labor, transportation, traffic, air quality, noise and any other applicable regulatory requirements.

**10.3.6.10**The Design/Builder shall not use any "float suppression" techniques such as preferential sequencing or logic, special lead/lag constraints or unjustifiably over-estimating activity durations in preparing the schedule. ("Finish no later" constraints will be permissible for Project Milestones only.)

**10.3.6.11**The Design/Builder shall attach a narrative report which explains assumptions used for activity durations, its assumptions regarding crew sizes, equipment requirements and production rates, any potential areas of concern or specific areas requiring coordination it may have identified and any long-lead time materials or equipment in the work.

**10.3.6.12**The Design/Builder shall formally present the detailed time-scaled CPM network for the duration of the Contract Time, demonstrating compliance with Project Milestones and other requirements to the District clearly showing the critical path(s) of the Project through completion.

**10.3.6.13**Time units for all schedules shall be in calendar days, and no construction activity scheduled to commence within sixty (60) days of the Data Date shall have a duration greater than seven (7) calendar

days. Activities scheduled to start more than sixty (60) days of the Data Date shall have durations no greater than twenty (20) days.

**10.3.7** The proposed Baseline Schedule shall be submitted and reviewed by the District. Changes to the Baseline Schedule shall be reviewed with the District prior to implementation. The District, at its sole discretion, may allow or require the Design/Builder to more fully detail portions of the Baseline Schedule at a later date.

**10.3.8** The District shall notify the Design/Builder of acceptance or of any necessary changes to the CPM network within ten (10) working days from the formal presentation, after which the Design/Builder shall make the required changes and resubmit it for acceptance within five (5) working days certifying in writing that all information contained in it complies with the contract requirements. Upon notification by the District of acceptance of the CPM network, the Design/Builder shall prepare computer plots (36" x 48") and printouts (8 ½" x 11"), and complete its submission of the Baseline Schedule, which shall include the following:

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

**10.3.8.1.1** Project Milestones only;

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

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

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

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

**10.3.8.2.1** Float (sorted low to high)

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

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

**10.3.9** **Design/Builder Progress Schedule**. Each month, in conjunction with the application for payment process, the Design/Builder and District will conduct monthly reviews to determine: "planned" versus "actual" progress to date; compliance with contract submittal requirements, Project Milestones and the accepted Baseline Schedule; and determination of any changes to the work plan or implementation which must be made by the Design/Builder to comply with the Baseline Schedule. The monthly schedule review shall include, at a minimum:

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

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

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

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

**10.3.9.5** Review of all impacts to the work during the preceding month and to date, Design/Builder evaluation of those impacts and any recovery plans or remedial actions required to comply with the Baseline Schedule.

**10.3.9.6** Following the review of the above and all other information relevant to the progress of the work, the Design/Builder shall adjust its work plan as required to ensure compliance with the Baseline Schedule. The requirement for additional work force allocations, additional shifts, overtime, etc., will not entitle Design/Builder to additional compensation except to the extent expressly provided for by this Contract or Change Order. The Progress Schedule shall be updated and submitted monthly for the District's review concurrent with each payment application submitted by the Design/Builder. The schedule update shall incorporate actual status to date and shall include the following:

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

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

**10.3.9.6.2.1** Project Milestones only (Baseline vs. forecast);

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

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

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

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

**10.3.9.6.3.1** Variance (Baseline vs. forecast);

**10.3.9.6.3.2** Progress Curves (Baseline vs. Earned/Forecast); and

**10.3.9.6.3.3** Float (sorted low to high.

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

**10.3.10 Design/Builder Short-Term Schedule.** The Short-Term Schedule shall address activities over a three-week period. This schedule shall be maintained on a weekly basis and used as a means of compensating for negative effects of as many variables as possible. It shall be directly derived and electronically tied to the Baseline Schedule to enable rapid analysis of impacts of short-term schedule changes on the overall Project timeline.

**10.3.10.1** The Short-Term Schedule is a dynamic schedule whose activities can vary in both duration and precedence, but only between two sequential milestones as described in the accepted Baseline Schedule. Upon the District's acceptance of the Baseline Schedule, the Design/Builder shall begin providing an updated Short-Term Schedule for all participants at each weekly progress meeting or on a weekly basis if the District decides weekly meetings are not required. The interval format shall be a seven-week projection that shall include one (1) week prior, the week submitted, and six (6) weeks thereafter.

**10.3.11 Schedule Revisions.** The implementation of revised schedule logic and/or activity duration estimates for updating a schedule whether furnished by the Design/Builder or the District do not constitute an extension of Contract Time, relaxation of Project Milestones or basis for a change to the GMP. Such revisions are for the purpose of maintaining the accuracy of the schedule's representation of the work to be accomplished and to present best duration estimates for work yet to be performed.

**10.3.12 Graphical Information.** The Design/Builder shall prepare professional-quality graphical presentations of such scheduling and/or sequencing information as may be required to communicate its work plans or to effectively implement its coordination obligations under the contract.

## 10.4 Float Time

Float or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. All float time contained in the Work shall be shared between the District and Design/Builder, but its use shall be determined by the District. Under no circumstances shall Design/Builder be entitled to maintain a claim against the District for Design/Builder's failure to achieve Completion on a date earlier than that set forth on said Project Milestone Schedule as the same may be adjusted by approved Change Orders.

## 10.5 Computation of Time / Adverse Weather

**10.5.1** The Design/Builder will only be allowed a time extension and compensation for Adverse Weather conditions if requested by Design/Builder in compliance with the time extension request procedures, and Change Order Procedures, and only if all of the following conditions are met:

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

**10.5.1.2** Design/Builder can verify that the Adverse Weather caused delays in excess of five (5) hours of the indicated labor required to

complete the scheduled tasks of Work on the day affected by the Adverse Weather.

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

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

**10.5.1.5** Exceeds twelve (12) workdays of delay per year.

**10.5.2** If the aforementioned conditions are met, a non-compensable day-for-day extension will only be allowed for those days in excess of those indicated herein. Additionally, Design/Builder may request and recover additional, actual direct costs of extra Work and delay costs (extended General Conditions Costs and escalation) arising directly from such weather delay.

**10.5.3** The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

## 11. EXTENSIONS OF TIME – LIQUIDATED DAMAGES; EXCUSABLE DELAYS

### 11.1 Liquidated Damages

Design/Builder and District hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the District will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the Design/Builder shall pay to District as fixed and liquidated damages, and as the District's sole and exclusive remedy for such delays, the sum of five thousand Dollars ($5,000) per day as liquidated damages for each and every day's delay to Substantial Completion. After achievement of Substantial Completion, Design/Builder shall pay to District as fixed and liquidated damages the sum of one thousand five hundred dollars ($1,500) per day for each and every day's delay to final acceptance, which shall include achievement of all material site improvements. Otherwise put, Design/Builder shall accrue liquidated damages at a rate of $5,000 per day for unexcused delays to Substantial Completion, provided, once Design/Builder achieves Substantial Completion such rate shall be stepped down to $1,500 per day until final acceptance, which shall include achievement of all material site improvements. It is hereby understood and agreed that this amount is not a penalty. Design/Builder and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85. In no event shall Design/Builder's aggregate liability for liquidated damages exceeding fifty (50%) percent of construction fees.

### 11.2 Excusable Delay

**11.2.1** Design/Builder shall not be charged for liquidated damages because of any delays in completion of Work which are not the fault of Design/Builder or its Subcontractors, including adverse weather delays, strikes, acts of God as defined in Public Contract Code section 7105, acts of enemy, epidemics, quarantine restrictions, and unforeseeable acts of governmental entities or agencies, or acts of inspectors materially deviating from established industry practice. Design/Builder shall, within five (5) calendar days of beginning of

any delay, including a Force Majeure event, notify District in writing of causes of delay including documentation and facts explaining the delay and the direct correlation between the cause and effect ("Notice of Delay"). If Design/Builder fails to provide its written Notice of Delay within this timeframe, Design/Builder waives, releases, and discharges any right to assert or claim any entitlement to an adjustment to the GMP and/or the Contract Time based on circumstances giving rise to the asserted delay. District shall review the facts and extent of any delay and shall grant extension(s) of time for completing Work when, in its judgment, the findings of fact justify an extension. Extension(s) of time shall apply only to that portion of Work affected by delay and shall not apply to other portions of Work not so affected. An extension of time may only be granted if Design/Builder has timely submitted the Baseline Schedule as required herein.

**11.2.2** Design/Builder's Notice of Delay and request for a time extension is a condition precedent to Design/Builder's submittal of and/or entitlement to a claim. Design/Builder shall notify the District pursuant to the claims provisions in this Contract of any anticipated delay and its cause. Following submission of a claim, the District may determine whether the delay is to be considered avoidable or unavoidable, how long it continues, and to what extent the prosecution and completion of the Work might be delayed thereby.

**11.2.3** In the event the Design/Builder requests an extension of Contract Time for unavoidable delay, such request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation, including both a written narrative and a schedule diagram depicting how the changed Work affects other schedule activities. The schedule diagram shall show how the Design/Builder proposes to incorporate the changed Work in the schedule and how it impacts the current schedule-update critical path. If the Design/Builder fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Baseline Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. Any request for time extension must include the following information as support, without limitation:

**11.2.3.1** The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

**11.2.3.2** Specific logical ties to the Baseline Schedule for the proposed changes and/or delay showing the activity/activities in the Baseline Schedule that are affected by the change and/or delay. In particular, Design/Builder must show an actual impact to the schedule, after making a good faith effort to mitigate the delay by rescheduling the work, by providing an analysis of the schedule ("Time Impact Analysis"). Such Time Impact Analysis shall describe in detail the cause and effect of the delay and the impact on the critical dates in the Project schedule and main sequence of schedule activities to enable District to evaluate the impact of changed Work to the scheduled critical path. (This information must be provided for any portion of any delay of seven (7) days or more.) Design/Builder shall

be responsible for all costs associated with the preparation of Time Impact Analyses

**11.2.3.3** A recovery schedule must be submitted within twenty (20) calendar days of written notification to the District of causes of delay to recover the lost time. As part of this submittal, Design/Builder shall provide a written narrative for each revision made to recapture the lost time. If the revisions include sequence changes, Design/Builder shall provide a schedule diagram comparing the original sequence to the revised sequence of work. The revisions shall not be incorporated into any schedule update until the revisions have been reviewed by District. At District's discretion, Design/Builder can be required to provide Subcontractor certifications for revisions affecting said Subcontractors.

**11.2.4** Design/Builder must comply with requirements in Article 10.2 for a Notice of Delay and supporting justification notwithstanding if Design/Builder contends the specific delay period is unknown and continuing. When submitting a Notice of Delay and supporting justification, Design/Builder must provide an estimated delay duration to critical path activities at the time the Notice of Delay and supporting justification is required to be submitted. Failure of the Design/Builder to perform in accordance with the current schedule update shall not be excused by submittal of a Notice of Delay. If Design/Builder contends the delaying event(s) are continuing, Design/Builder must update monthly the estimated delay period with supporting justification.

**11.2.5** Design/Builder's failure to timely submit a written Notice of Delay and/or provide the justification required Article 10.2 shall constitute Design/Builder's waiver of any right to later submit a Proposed Change Order or pursue a Claim on the circumstances giving rise to the request, or to later pursue any additional money or time extensions in any manner related to that issue, regardless of the merits because the Design/Builder will not have satisfied a condition precedent or exhausted administrative remedies required to show entitlement to a Contract Time adjustment. Design/Builder acknowledges that these written notices and justification requirements are critically important to District's Work, Project management, and evaluating potential options and alternatives to implement mitigation efforts to reduce or eliminate additional Project costs and delays.

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

**11.3.1** Design/Builder is aware that governmental agencies and utilities, including, without limitation, the AHJ, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Design/Builder-prepared drawings or approve a proposed installation. Provided that Design/Builder has taken all commercially reasonable steps to progress the work (including, where applicable, submission of a complete and contract-compliant drawing set for review), Design/Builder shall be entitled to a time extension, and shall not be charged for liquidated damages because of any delays and damages, that may be caused by such agencies, including without limitation delays due to California Environmental Quality Act ("CEQA") compliance. Thus, Design/Builder is not entitled to make a claim for damages for delays arising

from the review of Design/Builder's drawings unless and to the extent Design/Builder has taken all commercially reasonable steps to progress the work (including, where applicable, submission of a complete and contract-compliant drawing set for review), and such delay is beyond the reasonable control of Design/Builder and impacts the Project critical path, in which case, if during the construction phase, Design/Builder may recover its unavoidable proven extended general conditions costs at a rate not to exceed $5,936 per diem.

**11.3.1.1** Other than to the extent expressly set forth elsewhere herein, Design/Builder shall only be entitled to compensation for delay when all of the following conditions are met:

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

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

**11.3.1.1.3** The delay was not within the contemplation of District and Design/Builder.

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

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

**1.1.3** Where an event for which District is responsible impacts the projected Completion Date, the Design/Builder shall provide a written mitigation plan, including a schedule diagram, which explains how (e.g., increase crew size, overtime, etc.) the impact can be mitigated. Design/Builder shall also include a detailed cost breakdown of the labor, equipment, and material Design/Builder would expend to mitigate District-caused time impact. Design/Builder shall submit its mitigation plan to District within fourteen (14) calendar days from the date of discovery of the impact. Design/Builder is responsible for the cost to prepare the mitigation plan.

**1.1.4** Where a change in the Work extends the Contract Time, Design/Builder may request and recover additional, actual direct costs of such extra Work and delay costs (extended General Conditions Costs and escalation), provided that Design/Builder can demonstrate such additional costs are:

**1.1.1.6** Actually incurred performing the Work;

**1.1.1.7** Not compensated by the Markup allowed; and

**1.1.1.8** Directly result from the extended Contract Time.

Design/Builder shall comply with all required procedures, documentation and time requirements in the Contract Documents. Design/Builder may not seek or recover such costs using formulas (e.g. Eichleay, labor factors). No time will be granted under this Contract for cumulative effect of changes.

## 11.4 Force Majeure

"Force Majeure" means any event or circumstance unknown at the time of contracting that is beyond the Parties' control and makes performance of the Contract impractical or impossible. The Party seeking to have its performance obligation(s) excused must demonstrate that there was such an insuperable interference occurring without the Party's intervention as could not have been prevented by the exercise of prudence, diligence, and care, by providing prompt notice to the other Party, including full particulars of such event, of its inability to perform its obligations due to such event, following commencement of the claiming Party's inability to so perform its obligations. To the extent satisfying these conditions, Force Majeure events include the following: acts of God, war, civil unrest, epidemic, fire, smoke, volcanic eruption, earthquake, strike, unusually severe weather, flood, or shortage of raw materials or transportation facilities, lock out, or commandeering of materials, product, plant, or facilities by the government. Force Majeure shall not be based on a Party's financial inability to perform under this Agreement unless there exists extreme and unreasonable difficulty, expense, injury, or loss involved. A Force Majeure event does not include an act of negligence or intentional wrongdoing by a Party. Any Party claiming a Force Majeure event shall use reasonable diligence to remove the condition that prevents performance and shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Force Majeure event. Each Party shall use its best efforts to mitigate the effects of such Force Majeure event, remedy its inability to perform, and resume full performance of its obligations hereunder. No obligation that arose before the Force Majeure event that could and should have been fully performed before such Force Majeure event is excused as a result of such Force Majeure event.

## 12. CHANGES IN THE WORK

### 12.1 General

**12.1.1** The District may order, or unforeseeable changes in Applicable Laws and Codes after the setting of the GMP may require changes, including but not limited to, revisions to the Construction Documents, performance of extra work, and the elimination of work. Orders for such changes by District will be in writing. Changes shall not affect the obligations of the sureties on the contract bonds nor require their consent. The Design/Builder shall notify the District for their evaluation whenever it appears a change is necessary. Contract Time and GMP will be adjusted by written Change Order for changes materially increasing or decreasing the time for performance or cost.

**12.1.2** The Design/Builder, when ordered by the District, shall proceed with changes before agreement is reached on adjustment in compensation or time for performance, and shall furnish to the District records as specified in this Contract.

**12.1.3** If the Design/Builder fails to provide such records, the District's records will be used for the purpose of adjustment in Contract Time and GMP.

### 12.2 Proposed Change Order

**12.2.1 Time to Submit.** Design/Builder shall submit its PCO, using District's Proposed Change Order Form, within five (5) working days of the date

Design/Builder discovers, or reasonably should have discovered, the circumstances giving rise to the PCO, unless additional time to submit a PCO is granted in writing by District. Time is of the essence in Design/Builder's submission of PCOs so that District can promptly investigate the basis for the PCO. Accordingly, if Design/Builder fails to submit its PCO within this timeframe, Design/Builder waives, releases, and discharges any right to assert or claim any entitlement to an adjustment of the GMP and/or Contract Time based on circumstances giving rise to the PCO.

12.2.2 **Mandatory Use of Forms.** Design/Builder shall only submit PCOs by completing District's Proposed Change Order Form. Design/Builder acknowledges and agrees that use of this specific and consistent format is essential to District's evaluation of PCOs. Accordingly, Design/Builder waives, releases, and discharges any right to assert or claim any entitlement to an adjustment of the GMP and/or Contract Time for any purported PCO that does not comply with District's Proposed Change Order Form.

12.2.3 **Unknown and/or Unforeseen Conditions.** Separate from what is provided in the Allowance, if Design/Builder requests an increase in GMP and/or Contract Time that is based at least partially on Design/Builder's assertion that Design/Builder has encountered unknown and/or unforeseen condition(s) on the Project, then Design/Builder shall base the PCO on provable information that, beyond a reasonable doubt and to District's satisfaction, demonstrates that the unknown and/or unforeseen condition(s) were actually unknown and/or unforeseen and that the condition(s) were reasonably unknown and/or unforeseen. If not, District shall deny the PCO as unsubstantiated, and Design/Builder shall complete the Project without any increase in GMP and/or Contract Time based on that PCO.

## 12.3 Change Orders

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

**12.3.1.1** By mutual acceptance of a lump sum increase or decrease in costs. Upon the District's written request, the Design/Builder shall furnish a detailed estimate of increase or decrease in costs, together with cost breakdowns of labor, materials and equipment and other support data within the time specified in such request. Cost breakdowns shall include but are not limited to hourly labor rates and hours; materials quantities and unit costs; and equipment hourly rates and hours, as an example. The Design/Builder shall be responsible for any additional costs caused by the Design/Builder's failure to provide the estimate within the time specified.

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

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

**12.3.1.4** By actual and necessary costs, as determined by the District, on the basis of supporting documents submitted by Design/Builder. Beginning with the first day and at the end of each

day, the Design/Builder shall furnish to the District detailed hourly records for labor, construction equipment, and services; and itemized records of materials and equipment used that day in performance of the changes. Provide hourly rates for all include design professionals, contractor management staff both on site and office and other consultants performing services on this project. Such records shall be in a format approved by the District. Such records shall be signed by the Design/Builder and verified by the District.

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

**12.3.2 Allowable Costs.** If an increase or decrease cannot be agreed to, the method for determining the value of the Change Order shall be computed in the following manner:

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

**12.3.2.1.1** Professional Services: Compensation for professional architectural/engineering services shall be chargeable not to exceed the rates agreed to between the District and the Design/Builder.

**12.3.2.1.2** For work by Design/Builder. Design/Builder may add as mark-up to totals of authorized allowable costs, an amount not to exceed the following percentages:

| | **DESIGN/BUILDER PERFORMED WORK** | |
|---|---|---|
| (a) | **Material** (attach supplier's invoice or itemized quantity and unit cost plus sales tax) | |
| (b) | **Add Labor** (attach itemized hours and rates, fully Encumbered) | |
| (c) | **Add Equipment** (attach suppliers' invoice) | |
| (d) | **Add General Conditions, if Time Compensable** (attach invoices) | |
| (e) | **Subtotal** | |
| (f) | **Add Design/Builder's Overhead and Profit,** not to exceed three percent (3.00%) of **Item (e)** | |
| (g) | **Subtotal** | |
| (h) | **Add Bond and Insurance,** not to exceed two and seventy-three hundredths percent (2.73%) of **Item (g)** | |
| (h) | **TOTAL** | |

| | | |
|---|---|---|
| (i) | **Time** (zero unless indicated; "TBD" not permitted) | **__ Calendar Days** |

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**12.3.2.1.3** For work by Subcontractors. Actual cost to the Design/Builder for Work performed by the Subcontractor. The Subcontractor will compute costs as follows, except that the aggregate mark-ups made as all Subcontractor tiers must not exceed the following percentages:

| | | |
|---|---|---|
| | **SUBCONTRACTOR PERFORMED WORK** | |
| (a) | **Material** (attach supplier's invoice or itemized quantity and unit cost plus sales tax) | |
| (b) | **Add Labor** (attach itemized hours and rates, fully Encumbered) | |
| (c) | **Add Equipment** (attach suppliers' invoice) | |
| (d) | **Subtotal** | |
| (e) | **Add Overhead and Profit for any and all Tiers of Subcontractor**, the total not to exceed ten percent (10%) of **Item (d)** | |
| (f) | **Subtotal** | |
| (g) | **Add General Conditions, if Time Compensable** (attach invoices) | |
| (h) | **Subtotal** | |
| (i) | **Add Design/Builder's Overhead and Profit**, not to exceed three percent (3.00%) of **Item (h)** | |
| (j) | **Subtotal** | |
| (k) | **Add Bond and Insurance**, not to exceed two and seventy-three-hundredths percent (2.73%) of **Item (j)** | |
| (l) | **Add Subcontractor Default Insurance,** not to exceed one and fifteen-hundredths percent (1.15%) of Item (f) | |
| (m) | **TOTAL** | |
| (n) | **Time** (zero unless indicated; "TBD" not permitted) | **__ Calendar Days** |

**12.3.2.1.4** For deleted work: All deductive Change Order(s) must be prepared pursuant to the provisions herein. Where a portion of the Work is deleted from the Contract, the reasonable value of the deleted work less the value of any new work performed shall be considered the appropriate deduction. The value submitted on the Schedule of Values shall be used to calculate the credit amount unless the bid documentation is being held in escrow as part of the Contract Documents. If Design/Builder offers a proposed amount for a deductive Change Order(s) for work performed directly by the Design/Builder, Design/Builder shall include a minimum of three percent (3.00%) total profit and overhead to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall include a minimum of ten percent (10%) profit and overhead to be deducted with the amount of its deducted work and Design/Builder shall include a minimum of three percent (3.00%). Any deviation from this provision shall not be allowed.

**12.3.2.1.5** For Change Orders that involve both added and deleted work, the GMP will be adjusted based on the following computation: Costs before mark-ups of added and deleted work must each be separately estimated. If a difference between costs results in an increase to the GMP, a mark-up for Added Work will be applied to the difference. If a difference in costs results in a decrease, then the mark-up for the deleted Work will be applied to the difference.

### 12.3.3 Direct Costs

#### 12.3.3.1 Labor

Design/Builder shall be compensated for the costs of labor actually and directly utilized in the performance of the Work. Such labor costs shall be limited to the actual cost (use of any formulas [e.g. labor factors] is not allowed), not to exceed prevailing wage rates established by the bid advertisement date or when the Contract was awarded, whichever is applicable, in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Work, fully Encumbered. Labor costs shall exclude costs incurred by the Design/Builder in preparing estimate(s) of the costs of the change in the Work, in the maintenance of records relating to the costs of the change in the Work, coordination and assembly of materials and information relating to the change in the Work or performance thereof, or the supervision and other overhead and general conditions costs associated with the change in the Work or performance thereof, including but not limited to the cost for the job superintendent.

#### 12.3.3.2 Materials

The District shall pay only the actual cost to the Design/Builder for the materials directly required for the performance of the changed work. Such cost of materials may include the cost of transportation, and no

delivery charges will be allowed unless the delivery is specifically for the changed work. If a trade discount by an actual supplier is available to the Design/Builder, it shall be credited to the District. If the materials are obtained from a supplier or source owned wholly by or in part by the Design/Builder, payment thereof will not exceed the current wholesale price for the materials. The term "trade discount" includes the concept of cash discounting.

If in the opinion of the District, the cost of the materials is excessive or if the Design/Builder fails to furnish satisfactory evidence of a cost to him other from the actual supplier, then, in either case, the cost of the materials shall be deemed to be the lowest current wholesale price at which similar materials are available in the quantities required. The District reserves the right to furnish such materials, as it deems advisable, and the Design/Builder shall have no claims for cost or profits on materials furnished by the District.

#### 12.3.3.3 Equipment

The District shall pay only the actual cost to the Design/Builder for the use of equipment directly required in the performance of the changed work. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half hour. No payment will be made for time while equipment is inoperative due to breakdown or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to the work for rental of such equipment and to return it to the source.

No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project in any other way than upon the changed work. Individual pieces of equipment having a replacement value of $1,000 or less shall be considered to be small tools or small equipment and no payment will be made.

The rental rate for equipment will not exceed that as recommended by the lower of the rental rates established by distributors or equipment rental agencies or as contained in the Association of Equipment Distributors (AED) book in the locality for performance of the changes. For equipment owned, furnished, or rented by the Design/Builder no cost thereof shall be recognized in excess of the rental rates established by distributors or equipment rental agencies and/or the AED or any tier book in the locality for performance of the changes. The amount to be paid to the Design/Builder for the use of equipment as set forth above shall constitute full compensation to the Design/Builder for the cost of fuel, power, oil, lubricants, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators) and any and all costs to the Design/Builder incidental to the use of the equipment.

### 12.3.4 General Conditions Costs

The phrase "General Conditions Cost" shall mean, other than expressly limited or excluded herein, the costs of Design/Builder during the construction phase, including but not limited to: payroll costs for project manager for Work conducted at the Site, payroll costs for the superintendent and full-time general foremen, workers not included as direct labor costs engaged in support functions (e.g., loading/unloading, clean-up), costs of offices and temporary facilities including office materials, office supplies, office equipment, minor expenses, utilities, fuel, sanitary facilities and telephone services at the Site, costs of consultants not in the direct employ of Design/Builder or Subcontractors, and fees for permits and licenses.

#### 12.3.5 Overhead and Profit.

The phrase "Overhead and Profit" shall include staff salaries including, without limitation, field and office executives, supervisors, assistants, bookkeepers, estimators, other administrative staff, watchperson, use of small tools, consumable, insurance other than construction bonds and insurance required herein, and general field and home office expenses.

#### 12.3.6 Mandatory Use of Forms

Design/Builder shall only submit Change Orders by completing District's Change Order Form. Design/Builder acknowledges and agrees that use of this specific and consistent format is essential to District's processing of Change Orders. Accordingly, Design/Builder waives, releases, and discharges any right to assert or claim any entitlement to an adjustment of the GMP and/or Contract Time for any change that does not comply with District's Change Order Form.

### 12.4 Acceptance of Change Orders

The Design/Builder's written acceptance of a Change Order shall constitute final and binding agreement to the provisions of it and a waiver of all claims in connection with it, whether direct, indirect, or consequential in nature. The District's form shall control, and no annotations or handwritten notes by Design/Builder shall be effective upon its execution.

A Change Order will become effective when approved by the Board, notwithstanding that Design/Builder has not signed it, provided that District indicates it as a "Unilateral Change Order". Any dispute as to the adjustment in the GMP or Contract Time, if any, of the Unilateral Change Order shall be resolved pursuant to the Payment and Claims and Disputes provisions herein.

### 12.5 Effect on Sureties

All alterations, extensions of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing consent of surety(s).

### 12.6 Covering and Uncovering of Work

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

**12.6.2** If a portion of the Work is covered prior to the District's review, it shall, if requested in writing by the District, be uncovered for the District's observation and replaced at the Design/Builder's expense without change in the Contract Time.

## 12.7 Correction of Work

**12.7.1** The Design/Builder shall promptly correct work rejected by the District or failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed, or completed. The Design/Builder shall bear the costs of correcting such rejected work, including additional testing and inspections required and compensation for the District's services and expenses made necessary thereby. Schedule delays resulting from unauthorized, noncompliant, or defective work shall be Design/Builder's responsibility.

**12.7.2** Notwithstanding Design/Builder's Guarantee, in the event of an emergency constituting an immediate hazard to the health or safety of District employees, property, or licensees, the District may undertake, at the Design/Builder's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it was caused by work of the Design/Builder not being in accordance with requirements of the Contract Documents.

**12.7.3** The Design/Builder shall remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Design/Builder nor accepted by the District.

**12.7.4** If the Design/Builder fails to correct nonconforming work, the District may correct the nonconforming work in accordance with District Remedies. If the Design/Builder does not proceed with correction of such nonconforming work, within such time fixed by written notice from the District, the District may remove and store all salvageable materials articles and/or equipment at the Design/Builder's expense.

**12.7.5** If the Design/Builder does not pay all costs of such removal and storage within fourteen (14) days after written notice, the District may, upon fourteen (14) additional days written notice, sell such materials articles and/or equipment at an auction or private sale, and shall account for the proceeds, after deducting costs and damages that would have been borne by the Design/Builder, including compensation for the District's services and expenses made necessary by it. If the proceeds of a sale do not cover all costs that the Design/Builder would have borne, the GMP shall be reduced by the deficiency. If payments then or thereafter due the Design/Builder are not sufficient to cover such amount, the Design/Builder shall pay the difference to the District.

**12.7.6** The Design/Builder shall bear the cost of correcting Work that is not in accordance with requirements of the Contract Documents or work executed by the District or separate contractors that Design/Builder destroys or damages.

**12.7.7** Nothing contained in this paragraph, shall be construed to establish a period of limitation with respect to other obligations that the Design/Builder might have in the Contract Documents. Establishment of the time period of two (2) year (minimum), Guarantee, relates only to the specific obligation of the Design/Builder to correct the Work, and has no relationship to the time within which the obligation to comply with requirements of the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Work.

### 12.8 Acceptance of Nonconforming Work

If the District prefers to accept any or all of the Work that is not in accordance with requirements of the Contract Documents, the District may do so instead of requiring its correction and/or removal, in which case the GMP will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not Final Payment to the Design/Builder has been made.

## 13. TERMINATION AND SUSPENSION

### 13.1 District's Request for Assurances

If District at any time reasonably believes Design/Builder is or may be in default under this Contract, District may in its sole discretion notify Design/Builder of this fact and request written assurances from Design/Builder of performance of Work and a written plan from Design/Builder to remedy any potential default under the terms this Contract that the District may advise Design/Builder of in writing. Design/Builder shall, within ten (10) calendar days of District's request, deliver a written cure plan that meets the District's reasonable requirements in its request for assurances. Design/Builder's failure to provide such written assurances of performance and the required written plan, within ten (10) calendar days of request, will constitute a material breach of this Contract sufficient to justify termination for cause.

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

**13.2.1 Grounds for Termination:** The District, in its sole discretion, may terminate the Contract and/or terminate the Design/Builder's right to perform the work of the Contract based upon any of the following:

**13.2.1.1** Design/Builder refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or

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

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

**13.2.1.4** Design/Builder persistently refuses, or repeatedly fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or

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

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

**13.2.1.7** Design/Builder fails to supply labor, including that of Subcontractors, that is sufficient to prosecute the Work or that can work in harmony with all other elements of labor employed or to be employed on the Work; or

**13.2.1.8** Design/Builder or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract, including but not limited to a lapse in licensing or registration.

### 13.2.2 Notification of Termination

**13.2.2.1** Upon the occurrence at District's sole determination of any of the above conditions, District may, without prejudice to any other right or remedy, serve written notice upon Design/Builder and its Surety of District's termination of this Contract and/or the Design/Builder's right to perform the work of the Contract. This notice will contain the reasons for termination. Unless, within three (3) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to District for the correction of the condition(s) and/or violation(s) be made, this Contract and/or the Design/Builder's right to perform the Work of the Contract shall cease and terminate. Upon termination, Design/Builder shall not be entitled to receive any further payment until the entire Work is finished.

**13.2.2.2** Upon termination, District may immediately serve written notice of tender upon Surety whereby Surety shall have the right to take over and perform this Contract only if Surety:

**13.2.2.2.1** Within three (3) days after service upon it of the notice of tender, gives District written notice of Surety's intention to take over and perform this Contract; and

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

**13.2.2.3** Surety shall not utilize Design/Builder in completing the Project if the District notifies Surety of the District's objection to Design/Builder's further participation in the completion of the Project. Surety expressly agrees that any contractor which Surety proposes to fulfill Surety's obligations is subject to District's approval. District's approval shall not be unreasonably withheld, conditioned or delayed.

**13.2.2.4** If Surety fails to notify District or begin performance as indicated herein, District may take over the Work and execute the Work to completion by any method it may deem advisable at the expense of Design/Builder and/or its Surety. Design/Builder and/or its Surety shall be liable to District for any excess cost or other damages

the District incurs thereby. Time is of the essence in this Contract. If the District takes over the Work as herein provided, District may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to Design/Builder as may be on the Site of the Work, in bonded storage, or previously paid for.

**13.2.2.5** In the alternative, the District shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the Design/Builder under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the District, no Subcontractor shall have any claim against the District or third party for Work performed by Subcontractor or other matters arising prior to termination of the Contract and/or the Design/Builder's right to perform the work of the Contract. The District or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the District so elect, the Design/Builder shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the District may require, for the purpose of fully vesting in the District the rights and benefits of its Subcontractor under Subcontracts or other obligations or commitments. All payments due the Design/Builder hereunder shall be subject to a right of offset by the District for expenses and damages suffered by the District as a result of any default, acts, or omissions of the Design/Builder. Design/Builder must include this assignment provision in all of its contracts with its Subcontractors.

**13.2.2.6** In the event of a termination for cause, if the expense to the District to finish the Work exceeds the unpaid GMP, Design/Builder and Surety shall pay difference to District within twenty-one (21) days of District's request.

**13.2.2.7** In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, effective as of the same date as the purported termination for cause, and the Design/Builder shall have no greater rights than it would have had following a termination for convenience. Any Design/Builder claim arising out of a termination for cause shall be made in accord with Article 13 herein. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by the Design/Builder.

## 13.3 Termination of Design/Builder for Convenience

**13.3.1** District in its sole discretion may terminate the Contract and/or terminate the Design/Builder's right to perform the work of the Contract in whole or in part upon three (3) days' written notice to the Design/Builder.

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

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

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

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

**13.3.3** Within 30 days of the notice, Design/Builder submit to the District a payment application for the actual cost for labor, materials, and services performed, including all Design/Builder's and Subcontractor(s)' mobilization and/or demobilization costs, that is unpaid. Design/Builder shall have no claims against the District except for the actual cost for labor, materials, and services performed that adequately documented through timesheets, invoices, receipts, or otherwise. District shall pay all undisputed invoice(s) for work performed until the notice of termination.

**13.3.4** If Design/Builder objects to the termination for convenience, the District retains the right to all the options available to the District under a termination for cause.

## 13.4 Effect of Termination

**13.4.1** Design/Builder shall, only if ordered to do so by the District, immediately remove from the Site all or any materials and personal property belonging to Design/Builder that have not been incorporated in the construction of the Work, or which are not in place in the Work. The District retains the right, but not the obligation, to keep and use any materials and personal property belonging to Design/Builder that have not been incorporated in the construction of the Work, or which are not in place in the Work. The Design/Builder and its Surety shall be liable upon the Performance Bond for all damages caused to the District by reason of the Design/Builder's failure to complete the Contract.

**13.4.2** In the event that the District shall perform any portion of, or the whole of the Work, the District shall not be liable nor account to the Design/Builder in any way for the time within which, or the manner in which, the Work is performed by the District or for any changes the District may make in the Work or for the money expended by the District in satisfying claims and/or suits and/or other obligations in connection with the Work.

**13.4.3** In the event that the Contract is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Design/Builder or any impact or impairment of Design/Builder's bonding capacity.

**13.4.4** In the event of termination, all studies, reports, special forms, schedules, designs and any other written information pertaining to the Project shall become District's property as provided in this Contract.

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

## 13.5 Emergency Termination of Public Contracts Act of 1949

**13.5.1** This Contract is subject to termination as provided by sections 4410 and 4411 of the Government Code of the State of California, being a portion of the Emergency Termination of Public Contracts Act of 1949.

**13.5.1.1** Section 4410 of the Government Code states:

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

**13.5.1.2** Section 4411 of the Government Code states:

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

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

## 13.6 Suspension of Work

**13.6.1** District in its sole discretion may suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine upon three (3) days written notice to the Design/Builder.

**13.6.1.1** An adjustment may be made for changes in the time and cost of performance of the Work caused by any such suspension, delay or interruption. No adjustment shall be made to the extent:

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

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

**13.6.1.1.3** That the suspension of Work was the direct or indirect result of Design/Builder's failure to perform any of its obligations hereunder.

**13.6.1.2** Any adjustments in cost of performance may have a fixed or percentage fee as provided in the Article on Format for Proposed

Change Order herein. This amount shall be full compensation for all Design/Builder's and its Subcontractor(s)' changes in the cost of performance of the Contract caused by any such suspension, delay or interruption.

### 13.7 Non-Compliance with Agreement Requirements

In the event Design/Builder, after receiving written notice from District of non-compliance with any requirement of the Contract, fails to initiate promptly such action as may be appropriate to comply with the specified requirement within a reasonable period of time, District shall have the right to order Design/Builder to stop all Work in the area affected until Design/Builder has complied with or has initiated such action as may be appropriate to comply within a reasonable period of time. Design/Builder will not be entitled to any extension of Contract Time or GMP for any costs incurred as a result of being ordered to stop Work for such cause.

### 13.8 Termination Prior to Construction Phase.

In the event that District terminates this Contract prior to Design/Builder's commencement of construction of the project, District agrees and acknowledges that: (i) all design and engineering services and Design/Builder deliverables provided pursuant to this Contract prior to the effective date of termination are provided in their "as-is" condition and without any representation or warranty whatsoever, (ii) neither Design/Builder nor its Subconsultants shall have any liability to the District (and the District hereby releases Design/Builder and its Subconsultants) in connection with such design services and any Design/Builder deliverables, and (iii) neither Design/Builder nor any of its Subconsultants shall be the engineer of record with respect to any portion of the Project.

## 14. DISPUTES AND CLAIMS

### 14.1 Obligation to File Claims for Disputed Work

**14.1.1** Should Design/Builder otherwise seek extra time or compensation for any reason whatsoever ("Disputed Work"), then Design/Builder shall first follow procedures set forth in the Contract Documents, all of which are conditions precedent to submitting a Claim pursuant to Article 13. A Notice of Delay or Proposed Change Order are less formal procedures that precede the formal claim and do not constitute a Claim. A Claim also does not include correspondence, vouchers, invoices, progress payment applications, or other routine or authorized form of requests for progress payments in compliance with the Contract. If a dispute remains, then Design/Builder shall give written notice to District that expressly invokes this Article 13 within the time limits set forth herein.

**14.1.2** Design/Builder's sole and exclusive remedy for a Dispute is to file a written claim setting forth Design/Builder's position as required herein within the time limits set forth herein.

### 14.2 Duty to Perform during Claim Process

Design/Builder and its Subcontractors shall continue to perform its Work under the Contract including the Disputed Work and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement by the District.

## 14.3 Definition of Claim

**14.3.1** Pursuant to Public Contract Code section 9204, the term "Claim" means a separate demand by the Design/Builder sent by registered mail or certified mail with return receipt requested, for one or more of the following:

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

**14.3.1.2** Payment by the District of money or damages arising from work done by, or on behalf of, the Design/Builder pursuant to the Contract and payment of which is not otherwise expressly provided for or to which Design/Builder is not otherwise entitled to; or

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

## 14.4 Claims Presentation

### 14.4.1 Form and Contents of Claim

**14.4.1.1** If Design/Builder intends to submit a Claim for an increase in the GMP or Contract Time for any reason including, without limitation, the acts of District or its agents, Design/Builder shall, within thirty (30) days after the event giving rise to the Claim, give notice of the Claim ("Notice of Potential Claim") in writing specifically identifying Design/Builder is invoking this Article 14. The Notice of Potential Claim shall provide Design/Builder's preliminary request for an adjustment to the GMP and/or Contract Time, with a description of the grounds therefore.

**14.4.1.2** Within thirty (30) days after serving the written Notice of Potential Claim, Design/Builder shall provide a Claim including an itemized statement of the details and amounts of its Claim for any increase in the GMP or time requested, including a Time Impact Analysis and any and all other documentation substantiating Design/Builder's claimed damages. Otherwise, Design/Builder shall have waived and relinquished its dispute against District and Design/Builder's claims for compensation or an extension of time shall be forfeited and invalidated.

**14.4.1.3** The Claim shall identify:

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

**14.4.1.3.2** Citation to provisions in the Contract Documents, statute sections, and/or case law entitling Design/Builder to an increase in the GMP or Contract Time;

**14.4.1.3.3** The pertinent dates and/or durations and actual and/or anticipated effects on the GMP, Contract Schedule Milestones and/or Contract Time adjustments;

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

**14.4.1.3.5** The line-item costs for labor, material, and/or equipment, if applicable, for all cost impacts priced like a change order and must be updated monthly as to cost and entitlement if a continuing claim; and

**14.4.1.3.6** A request by Design/Builder, if any, to waive the claims procedure under Public Contract Code section 9204 and proceed directly to the commencement of a civil action or binding arbitration.

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

**14.4.1.4.1** The undersigned Design/Builder certifies under penalty of perjury that the attached dispute is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the adjustment for which Design/Builder believes the District is liable; and that I am duly authorized to certify the dispute on behalf of the Design/Builder.

**14.4.1.4.2** Furthermore, Design/Builder understands that the value of the attached dispute expressly includes any and all of the Design/Builder's costs and expenses, direct and indirect, resulting from the dispute, additional time required and/or resulting from the dispute including, without limitation, cumulative impacts. Design/Builder may not separately recover for overhead or other indirect costs. Any costs, expenses, damages, or time extensions not included are deemed waived.

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

**14.4.3** Failure to timely submit a Claim and the requisite supporting documentation shall constitute a waiver of Design/Builder's claim(s) against the District and Design/Builder's claims for compensation or an extension of time shall be forfeited and invalidated.

## 14.5 Claim Resolution pursuant to Public Contract Code section 9204

Design/Builder may request to waive the claims procedure under Public Contract Code section 9204 and proceed directly to the commencement of a civil action or binding arbitration. If Design/Builder chooses to proceed, Design/Builder shall comply with the following steps:

### 14.5.1 STEP 1:

**14.5.1.1** Upon receipt of a Claim by registered or certified mail, return receipt requested, including the documents necessary to substantiate it, the District shall conduct a reasonable review of the Claim and, within a period not to exceed forty-five (45) days, shall provide the Design/Builder a written statement identifying what

portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and Design/Builder may, by mutual agreement, extend the time period to provide a written statement. If the District needs approval from its governing body to provide the Design/Builder a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing body does not meet within the forty-five (45) days or within the mutually agreed to extension of time following receipt of Claim sent by registered mail or certified mail, return receipt requested, the District shall have up to three (3) days following the next duly publicly noticed meeting of the governing body after the forty-five (45)-day period, or extension, expires to provide Design/Builder a written statement identifying the disputed portion and the undisputed portion.

**14.5.1.1.1** Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the District issues its written statement. Amounts not paid in a timely manner as required by this Article shall bear interest at seven percent (7%) per annum.

**14.5.1.2** Upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. In this instance, District and Design/Builder must comply with the Articles below regarding Public Contract Code section 20104 et seq. and Government Code Claim Act Claims.

**14.5.1.3** If the District fails to issue a written statement, or to otherwise meet the time requirements of this Article, this shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of the District's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this Article, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of Design/Builder.

**14.5.2 STEP 2:**

**14.5.2.1** If Design/Builder disputes the District's written response, or if the District fails to respond to a Claim within the time prescribed, Design/Builder may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute. Within ten (10) business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, the District shall provide the Design/Builder a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed.

**14.5.2.1.1** Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the District issues its written statement. Amounts not paid in a

timely manner as required by this Article shall bear interest at seven percent (7%) per annum.

**14.5.3 STEP 3:**

**14.5.3.1** Any disputed portion of the Claim, as identified by Design/Builder in writing, shall be submitted to nonbinding mediation, with the District and Design/Builder sharing the associated costs equally. The District and Design/Builder shall mutually agree to a mediator within ten (10) business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator, and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside this Article.

**14.5.3.1.1** For purposes of this Article, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Article.

**14.5.3.2** Unless otherwise agreed to by the District and Design/Builder in writing, the mediation conducted pursuant to this Article shall excuse any further obligation under Public Contract Code section 20104.4 to mediate after litigation has been commenced.

**14.5.4 STEP 4:**

**14.5.4.1** If mediation under this Article does not resolve the parties' dispute, the District may, but does not require, arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program.

## 14.6 Subcontractor Pass-Through Claims

**14.6.1** If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against a District because privity of contract does not exist, the Design/Builder may present to the District a Claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that Design/Builder present a Claim for work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim.

**14.6.2** Within forty-five (45) days of receipt of this written request from a Subcontractor, Design/Builder shall notify the Subcontractor in writing as to whether the Design/Builder presented the Claim to the District and, if

Design/Builder did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.

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

## 14.7 Government Code Claim Act Claim

**14.7.1** If a Claim, or any portion thereof, remains in dispute upon satisfaction of all applicable Claim Resolution requirements the Design/Builder shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Design/Builder's right to bring a civil action against the District.

**14.7.2** Design/Builder shall bear all costs incurred in the preparation, submission and administration of a Claim. Any claims presented in accordance with the Government Code must affirmatively indicate Design/Builder's prior compliance with the claims procedure herein of the claims asserted.

**14.7.3** For purposes of those provisions, the running of the time within which a claim pursuant to Public Contract Code section 20104.2 only must be presented to the District shall be tolled from the time the claimant submits his or her written claim until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

## 14.8 Claim Resolution pursuant to Public Contract Code section 20104 et seq.

**14.8.1** In the event of a disagreement between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve all Claims of three hundred seventy-five thousand dollars ($375,000) or less which arise between Design/Builder and District by those procedures set forth in Public Contract Code section 20104, et seq., to the extent applicable.

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

**14.8.1.2** For Claims of less than fifty thousand dollars ($50,000), the District shall respond in writing within forty-five (45) days of receipt of the Claim or may request in writing within thirty (30) days of receipt of the Claim any additional documentation supporting the Claim or relating to defenses or claims the District may have against the Design/Builder.

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

**14.8.1.2.2** District's written response to the documented Claim shall be submitted to the Design/Builder within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the Design/Builder to produce the additional information, whichever is greater.

**14.8.1.3** For Claims of over fifty thousand dollars ($50,000) and less than or equal to three hundred seventy-five thousand dollars ($375,000), the District shall respond in writing to all written Claims within sixty (60) days of receipt of the Claim, or may request, in writing, within thirty (30) days of receipt of the Claim any additional documentation supporting the Claim or relating to defenses or claims the District may have against the Design/Builder.

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

**14.8.1.3.2** The District's written response to the Claim, as further documented, shall be submitted to the Design/Builder within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the Design/Builder to produce the additional information or requested documentation, whichever is greater.

**14.8.1.4** If Design/Builder disputes the District's written response, or the District fails to respond within the time prescribed, Design/Builder may so notify the District, in writing, either within fifteen (15) days of receipt of the District's response or within fifteen (15) days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the District shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

**14.8.1.5** Following the meet and confer conference, if the Claim or any portion of it remains in dispute, the Design/Builder may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions the running of the time within which a claim must be filed shall be tolled from the time the Design/Builder submits its written Claim until the time the Claim is denied, including any period of time utilized by the meet and confer process.

**14.8.1.6** For any civil action filed to resolve claims filed pursuant to this Article, within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is

extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

**14.8.1.7** If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of the Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986, (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

**14.8.1.8** The District shall not fail to pay money as to any portion of a Claim which is undisputed except as otherwise provided in the Contract Documents. In any suit filed pursuant to this Article, the District shall pay interest due at the legal rate on any arbitration award or judgment. Interest shall begin to accrue on the date the suit is filed in a court of law.

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

## 14.9 Claim Procedure Compliance

**14.9.1** Failure to submit and administer claims as required in Article 13 shall waive Design/Builder's right to claim on any specific issues not included in a timely submitted claim. Claim(s) not raised in a timely protest and timely claim submitted under this Article 13 may not be asserted in any subsequent litigation, Government Code Claim, or legal action.

**14.9.2** District shall not be deemed to waive any provision under this Article 13, if at District's sole discretion, a claim is administered in a manner not in accord with this Article 13. Waivers or modifications of this Article 13 may only be made by a signed change order approved as to form by legal counsel for both District and Design/Builder; oral or implied modifications shall be ineffective.

## 14.10 Claim Resolution Non-Applicability

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

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

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

**14.10.1.3** Stop payment notices;

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

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

**14.10.1.6** District rights and obligations as a public entity set forth in applicable statutes; provided, however, that penalties imposed against a public entity by statutes, including, but not limited to, Public Contract Code sections 20104.50 and 7107, shall be subject to the Claim Resolution requirements provided in this Article.

### 14.11 Attorney's Fees

Should litigation be necessary to enforce any terms or provisions of this Contract, then each party shall bear its own litigation and collection expenses, witness fees, court costs, and attorney's fees.

## 15. PROTECTION OF PERSONS AND PROPERTY

### 15.1 Safety of Persons and Property

**15.1.1** The Design/Builder shall be primarily responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. The District shall have no responsibility other than the responsibility to avoid its own negligence or misconduct for initiating, maintaining and supervising safety of persons and property.

**15.1.2** The Design/Builder shall furnish to the District a copy of the Design/Builder's safety plan, specifically adapted for the Project, within the time frame indicated in the Contract Documents and specifically adapted for the Project. However, implementation and maintenance of the safety plan shall be the sole responsibility of the Design/Builder.

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

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

**15.1.3.2** The Work and materials and equipment to be incorporated in it, whether in storage on or off the Project site, under care, custody or control of the Design/Builder or the Design/Builder's Subcontractors or sub-subcontractors; and

**15.1.3.3** Other property at the Project site, or adjacent to it, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement during the course of construction.

**15.1.4** The Design/Builder shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property, or their protection from damage, injury or loss.

**15.1.5** The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Contract Documents, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the District, other owners (other than the District) and users of adjacent sites and utilities.

**15.1.6** The Design/Builder shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities regarding the storage and/or use of explosives or other hazardous materials or equipment necessary for execution of the Work. The Design/Builder shall employ properly qualified personnel for supervision of same.

**15.1.7** The Design/Builder shall remedy damage and loss to property caused in whole or in part by the Design/Builder, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design/Builder is responsible. The foregoing obligations of the Design/Builder are in addition to the Design/Builder's indemnity and defense obligations.

**15.1.8** When conditions of the Work, in the judgment of the District, present unreasonable risk of injury or death to persons or property damage, the District, may direct the Design/Builder, at the Design/Builder's sole expense, to close down the Work and not commence work again until all dangerous conditions are eliminated.

**15.1.9** The Design/Builder, at the Design/Builder's own cost, shall rebuild, repair, restore and make good any and all damages to any portion of the Work affected by such causes before its acceptance.

**15.1.10** Design/Builder shall take all precautions to protect the Work, and all equipment, materials, and supplies related to the Work protected from trespassers, vandals, and protestors, including but not limited to hiring security personnel to guard and patrol the Project site throughout the duration of the Project's schedule until Completion is accomplished. Design/Builder shall bear the costs of such security.

## 15.2 Emergencies

In an emergency affecting safety of persons or property, the Design/Builder shall act, at the Design/Builder's sole discretion, to prevent any threatened damage, injury or loss. Additional compensation or extension of Contract Time claimed by the Design/Builder because of an emergency will be reviewed as provided in Article 11, Changes in the Work. The Design/Builder shall maintain emergency vehicle access to the site at all times during the course of the project up to and including Final Acceptance of the work.

# 16. INSURANCE, BONDS, AND INDEMNIFICATION

## 16.1 Insurance

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

### 16.1.1 Professional Liability Insurance

Design/Builder shall procure and maintain Professional Liability Insurance on a Claims Made basis at the required limits, coverage to continue through completion of construction plus two (2) years thereafter, at a minimum.

### 16.1.2 Commercial General Liability and Automobile Liability Insurance

**16.1.2.1** Design/Builder shall procure and maintain, during the life of the Project, Commercial General Liability Insurance and Automobile Liability Insurance in a form at least as broad as Insurance Services (ISO) Form CG 00 01 that shall protect Design/Builder, District, its Board Members, employees, agents, Construction Manager(s), and Project Inspector(s) from all claims for products and completed operations, property damage, bodily injury and personal injury, death, advertising injury, and medical payments arising from, or in connection with, performance of the Work of the Project within the Contract Documents at the required limits, or Design/Builder shall procure and maintain these coverages separately. Design/Builder shall procure and maintain Automobile Liability Insurance in a form at least as broad as ISO Form CA 0001 covering Code 1 (any auto) at the required limits, or Design/Builder shall procure and maintain these coverages separately.

**16.1.2.2** Design/Builder's deductible or self-insured retention for its Commercial General Liability Insurance policy shall not exceed one hundred thousand dollars ($100,000) for deductible or one hundred thousand dollars ($100,000) for self-insured retention, respectively, unless approved in writing by District.

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

### 16.1.3 Excess Liability Insurance

**16.1.3.1** If Design/Builder's underlying policy limits are less than required, subject to the District's sole discretion, Design/Builder may procure and maintain, during the life of the Project, an Excess Liability Insurance Policy to meet the policy limit requirements of the required policies in order to satisfy, in the aggregate with its underlying policy, the insurance requirements herein including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Excess Liability Insurance Policy shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until Design/Builder's primary and excess liability policies are exhausted.

**16.1.3.2** There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Excess Liability Insurance Policy. Any Excess Liability Insurance Policy shall protect Design/Builder, District, its Board Members, employees, agents, Construction Manager(s), Project Manager(s), and Project Inspector(s) in the amounts and in compliance with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

**16.1.3.3** The District, in its sole discretion, may accept the Excess Liability Insurance Policy that brings Design/Builder's primary limits to the minimum requirements herein.

### 16.1.4 Subcontractor

**16.1.4.1** Design/Builder shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Excess Liability Insurance (if Subcontractor elects to satisfy, in part, the insurance required herein by procuring and maintaining an Excess Liability Insurance Policy) with minimum limits at least equal to the amount required of the Design/Builder except where smaller minimum limits are permitted as set forth below. For Commercial General Liability coverage, Subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

### 16.1.5 Workers' Compensation and Employers' Liability Insurance

**16.1.5.1** In accordance with provisions of section 3700 of the California Labor Code, the Design/Builder and every Subcontractor shall be required to secure the payment of compensation to its employees.

**16.1.5.2** Design/Builder shall procure and maintain, during the life of the Project, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under the Project, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Design/Builder shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Design/Builder's insurance. If any class of employee or employees engaged in Work on the Project, on or at the Site of the Project, is not protected under the Workers' Compensation Insurance, Design/Builder shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

**16.1.5.3** The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of District for all work performed by Design/Builder, its employees, agents and Subcontractors.

### 16.1.6 Builder's Risk Insurance: Builder's Risk "All Risk" Insurance

**16.1.6.1** Design/Builder shall procure and maintain, during the life of this Contract, Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the Project and no coinsurance penalty provisions. The cost value basis shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority,

theft, sonic disturbance, earthquake, flood, collapse, wind, rain, dust, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for architectural and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

### 16.1.7 Pollution Liability Insurance

**16.1.7.1** Design/Builder shall procure and maintain Pollution Liability Insurance in a form at least as broad as ISO From CG 2415 that shall protect Design/Builder, District, Construction Manager(s), and Project Inspector(s) from all claims for bodily injury, property damage, including natural resource damage, cleanup costs, removal, storage, disposal, and/or use of the pollutant arising from operations under this Contract, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, or Design/Builder Shall procure and maintain these coverages separately. Coverage shall apply to sudden and/or gradual pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, natural gas, waste materials, or other irritants, contaminants, or pollutants, including asbestos.

**16.1.7.2** Design/Builder warrants that any retroactive date applicable to coverage under the policy shall predate the Effective Date of this Contract and that continuous coverage will be maintained, or an extended reporting or discovery period will be exercised for a period of three (3) years, beginning from the time that the Work under the Contract is completed.

**16.1.7.3** If the services involve lead-based paint or asbestos identification/ remediation, Design/Builder's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/ remediation, Design/Builder's Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

**16.1.7.4** If Design/Builder is responsible for removing any pollutants from a site, then Design/Builder shall ensure that Any Auto, including owned, non-owned, and hired, are included within the above policies and at the required limits, to cover its automobile exposure for transporting the pollutants from the site to an approved disposal site. This coverage shall include the Motor Carrier Act Endorsement, MCS 90.

### 16.1.8 Proof of Insurance and Other Requirements: Endorsements and Certificates

**16.1.8.1** Design/Builder shall not commence Work nor shall it allow any Subcontractor to commence Work on the Project, until Design/Builder and its Subcontractor(s) have procured all required

insurance and Design/Builder has delivered in duplicate to the District complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained, and the District has approved these documents.

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

**16.1.8.2.1** Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

**16.1.8.2.2** A clause stating the following, or other language acceptable to the District:

"This policy shall not be canceled until written notice to District and Construction Manager stating date of the cancellation by the insurance carrier. Date of cancellation may not be less than thirty (30) days after date of mailing notice."

**16.1.8.3** All endorsements, certificates and insurance policies shall state that District, its Board Members, employees and agents, Construction Manager(s), Project Manager(s), and Inspector(s) are named additional insureds under all policies except Workers' Compensation Insurance and Employers' Liability Insurance. General liability coverage can be provided in the form of an endorsement to the Design/Builder's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).

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

**16.1.8.5** Design/Builder's and Subcontractors' insurance coverage at least as broad as ISO CG 20 01 04 13 shall be primary and non-contributory to any insurance or self-insurance maintained by District, its trustees, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s). This requirement shall also apply to any Excess Liability policies.

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

**16.1.8.7** No policy shall be amended, canceled, or modified, and the coverage amounts shall not be reduced, until Design/Builder or Design/Builder's broker has provided written notice to District and Construction Manager stating date of the amendment, modification, cancellation or reduction, and a description of the change. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice.

**16.1.8.8** Insurance written on a "claims made" basis shall be retroactive to a date that coincides with or precedes Design/Builder's commencement of Work, including subsequent policies purchased as renewals or replacements. Said policy is to be renewed by the Design/Builder and all Subcontractors for a period of five (5) years following completion of the Work or termination of this Contract. Such insurance must have the same coverage and limits as the policy that was in effect during the term of this Contract and will cover the Design/Builder and all Subcontractors for all claims made. If coverage is cancelled or non-renewed and not replaced with another claims-made policy from with a retroactive date prior to the effective date of this Agreement, or the start of Work date, the Design/Builder must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work. A copy of the claims reporting requirements must be submitted to the District for review.

**16.1.8.9** Design/Builder's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by District, its Board Members, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), and/or Inspector(s).

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

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

**16.1.8.12** The insurance requirements set forth herein shall in no way limit the Design/Builder's liability arising out of or relating to the performance of the Work or related activities.

**16.1.8.13** Failure of Design/Builder and/or its Subcontractor(s) to comply with the insurance requirements herein shall be deemed a material breach of the Contract and constitute a Default by the Design/Builder pursuant to this Contract.

### 16.1.9 Insurance Policy Limits

The limits of insurance shall not be less than the amounts set forth below. If Design/Builder normally carries insurance in an amount greater than the minimum amounts required by District, that greater amount shall become the minimum required amount of insurance for purposes of the Contract. Therefore, Design/Builder hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Contract.

| | | |
|---|---|---|
| Professional Liability | | $5,000,000 per claim; continuation of coverage for at least 2 years post completion |
| Commercial General Liability | Product Liability and Completed Operations, Fire Damage Liability – Split | $5,000,000 per occurrence; $10,000,000 aggregate |

| | | |
|---|---|---|
| | Limit | |
| Excess Liability Coverage | | $8,000,000 per occurrence; $8,000,000 per aggregate |
| Automobile Liability – Any Auto | Combined Single Limit | $2,000,000 |
| Workers' Compensation | | Statutory limits under State law |
| Employer's Liability | | $1,000,000 per accident for bodily injury or disease |
| Builder's Risk | | Full replacement value for scope of Work |
| Pollution Liability | | $1,000,000 per claim; $2,000,000 aggregate |

## 16.2 Indemnification

**16.2.1** To the fullest extent permitted by California law, Design/Builder shall indemnify, keep and hold harmless the District and its respective Board Members, officers, representatives, and employees, and consultants in both individual and official capacities ("Indemnitees"), from any and all claims, injury, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, including, without limitation, any suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or injury to or destruction of tangible property (including damage to the Work itself), and including but not limited to attorney's fees and costs, ("Claim") as follows:

**16.2.1.1** For design professional services: Any Claim to the extent caused by, arising out of, resulting from, or incidental to the negligence, recklessness, or willful misconduct of the Design/Builder, its officers, employees, Subcontractors, consultants, or agents, in connection with any design professional services under or related to this Contract.

**16.2.1.2** For all other Work: Any Claim to the extent caused by, arising out of, resulting from, or incidental to performance of the Work under this Contract, other than design professional services, by the Design/Builder or its Subcontractors, vendors and/or suppliers, except to the extent caused wholly by the active negligence or willful misconduct of the Indemnitees, as found by a court or arbitrator of competent jurisdiction, in which case the Design/Builder's

indemnification and hold harmless obligation shall be reduced by the proportion of the Indemnitees' liability.

**16.2.2** This indemnification and hold harmless obligation includes, but is not limited to, any failure or alleged failure by Design/Builder to comply with any law and/or provision of the Contract Documents, including, without limitation, any stop payment notice actions or liens, including Civil Wage and Penalty Assessments and/or Orders by the California Department of Industrial Relations.

**16.2.3** To the furthest extent permitted by California law, Design/Builder shall also defend, at its own expense, Indemnitees against any and all Claims(s) caused by, arising out of, resulting from, or incidental to, the performance of the Work, including design professional services, under this Contract by Design/Builder, its Subcontractors, vendors, or suppliers, except to the extent caused by the active negligence or willful misconduct of the Indemnitees, as found by a court or arbitrator of competent jurisdiction, in which case, without impacting Design/Builder's obligation to provide an immediate and ongoing defense of Indemnitees, the Design/Builder's defense obligation shall be retroactively reduced by the proportion of the Indemnitees' liability. The District shall have the right to accept or reject any legal representation that Design/Builder proposes to defend the Indemnitees. If a conflict-of-interest bars joint representation of Design/Builder and Indemnitees, District shall have the right to select its own counsel, subject to Design/Builder's reasonable right of rejection. If any of the Indemnitees provide their own defense due to failure to timely respond to tender of defense, rejection of tender of defense, or conflict of interest of proposed counsel, Design/Builder shall reimburse such Indemnitee(s) for any expenditures, including reasonable attorney's fees and costs. Even if the Design/Builder assumes the defense of the District with acceptable counsel, the District, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Design/Builder of any of its obligations hereunder. This defense obligation includes, but is not limited to, any failure or alleged failure by Design/Builder to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, and without limitation, any failure or alleged failure of Design/Builder's obligations regarding any stop payment notice actions or liens, including Civil Wage and Penalty Assessments and/or Orders by the California Department of Industrial Relations. This agreement and obligation of the Design/Builder shall not be construed to negate, abridge, or otherwise reduce any right or obligation of defense that would otherwise exist as to any Indemnity or other person described herein.

**16.2.4** The Design/Builder shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if the Design/Builder's agreement to indemnify and hold harmless the Indemnitees or its agreement to defend Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances shall not otherwise affect the validity or enforceability of

the Design/Builder's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of the Design/Builder, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, the Design/Builder shall be and remain fully liable on its agreements and obligations herein to the fullest extent per-mitted by law.

**16.2.5** In any and all claims against any of the Indemnitees by any employee of the Design/Builder, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Design/Builder's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Design/Builder or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**16.2.6** The District may retain so much of the moneys due to the Design/Builder as shall be considered necessary, until disposition of any such suit, claims or actions for damages or until the District and Construction Manager have received written agreement from the Design/Builder that Design/Builder will unconditionally defend the District and its respective Board Members, officers, representatives, employees, consultants, and Construction Manager and their subconsultants and pay any damages due by reason of settlement or judgment.

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

**16.2.8** Pursuant to Public Contract Code section 9201, the District shall provide timely notification to Design/Builder of the receipt of any third-party Claim relating to the Contract. The District shall be entitled to recover its reasonable costs incurred in providing said notification.

### 16.3 No Personal Liability

The District and Design/Builder expressly agree that no director, officer, elective and appointive official, employee, or consultant of the District or the Design/Builder will be personally responsible for liabilities arising under this Contract.

### 16.4 Performance Bond and Payment Bonds

**16.4.1** The Design/Builder shall furnish to the District, prior to the execution of the Contract: (1) a bond in an amount at least equal to one hundred percent (100%) of the NTE Amount as security for faithful performance of the Contract Documents; and (2) a bond in an amount at least equal to one hundred percent (100%) of the NTE Amount as security for payment of persons performing labor and/or furnishing materials in connection with this Contract. All bonds related to this Project shall be in the forms set forth in these Contract Documents and shall comply with all requirements of the Contract Documents, including, without limitation, the bond forms. The bonds shall be issued by a California admitted surety with a rating classification of "A

XIII" or better according to Best's Rating Service. Cost of bonds shall be included in the GMP and updated based on the amount of the GMP.

**16.4.2** The District acknowledges that any faithful performance and payments bonds provided by the Design/Builder shall not apply to errors or omissions in the furnishing of professional services in connection with architecture or engineering services provided by the Design/Builder or its consultants. The District waives and releases all claims against such sureties arising out of or relating to such professional errors and omissions; such release, however, does not apply to a failure to provide professional services where required under the Contract Documents and the performance bonds shall include the costs of such services. Professional Liability insurance shall be primary insurance in settling claims related to Errors and Omissions.

## 17. SEPARATE CONTRACTS

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

**17.1.1** The District reserves the right to perform work or operations related to the Project with the District's own work force, and to award separate contracts in connection with other portions of work or other construction or operations on the Project site.

**17.1.2** When separate contracts are awarded for different portions of work or for other construction or operations on the Project site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate agreement.

**17.1.3** The District will provide for coordination of the activities of the District's own work force and of each separate Contractor with the Work of the Design/Builder, who shall cooperate with them. The Design/Builder shall participate with other separate Contractors and the District in reviewing and revising their Baseline Schedules when directed by the District. The resulting Baseline Schedules shall then constitute the schedules to be used by the Design/Builder, separate Contractors and the District.

**17.1.4** The District reserves the right to perform other work in connection with the Project or adjacent to the Project site by separate contract or otherwise. The Design/Builder shall at all times conduct the Work so as to impose no hardship on the District or others engaged in separate work on the Project site, nor to cause any unreasonable delay or hindrance to the separate work.

### 17.2 Mutual Responsibility

**17.2.1** The Design/Builder shall afford the District and other Contractors the opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractors construction and operations with theirs as required by the Contract Documents.

**17.2.2** If part of the Design/Builder's work relies on proper execution or results upon construction or operations by the District or separate Contractors, the Design/Builder shall, prior to proceeding with that portion of

the work, report to the District apparent discrepancies or defects in other construction that would render it unsuitable for proper execution and results. Failure of the Design/Builder to report any discrepancies or defects shall constitute an acknowledgment that the District's or separate Contractors' complete or partially completed construction is fit and proper to receive the Design/Builder's work.

**17.2.3** The Design/Builder shall promptly remedy damage wrongfully caused by the Design/Builder to any completed or partially completed construction or to any property of the District or separate Contractors.

## 18. MISCELLANEOUS

### 18.1 Limitation of District Liability

District's financial obligations under this Contract shall be limited to the payment of the compensation provided in this Contract. Notwithstanding any other provision of this Contract, in no event shall District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, lost bonding capacity, arising out of or in connection with this Contract for the services performed in connection with this Contract.

### 18.2 Limitation of Design/Builder Liability

To the fullest extent permitted by law, Design/Builder's liability in connection with any and all claims, including claims for indemnification, which may arise under this agreement or otherwise relating to the Project, shall in no event exceed 100% of the GMP, provided, such limitation of liability shall not extend to: (i) available insurance proceeds, or (ii) losses to the extent arising from Design/Builder's gross negligence or willful misconduct.

### 18.3 Governing Law

This Contract shall be governed by the laws of the State of California. The venue for any action or proceeding, in law or equity, which may be brought in connection with this Contract is the county in which the District administration office is located.

### 18.4 Successors

The District and the Design/Builder respectively bind themselves, their partners, shareholders, successors, assigns and legal representatives to the other party and to shareholders, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Neither party shall assign the Contract as a whole without the written consent of the other party. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all of its obligations under the Contract and the Contract Documents.

### 18.5 Notice

Written notices or other communications required or permitted hereunder shall be sufficiently given if delivered personally, by electronic mail including delivery receipt, by facsimile, by registered or certified first class U.S. mail, return receipt requested with postage pre-paid, or by commercial courier. Written notice shall be deemed to

have been duly served on the date of delivery if delivered in person, by electronic mail, or by facsimile, on the first working day after deposit if delivery by overnight courier, or two (2) working days after deposit of delivery by placing in the U.S. mail as provided herein. All notices shall be addressed to the appropriate authorized representative, as follows:

| | |
|---|---|
| District:<br><br>Alum Rock Union Elementary School District<br>Attn: Superintendent<br>2930 Gay Ave<br>San Jose, CA 95127<br>Fax:<br>Email: | Design/Builder:<br><br>CORE General Contractor Inc. dba CORE Builders<br>Attn: Keith Craw<br>470 S Market Street,<br>San Jose, CA 95113<br>Fax:<br>Email: kcraw@corebuildersgc.com |
| With a mandatory copy to:<br><br>Deidree Y.M.K. Sakai, Esq.<br>DANNIS WOLIVER KELLEY<br>200 California Street, Suite 400<br>San Francisco, CA 94111<br>Fax: 415.543.4384<br>Email: dsakai@DWKesq.com | With a mandatory copy to: |

### 18.6 Modifications

No modifications or Change Orders shall be valid unless in writing and signed by the District and the Design/Builder or their respective permitted successors and assigns.

### 18.7 No Oral Agreements

No oral agreement or conversation with any officer, agent, or employee of District, either before or after execution of Contract Documents, shall affect or modify any of the terms or obligations contained in any of the documents comprising the Contract Documents.

### 18.8 Meaning of Words

Any and all headings used in this Contract are for convenience only and do not modify, define or limit the provisions of it. Words of any gender shall be deemed and construed to include correlative words of the other gender. Words importing the singular number shall include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms of this Contract. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties and obligations of such person or entity in accordance with the terms of this Contract. Where reference is made in this Contract or to another Contract Document, the reference refers to that provision as amended or supplemented by the other provisions of the Contract Documents. No provision of this Contract shall be interpreted for or against a party because that party or its legal

representative drafted such provision, and this Contract shall be construed as if jointly prepared by the parties.

### 18.9 Severability

If any provision of this Contract is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering any other provision contained herein to be inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Contract shall not affect the remaining portions of this Contract, or any part of it, and the remaining portions shall otherwise remain in full force and effect.

### 18.10 Whole Agreement

This Contract and any and all exhibits and the Contract Documents shall constitute the entire agreement between the Parties, and no inducements, considerations, promises or other references shall be implied in this Contract that are not expressly addressed in this Contract.

### 18.11 Record Retention and Audits

**18.11.1** Design/Builder agrees that the District, or its designated representative, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Contract. The Design/Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be reasonably satisfactory to the District and shall be in accordance with generally accepted accounting standards.

**18.11.2** Design/Builder shall retain all records, books, correspondence, instructions, drawings, receipts, subcontracts, vouchers, memoranda and other data relating to this Contract for a period of five (5) years after Final Payment under this Contract, or for such longer period as may be required by law. Design/Builder agrees to allow the District to audit this Contract, including all financial and performance records, and to allow access to all records to District's auditor(s) during normal business hours and to allow interviews of any employees who might reasonably have information related to such records, and not withhold relevant information. Further, Design/Builder agrees to include a similar right of the District to audit records and interview staff in any subcontract related to performance of this Contract.

### 18.12 Deliverables

The Design/Builder is responsible for delivery to the District certain drawings, schedules, reports, samples and other documents as described in the Contract Documents.

### 18.13 Waiver

The failure of District in any one or more instances to insist upon strict performance of any of the terms of the Contract Documents or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the

right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the District or Construction Manager shall constitute a waiver of any right or duty afforded the District under the Contract Documents, nor shall any action or failure to act constitute an approval of or acquiescence on any breach thereunder, except as may be specifically agreed in writing.

**18.14 Computer Software**

Design/Builder certifies that it has appropriate systems and controls in place to ensure that District funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

**18.15 Tax Benefits**

Design/Builder shall issue a credit to District as an offset to the Design Fee equal to fifty percent (50%) of the amount of any tax deduction and/or credit Design/Builder and/or any member of Design/Builder receives for the Project at any time under the Commercial Buildings Energy-Efficiency Tax Deduction, 26 U.S. Code § 179D ("Section 179D").

Design/Builder shall provide District with all necessary documentation to enable District to verify the amounts of the Section 179D tax deduction and the resulting credit owed to District. Design/Builder shall notify District in writing of the Section 179D tax deduction within 30 days of when Design/Builder and/or any member of Design/Builder receives IRS notice of the Section 179D tax deduction or receives the Section 179D tax refund, whichever occurs first.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the Parties have caused this Contract to be executed by their respective officers who are duly authorized, as of the Effective Date.

**ACCEPTED AND AGREED:**

| | |
|---|---|
| Dated: _____, 20__ | Dated: _____, 20__ |
| Alum Rock Union Elementary School District | CORE General Contractor Inc. dba CORE Builders |
| By: _____ | By:_____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

**Information regarding Design/Builder:**

Design Professional License No.: _____

Contractor License No.: _____

_____**:**

**Employer Identification and/or**

DIR Registration No.: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Type of Business Entity:
_____ Individual
_____ Sole Proprietorship
_____ Partnership
_____ Limited Partnership
_____ Corporation, State: _____
_____ Limited Liability Company
_____ Other: _____

**Social Security Number**

**NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of $600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, the District requires the Design/Builder to furnish the information requested in this section.**