



**REQUEST FOR PROPOSALS  
FOR  
PRECONSTRUCTION AND LEASE-LEASEBACK  
SERVICES FOR PROPOSED CARMEL DEL MAR  
SCHOOL MODERNIZATION AND ASHLEY FALLS  
SCHOOL MODERNIZATION**

**Mandatory Project Meeting:**

**October 15, 2025, at 1:00:00 PM at**

**Carmel Del Mar School,  
12345 Carmel Park Drive, San Diego, CA 92130**

**(Parties will subsequently travel to Ashley Falls School as well)**

**Proposal Deadline Date:**

**November 5, 2025, at 11:00:00 AM**

**Submit to:**

**Del Mar Union School District  
11232 El Camino Real  
San Diego, CA 92130  
Attn: Marley Nelms**

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## **I. PURPOSE OF THE RFP:**

By way of this Request for Proposals ("RFP"), the Del Mar Union School District ("District") seeks proposals from lease-leaseback contractors ("Contractor" or "Firm") to provide services in a multi-phase process related to the following proposed projects:

- (1) Carmel Del Mar School Modernization Project; and
- (2) Ashley Falls School Modernization Project.

Each of the foregoing may be referred to collectively as the "Proposed Projects." The first phase for each of the Proposed Projects will include preconstruction services. The second phase includes lease-leaseback construction services.

The purpose of this RFP is to obtain information that will enable the District to select one or more lease-leaseback Contractors using the "best value" competitive procurement process under Education Code section 17400 *et seq.*, that can assist the District with the above-listed Proposed Projects. The "best value" competitive procurement process is an evaluation process whereby a Firm is selected by the District on the basis of objective criteria for evaluating the qualifications of Firm(s), with the selected Firm(s) representing the best combination of price and qualifications. Each Contractor responding to this RFP should be prepared and qualified to provide the services described in this RFP to the District in an expeditious and timely manner so as to enable the District to meet time deadlines and schedules.

**It is the District's strong preference and intention to award both Proposed Projects to a single Contractor.** Accordingly, the District expects that the Contractor will be able to achieve economies of scale and will provide its best team (including, but not limited to, the best job superintendents) for the Proposed Projects. Notwithstanding the foregoing, the District may also decide to award the Proposed Projects to different Contractors, without limitation, and in any combination of awards. Notwithstanding anything to the contrary any Contractor awarded both Proposed Projects will be required to execute separate lease-leaseback agreements for each awarded Proposed Project.

For construction services, as opposed to preconstruction services, the Proposed Projects are anticipated to commence with the Carmel Del Mar School Modernization Project and then proceed to the Ashley Falls School Modernization Project. Any Contractor awarded both Proposed Projects will be required to agree to contractual language allowing the District to terminate any and/or both awarded Proposed Projects for any reason, at any time, and without penalty to the District. Submission of a proposal hereunder shall be considered acceptance of the foregoing requirement. So, for example, if the District is dissatisfied with the work on the first project, the District must be able to cancel any part or all of the other project in addition to the first project, without penalty. The foregoing contractual language will be in the form Lease-Leaseback Agreements that are being provided with this RFP. Such language will be removed, however, if a Contractor is awarded

**just one Proposed Project.**

## **II. BACKGROUND ON THE PROPOSED PROJECTS:**

The Proposed Project, if approved, will be constructed using the lease-leaseback project delivery method authorized by Education Code section 17400 *et seq.* The District has contracted with the following architects for the Proposed Projects:

- (1) Carmel Del Mar School Modernization Project – DLR Group, Inc.; and
- (2) Ashley Falls School Modernization Project – HMC Architects.

The foregoing design firms will be the Architects of Record for the Proposed Projects.

The lease-leaseback Contractor will be expected to provide preconstruction services, and lease-leaseback construction services for the Proposed Projects as described below:

### **Carmel Del Mar School Modernization Project**

The District owns real property located at 12345 Carmel Park Drive, San Diego, California 92130 (“Carmel Del Mar Property”). The Carmel Del Mar School Modernization Project will be constructed on the Carmel Del Mar Property, which consists of approximately 3 acres. Total combined building area of the Proposed Project is +/- 47,000 sq.ft.

The proposed project would include modernizations such as roofing/HVAC, painting, upgrading sewer, ADA accessibility; modernizing learning studios (whiteboards, tackboards, carpet, casework replacement, etc.); upgrading technology infrastructure; and interior upgrades to the Innovation Center (library), Multi-Use Room, exterior shade and landscaping improvements, and front office. The District will be pursuing State funds. The proposed project would not affect student enrollment, staffing, or circulation patterns at the site.

The estimated construction budget for the Carmel Del Mar School Modernization Project is \$10,000,00.00.

The estimated performance period for the construction services is 14 months to begin in June 2026.

### **Ashley Falls School Modernization Project**

The District owns real property located at 13030 Ashley Falls Drive, San Diego, CA 92130 (“Ashley Falls Property”). The Ashley Falls School Modernization Project will be constructed on the Ashley Falls Property, which consists of approximately 4.1 acres. Total combined building area of the Ashley Falls School Modernization Project is +/- 65,000 sq.ft.

The proposed project would include modernizations such as roofing/HVAC, painting, upgrading sewer, ADA accessibility; modernizing learning studios (whiteboards,

tackboards, carpet, casework replacement, etc.); upgrading technology infrastructure; and interior upgrades to the Innovation Center (library), Multi-Purpose Room, exterior shade and landscaping improvements, and front office. The District will be pursuing State funds. Site demolition would be minimal and non-invasive. The proposed project would not impact student enrollment, staffing, or circulation patterns at the site.

The estimated construction budget for the Ashley Falls School Modernization Project is \$13,500,00.00

The estimated performance period for the construction services is 18 months to begin in June 2027 or earlier.

### **III. RFP TIMELINE:**

Request for Proposals Issued .....Oct. 1, 2025  
Mandatory Project Meeting .....Oct. 15, 2025, by 1:00:00 pm  
Deadline for Submittal of Questions .....Oct. 17, 2025, by 11:00:00 am  
Responses to the Questions Submitted .....Oct. 22, 2025  
Due Date for Prequalification Approval .....Oct. 31, 2025  
(or 5 days before the Final Due Date for Submittal of Proposals)  
Due Date for Submittal of Proposals .....Nov. 5, 2025, by 11:00:00 am  
Interviews, if required .....Nov. 24, 2025\*  
Anticipated Board Approval Date .....Dec. 10, 2025\*  
Notification of Selected Firm .....Dec. 11, 2025\*  
\* Estimated deadlines subject to revision at the District's discretion.

### **IV. QUESTIONS AND CLARIFICATION OF THE RFP**

All questions, requests for explanation or clarifications of any kind in regard to this RFP shall be made in written form, submitted via email to Marley Nelms, at [mnelms@dmusd.org](mailto:mnelms@dmusd.org). All questions, requests for explanation or clarifications of any kind in regard to this RFP must be submitted by no later than **11:00:00 am, Oct. 17, 2025**. A response will not be provided to any late questions, or requests for explanation or clarifications. All addenda and clarifications will be posted on the District's website, <https://www.dmusd.org/Departments/Business-Services/Purchasing/Bid-Opportunities>, and provided to those Firms that have attended the mandatory project meeting. Any interpretation, clarification, or correction of this RFP will only be made by addendum as noted above. No person or Firm is authorized to make any oral interpretation of any provision in this RFP, nor shall any oral interpretation be binding on the District.

### **V. PRECONSTRUCTION SERVICES**

The District anticipates that the successful Contractor(s) will provide preconstruction services for one or both Proposed Projects including, but not limited to, reviewing the Proposed Project's plans and specifications during the design of a Proposed Project to identify and note all deficiencies, incongruities and inconsistencies that may affect constructability of a Proposed Project including, but not limited to, design and

specification omissions, incomplete and/or inconsistent plans, details and specifications, and any lack of coordination, together with all other appropriate, necessary and/or required services to facilitate and prepare for the successful development and construction of a Proposed Project.

The preconstruction services will also include, but not be limited to, the following tasks:

1. Design meetings with the architects and engineers ("A/E");
2. Review and validation of estimates prepared by the architect;
3. Preparation of a master critical path method schedule for a Proposed Project;
4. Preparation of cost estimates or updated cost estimates as follows:
  - (a) At the end of Architectural Schematic Design and Engineering Basis of Design reports. Cost estimating by Contractor will include Life Cycle Cost Analysis for building systems, which will allow District to decide direction for A/E team;
  - (b) At the end of Design Development. Contractor will participate in A/E Building Information Modeling Clash Detection process as constructability advisor;
  - (c) Construction Documents 50% - same as Design Development, plus Contractor will provide Guaranteed Maximum Price ("GMP") for grading/utility construction at this point including allowances, contingencies, general conditions, costs and fees
  - (d) Construction Documents 100% - Same as Design Development, plus Contractor will provide GMP for remainder of construction at this point including allowances, contingencies, general conditions, costs and fees;
5. Constructability reviews; value engineering; construction planning and phasing, and cost proposal strategies all with the goal that the DSA-approved plans and specifications for a Proposed Project will be complete such that a Proposed Project can be constructed by a competent licensed general building contractor in strict accordance with the DSA-approved plans and specifications without change orders, delays, or additional charges to District.

The successful Contractor shall not provide any preconstruction services or work that requires a contractor's license pursuant to Business and Professions Code section 7065 et seq. before receipt of the required Division of the State Architect approval.

Each Contractor shall submit with its proposal(s) line-item descriptions and costs for the preconstruction services it is proposing to perform. If any service is or has a reoccurring monthly cost, Contractor shall provide the total amount and the monthly amount.

## **VI. CONSTRUCTION SERVICES**

The District anticipates that the successful Contractor will provide construction services for one or both Proposed Projects. Such cost proposals shall be based on a preliminary GMP using the information provided in this Request for Proposals. Once the final construction plans and specifications have been approved by the California Department of General Services, Division of the State Architect, the parties will establish a final GMP.

## **VII. DIR REGISTRATION AND PREVAILING WAGES**

DIR Registration. Contractors and their subcontractors (of any tier) shall not be qualified to submit or be listed on a proposal, or engage in the performance of any contract for public work, as defined in the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. It is not a violation of this section for an unregistered contractor to submit a proposal that is authorized by Section 7029.1 of the Business and Professions Code or by Section 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 of the Labor Code at the time the contract is awarded.

Prevailing Wages. The Contractor and all subcontractors shall comply with the requirements set forth in Division 2, Part 7, Chapter 1 of the Labor Code. Pursuant to Labor Code section 1770 et seq., the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this work is to be performed for each craft, classification or type of worker needed to execute the contract. Copies are available from the District to any interested party on request and are also available from the Director of the Department of Industrial Relations.

## **VIII. SUBCONTRACTOR DESIGNATIONS**

Pursuant to Education Code section 17406(a)(4), the District is **NOT** requiring Firms to identify and designate the subcontractors in their proposals. However, in the event the District approves a Proposed Project, and after award of the lease-leaseback contract, in accordance with Education Code section 17406(a)(4)(B), any subcontractor whose subcontract value exceeds one-half of one percent of the price allocable to the total construction work on a Proposed Project must be awarded a subcontract in accordance with the following process:

- A. Provide public notice of availability of work to be subcontracted in accordance with publication requirements applicable to the competitive bidding process of the District, including a fixed date and time on which qualifications statements, bids, or proposals will be due.
- B. Establish reasonable qualification criteria and standards.

- C. Award the subcontract either on a best value basis or to the lowest responsible bidder.

The process above may include prequalification or short-listing except for those subcontractors requiring prequalification, which is described in this Section VIII below. Subcontractors awarded subcontracts as set forth above shall be afforded all the protections of the Subletting and Subcontracting Fair Practices Act. (Public Contract Code section 4100 et seq.)

All subcontractors (of any tier) performing any portion of the work must comply with Labor Code sections 1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations and qualified to perform public works pursuant to Labor Code section 1725.5 throughout the duration of the Proposed Project.

Additionally, all mechanical, electrical, and plumbing subcontractors, defined in Section IX(D)(1)(a) below, must be prequalified per Public Contract Code section 20111.6 prior to award of the applicable subcontract.

## **IX. CONTENTS OF THE PROPOSAL**

Firms must submit one original, four (4) hard copies, and a digital copy (on a thumb drive) of each or any proposal. All proposals should address the requested information for each of the evaluation categories below. The proposal shall demonstrate the qualifications, competence, and capacity of the Firm:

- A. **Cover Letter/Letter of Interest** - Include a cover letter, addressed to Marley Nelms, stating the eligibility of the Firm to respond to this RFP, a brief description and history of the Firm, and a statement of interest for one or both Proposed Projects.
- B. **Table of Contents** - The table of contents shall reflect the order stated herein and shall include section titles and page numbers.
- C. **Exceptions to the Lease-Leaseback Agreements** – The form Lease-Leaseback Agreements (Site Lease, Leaseback Agreement, and Construction Services Agreement) are attached to this RFP as Attachment 3. Please review each agreement and provide any proposed exceptions to those agreements on Attachment 1, Firm Questionnaire, Section E.
- D. **Evaluation Categories**
  - 1. **Mandatory Requirements** – The following requirements are mandatory and must be satisfied. The mandatory requirements will be scored on a pass/fail basis. Failure to meet any one of the mandatory requirements specified in this Section X(D)(1) will disqualify your Firm from any further consideration for this RFP.



- a. **Lease-Leaseback Contractor and Subcontractor Prequalification** – All Firms submitting a proposal to this RFP must be prequalified with the District pursuant to Public Contract Code section 20111.6 (b)-(m) without exception prior to submitting a proposal. Any Firm that submits a proposal and is not prequalified will be deemed non-responsive and that Firm's proposal will be rejected and returned to the Firm unopened. Prequalification documents are available from the Del Mar Union School District website at <https://www.dmusd.org/>, and at 11232 El Camino Real, Ste. 100, San Diego, CA 92130. Additionally, the District's prequalification program will be administered by a third-party contractor named PQBids, which can be reached at <https://pqbids.com/dmusd/>. Prequalification documents must be submitted and approved by **Oct. 31, 2025**. Contractors will be notified by telephone, email, or mail of their prequalification rating within a reasonable period of time after submission of their prequalification documents. **Contractors currently prequalified with the District will not need to submit another prequalification package. Provide a copy of your current prequalification status letter from the District with your proposal.**

All mechanical, electrical or plumbing ("MEP") subcontractors (defined as contractors that **hold** a C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38, C-42, C-43 or C-46 license) must also be prequalified. This prequalification requirement applies even if the subcontractor will perform, or is designated and identified to perform, work that does not require one of the licenses listed above, but the subcontractor **holds** one of the licenses listed above.

MEP subcontractors (as defined above) must be prequalified prior to the award of their respective subcontract. A list of already prequalified MEP subcontractors, if any, will be made available by the District upon request. However, it is the responsibility of the Contractor to ensure that all MEP subcontractors **holding** any of the licenses listed above are properly prequalified.

- b. **Contractor Responsibility** – Identify if your Firm has ever had the following occur in the past seven (7) years. For the purposes of this paragraph, "Firm" shall include any present or past (over the last seven years), officers, owners, principals, partners, or any qualifying individuals including any Responsible Managing Employee ("RME") or Responsible Managing Officer ("RMO"). Any occurrence of the following in

the past seven (7) years shall render the Firm not qualified to submit a proposal:

- Found to be a non-responsible contractor by any public agency;
- Convicted for false claims;
- Firm's license revoked or suspended;
- Debarred or otherwise ineligible to bid on or be awarded a public works contract;
- Terminated for cause or defaulted on a construction contract; or
- Convicted of a crime involving the awarding of a construction contract, or the bidding or performance of a construction contract.

- c. **License Requirements** – Pursuant to Business and Professions Code section 7028.15 and Public Contract Code section 3300, the Contractor must possess a California Contractor's **Class "B"** license at the time of submittal of its proposal, and for the duration of any contract, if awarded. Subcontractors must possess the appropriate license for the work to be performed on a Proposed Project.
- d. **Performance and Payment Bonds** – All Firms submitting a proposal to this RFP must be able to provide separate faithful payment and performance bonds, each in an amount equal to 100% of the total contract amount for each Proposed Project awarded. All bonds must be issued by a California admitted surety as defined in California Code of Civil Procedure section 995.120. Firms must provide a letter from their surety indicating the Firm's current and overall bonding capacity, and the ability to meet the bond requirements in the Construction Services Agreement.
- e. **Insurance Requirements** - All Firms submitting a proposal to this RFP must have the ability to meet all of the insurance requirements set forth in the Construction Services Agreement for each Proposed Project. Firms must include a copy of their current certificate of insurance in their proposals evidencing the following minimum insurance requirements:

Comprehensive general liability insurance with a combined single limit per occurrence of not less than \$2,000,000 or commercial general liability Insurance (including automobile insurance) which provides limits of not less than:

- Per occurrence (combined single limit): \$3,000,000
- Project Specific Aggregate (for each individual Proposed Project): \$6,000,000
- Products and Completed Operations: \$6,000,000
- Personal and Advertising Injury Limit: \$3,000,000

The following special hazards shall be covered by riders or riders to above mentioned public liability insurance or property damage insurance policy or policies of insurance, in amounts as follows:

- Automotive and truck where operated: \$3,000,000
- Material Hoist where used: \$1,000,000
- Explosion, Collapse and Underground (XCU coverage): \$1,000,000

Excess Liability Insurance coverage in the amount of \$5,000,000

Workers' Compensation Insurance shall be provided in accordance with the provisions of the California Labor Code adequate to protect any person, firm, or corporation employed directly or indirectly in connection with the work of the Contractor from claims under Workers' Compensation Acts which may arise for operations, whether such operations be by any person, firm, or corporation, employed directly or indirectly by the Contractor upon or in connection with the work. Notwithstanding anything to the contrary, the District is requiring workers' compensation insurance in the amount of at least \$3,000,000.

Additional insurance requirements are provided in the Construction Services Agreement attached hereto.

Provide a letter from your insurance broker stating that you will be able to provide and meet the insurance requirements in the Construction Services Agreement for each Proposed Project.

2. **Firm Personnel, Capacity, and Methodology – Attachment 1.** Each Firm must completely answer all questions in Attachment 1 of the RFP. Note: **Questions may be answered in other sections of the proposal if clearly and conspicuously identified and referenced in the proposal.** The following shall be stated:

- a. **Description of Firm** – Include a description of the Firm's qualifications for providing preconstruction and lease-leaseback services on California school construction projects. Include information regarding the size of the Firm, location of the office from which the required services will be performed and/or headquartered, nature of all work performed, and the number of years in this particular business. The Firm shall provide an affirmative statement that it is independent of the District as defined by generally accepted standards.
- b. **Firm's Personnel and Staffing Resources** – Submit resume(s) or profiles for each key staff who will be proposed to provide the requested services, including their qualifications and recent relevant experience providing similar services. Each resume shall include, without limitation, the following information; (a) education; (b) years of relevant experience; (c) professional registrations, certifications and affiliations (d) project-specific experience with focus on public works projects and emphasis on K-12 projects providing preconstruction and lease-leaseback services, including dates and durations of each project listed and the name of the firm where employed. Include a discussion on the Firm's philosophy and approach for providing outstanding customer service.
- c. **Capacity & Methodology** – Describe how the Firm will provide services and fulfill the requirements and expectations of the District and this RFP. Use this section to address the ability of your Firm to undertake and accomplish the required scope of services for any Proposed Project while meeting deadlines, the Firm's record of meeting schedules and deadlines of other clients, advantages over other firms in the same industry, strength and stability as a business, and supportive client references. Describe the Firm's ability to provide preconstruction and lease-leaseback services exclusively and in a timely manner for the District and the Firm's commitment to providing experienced personnel assigned to District's Proposed Projects.
- d. **Litigation** – Furnish and provide specific information on any termination for convenience, litigation settled or judgments

entered within the last five (5) years, as well as any civil judgments within the last five (5) years. Identify if the Firm or any employee of the Firm is a party to an existing dispute with an owner, or owner's consultants, related to any project for which the Firm provided construction services. If so, please describe the nature of the dispute and its anticipated outcome.

Identify if the Firm has ever filed a petition for bankruptcy. If so, please provide the date the petition was filed and identify the jurisdiction in which it was filed.

3. **Relevant Experience and Past Performance** – Description of past performance and related experience. Each Firm is required to submit a list of its preconstruction and lease-leaseback services provided in California in the past five (5) years that are of the approximate size of a Proposed Project described in the RFP. The list shall include: (1) a description and size of the project, (2) the general scope of the work, (3) the dates services were performed for preconstruction services and for lease-leaseback services, (4) the total price for the project (please state amounts separately for preconstruction services and for lease-leaseback services and include the final guaranteed maximum price and all contingencies and allowances), and (5) the owner's name, address, email(s), and phone number.
4. **Preconstruction Services** – Describe your methodology in providing preconstruction services for one or more Proposed Projects, specifically discussing value engineering, constructability review, estimating, and scheduling. Provide examples of constructability reviews that you performed that resulted in the identification of significant design conflicts or omissions, and of value engineering that resulted in significant savings of money or time. State whether your firm has building information modeling capability and use of BIM on prior lease-leaseback projects.
5. **Labor Compliance/Skilled and Trained Workforce** – Describe your ability to comply with statutory requirements for the payment of prevailing wages, including the monitoring and enforcement of your subcontractor's payment of prevailing wages. Provide copies of any DIR Civil Wage and Penalty Assessment issued against your Firm, explain the circumstances for the Civil Wage and Penalty Assessment, and the final resolution.

Further describe your plan and methodology to comply with the requirements for the use of a "skilled and trained workforce" as defined in Education Code section 17407.5 and Public Contract Code section 2600 et seq., for each apprenticeship occupation that will be used on a Proposed Project, including all subcontractors of

any tier. Include in your discussion your plan and methodology to comply with the percentage requirements for the use of “skilled journeypersons” for each apprenticeship occupation and the required monthly report demonstrating compliance. Please include a copy of a sample monthly report prepared by your Firm for another owner if available. Finally, identify and discuss which apprenticeship occupation(s) will be the most difficult to meet the percentage requirements for skilled journeypersons on the Proposed Project and state why.

6. **Safety** – Discuss your plan to maintain a safe worksite. In your discussion, include whether your Firm has an Injury and Illness Prevention Program that complies with 8 CCR § 1509, whether your Firm has a safety program that meets Cal/OSHA requirements, and whether your Firm will provide a full-time person dedicated to safety on a Proposed Project.

Please state whether you have had any accidents in the past five years that resulted in a construction fatality on any of your projects and provide any details for each incident.

Please state whether you have had any recordable injuries in the past five years and provide the average total recordable injuries for the past five years.

Please provide an EMR verification from the State of California or an insurance company for each of the past five years.

7. **Locality** - Under this criteria the District will assign additional points for Contractors that are located, or have an office situated, within 30 road miles from the District’s office located at 11232 El Camino Real, Ste. 100, San Diego, CA 92130.

**E. Fee Proposal – Preconstruction Fee, Lease-Leaseback Fee, and General Conditions – “Attachment 2”**

For each Proposed Project for which a Contractor wants to be considered, provide a lump sum fee to provide the preconstruction services, the lease-leaseback fee, and a monthly general conditions fee as set forth on Attachment 2. The proposed fees should include all direct labor costs, fringe benefits, insurance, overhead, profit, and all other expenses the Contractor will incur in providing the preconstruction services and the lease-leaseback construction services. These fees, including general conditions, should be included as separate line items for each fee/cost. On a separate sheet, please explain whether and how the Contractor can obtain economies of scale if they are awarded more than one Proposed Project.

## **X. PREPARATION AND SUBMITTAL OF THE PROPOSAL**

### **A. Proposal Submittal and Deadline**

One original, four (4) hard copies and a digital copy (on a thumb drive) of each proposal must be submitted under sealed cover by no later **than 11:00:00 am on Nov. 5, 2025**. Label the outside of the sealed proposal envelope or box with your company name, proposal title and RFP deadline.

Proposals shall be delivered to the attention of:

Marley Nelms, Business Services Department  
Del Mar Union School District,  
11232 El Camino Real, Ste. 100  
San Diego, CA 92130

It is the sole responsibility of the Firm submitting the proposal to ensure that its proposal is actually received in the office prior to the deadline time and due date. Unless this RFP is extended by a written amendment from the District, proposals received after the time on the due date will not be considered. Faxed or emailed proposals will not be accepted.

### **B. Proposal Completeness**

Proposals shall be completed in all respects as required by the instructions herein. A proposal may be rejected if it is conditional or incomplete, or if it contains alterations of form or major irregularities of any kind as determined solely by the District. A proposal will be rejected if, in the opinion of the District, the information contained therein was intended to mislead the District in the evaluation of the proposal.

### **C. District Not Responsible For Preparation Costs**

All costs incurred in the preparation, submission and/or presentation of Firms responding to the RFP including, but not limited to, the Firm's travel expenses or long distance charges to attend any pre-conferences, presentations, interviews, and negotiation sessions, shall be the sole responsibility of the Firm and will not be reimbursed by the District. The District shall not pay for any costs incurred for proposal or contract preparation as a result of termination of this RFP or termination of the contract resulting from this RFP.

### **D. Right to Use Ideas**

All proposals and other materials submitted become the property of the District. District reserves the right to use any ideas presented in any response to the RFP. Selection or rejection of any proposal shall not affect this right.



**E. Modification or Withdrawal Of Proposal**

A Firm may modify or withdraw a proposal after submission by written request of withdrawal and re-submission, provided that the proposal withdrawal is prior to the proposal deadline specified.

**F. Amendments**

Firms are advised that the District reserves the right to amend this RFP at any time. Amendments will be done formally by providing written amendments to all potential Firms known to have received a copy of the RFP and/or by publishing the amendment on the District's website.

**G. Equal Opportunity**

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

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

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

**H. Waiver or Breach Thereof**

No term or provision of this RFP shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent for each party. Any consent by either party to, or waiver of, a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or subsequent breach, except as may be expressly provided in the written waiver or consent.

**I. Covenant Against Gratuities**

The Firm warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Firm or any agent or representative of the Firm, to any officer or employee or agent/consultant of the District with a view toward securing the resultant contract or securing favorable treatment with respect to any determinations concerning the award of any contract(s). For breach or violation of this provision, the District shall



have the right to terminate any negotiation or any resultant contract(s), either in whole or in part, and any loss or damage sustained by the District in procuring on the open market any items which the Firm agreed to supply shall be borne and paid for by the Firm. The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided in the Lease-Leaseback Agreements or by law.

**J. Conflict of Interest**

The Firm represents that it presently has no interest and will not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the services hereunder. The Firm further agrees that no person having any such known interest or conveyed an interest shall be employed, directly or indirectly, in the delivery of services under this RFP.

**K. Independent Contractor**

The Firm represents itself as an independent contractor offering such services to the general public and shall not represent him/herself or his/her employees to be an employee of the District. Therefore, the Firm shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, and other expenses.

**L. Precedence of Documents**

The contract(s) between the District and the successful Firm(s) shall consist of (1) this Request for Proposals (RFP) and any amendments thereto, (2) the Agreements to be executed with the successful Firm(s); and (3) the proposal submitted by the Firm to the District in response to the RFP. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the Agreements shall govern.

**M. Compliance with Laws**

Notwithstanding anything to the contrary, in connection with the furnishing of services or performance of work under this RFP, the Firm agrees to comply with the Fair Labor Standards Act, Equal Opportunity Employment Act, and all other applicable federal and state laws, regulations and executive orders to the extent that the same may be applicable.

**XI. PROPOSAL EVALUATION AND BEST VALUE SCORE**

**A. Proposal Evaluation Committee**

The District's Proposal Evaluation Committee will consist of at least three (3) members and will score each proposal based on the evaluation categories and points set forth in the RFP (See, Section XI(B)). The District shall have sole discretion and control over the number and selection of individuals who will serve on the Proposal Evaluation Committee.

Each Firm's proposal will be evaluated and scored only on the information that is included in the Firm's proposal. If any information is missing or incomplete in any proposal, no Firm will be provided the opportunity to supply the missing or incomplete information, nor will the District seek clarification of any information included in the proposals. Each proposal must be capable of being evaluated independently based solely on the information contained in the proposal.

## **B. Evaluation Categories, Points, and Scoring**

Each member on the Proposal Evaluation Committee will independently score each proposal and each Firm's score will be equal to the average score from the Evaluation Committee (i.e., the total number of points from the Proposal Evaluation Committee divided by the number of Proposal Evaluation Committee members: base score = sum total of points from all members of the Proposal Evaluation Committee divided by the number of committee members). The base score will be calculated to two decimal places. Although the Proposal Evaluation Committee will independently score each proposal, the members reserve the right to discuss the RFP process and information in any proposal with other members and/or District legal counsel. Finally, scores will be given for each Proposed Project for which a Contractor seeks consideration. For example, if a Contractor submits price sheets (Attachment 2) for each Proposed Project, that Contractor will be scored separately on each project.

The RFP contains nine (9) Evaluation Categories, as discussed herein, and the maximum number of points for each category is shown in the table below. The initial base scoring will include the first eight (8) Evaluation Categories. The top three (3) Firms may be asked to interview with the District. Only these top three (3) Firms may be further scored as demonstrated below.

In the event of any tie, the Proposal Evaluation Committee shall have the sole discretion to select one of the proposals in any manner it deems reasonable and fair.

<b>EVALUATION CATEGORY</b>	<b>POINTS</b>
Mandatory Requirements	Pass/Fail
Firm Personnel, Capacity, and Methodology	25
Relevant Experience and Past Performance	30
Preconstruction Services	30
Labor Compliance/Skilled and Trained Workforce	20
Safety	10
Locality	5
Price (Attachment 2)	30
<b>MAXIMUM BASE SCORE</b>	<b>150</b>
Interview (top 3 Firms may be considered)	50
<b>MAXIMUM TOTAL SCORE</b>	<b>200</b>

### **C. Short List Interviews**

After each Firm's score is calculated using the first eight (8) Evaluation Categories, the Proposal Evaluation Committee may, in its sole discretion, determine a short list of Firms to interview with the Proposal Evaluation Committee. If interviews are conducted, the interview will consist of a presentation followed by a question-and-answer period. After the interview, the Proposal Evaluation Committee will add the points for the "Interview" Evaluation Category (again calculated as an average as described above) based on the information presented at the interviews and the Firm's performance to determine the Firm's total final score. If the Firm provides information during the Interview that differs from, or otherwise clarifies any information in the proposal submitted, the Proposal Evaluation Committee reserves the right to adjust any previous points given to the Firm in the appropriate Evaluation Category. The total final scores will be used to determine the Best Value Scores (as defined in Education Code section 17400). Best Value Score = sum total of points from all members of the Proposal Evaluation Committee divided by the number of committee members. If interviews are required by the District, a Best Value Score will not be calculated for those Firms not invited to interview with the Proposal Evaluation Committee.

## **XII. GENERAL TERMS AND CONDITIONS**

### **District Obligation**

Receipt of proposals and responses to this RFP does not obligate the District to any Firm, in any way. The District reserves the right to accept or reject any or all proposals, and to waive any minor irregularities or informalities in any proposal or in the RFP process.

### **Award of Contract(s)**

This RFP implies no obligation to award contracts to any Firm. If it is in the best interest of the District, the District retains the sole and absolute right to select the Firm(s) that best meet(s) the District requirements. The award is subject to acceptance and approval by the District's Board of Trustees ("Board"). The District also reserves the right to reject any or all proposals.

### **Approval to Start Work**

The successful Firm may perform the preconstruction services once Lease-Leaseback Agreements (Site Lease, Leaseback Agreement, and Construction Services Agreement) have been fully executed and approved by both parties and all appropriate documentation has been received and approved by the District. The foregoing includes the issuance of a duly executed Notice to Proceed. The District shall not be responsible for work done, even in good faith, prior to approval of the agreement by the District's Board and the receipt of a duly executed Notice to Proceed. Thereafter, no work shall be performed on the construction services until the District has issued a separate Notice to Proceed for the construction services. The District shall not be responsible for work done, even in good faith, prior to the District's issuance of the appropriate Notice to Proceed.

### **Ownership of Documents**

All proposals and materials submitted in response to this RFP shall become the property of the District and shall be considered a part of public records and subject to disclosure under the California Public Records Act, unless exempted by law. In addition, all designs, drawings, specifications, notes and other work developed in the performance of any services resulting from this RFP shall be the sole property of District and may be used by District for any purpose without additional compensation to any Firm. Each Firm agrees that, by submitting any proposal in response to this RPF, such Firm will not assert any rights or establish any claim under the design patent or copyright laws.

### **Joint Ventures**

Where two or more Firms desire to submit a single response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture or informal team. The District intends to contract with a single Firm and not with multiple Firms doing business as a joint venture.

### **Fingerprinting**

Education Code section 45125.1, subdivision (a), requires that entities under contract with the District shall ensure that each employee who interacts with a student outside the immediate supervision and control of the student's parent/guardian or of a District employee, shall have a valid criminal records summary as described in Education Code section 44237. Education Code section 45125.1, subdivision (c), authorizes the District to require compliance with the foregoing requirements with respect to employees in addition to those within the scope of Education Code section 45125.1, subdivision (a). Therefore, the successful Contractor and its subcontractor(s) shall comply in all respects with the requirements of Education Code section 45125.1. To the greatest extent permitted by law, the District may impose other requirements designed to protect students in connection with the performance of the Proposed Projects. Any successful Contractor that is a sole proprietor shall have an immediate and affirmative duty to inform the District of such status so as to allow the District to comply with Education Code section 45125.1. Notwithstanding the foregoing, compliance with Education Code Section 45125.1 shall be subject to the District's sole discretion to grant alternative compliance requirements per Education Code section 45125.2, subdivision (a).

*(Remainder of page intentionally left blank.)*

## **ATTACHMENT 1 – FIRM QUESTIONNAIRE**

The Firm ("Respondent") shall furnish all the following information accurately and completely for the Respondent and each of the proposed staff and submit this with the proposal. Failure to comply with this requirement may cause rejection of the Respondent's qualifications. Attach additional sheets if necessary. "You" or "your" or "Respondent" as used herein collectively refers to the Respondent and/or any of its owners, officers, directors, shareholders, parties, principals, or any qualifying individuals including any RME or RMO.

If the same information is provided elsewhere in your qualification and qualification materials, then please clearly identify such in the following questions.

Please be advised that the District may request verbal or written clarifications, additional information, an interview or presentation at any time regarding this questionnaire.

### **SECTION A - GENERAL INFORMATION**

- (1) Respondent's name, address and contact information:

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- (2) Telephone:\_\_\_\_\_ Facsimile:\_\_\_\_\_

Email Addresses:\_\_\_\_\_

Website:\_\_\_\_\_

- (3) Type of Respondent: (check one)

Individual \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation \_\_\_\_\_

Other (please explain)\_\_\_\_\_

- (4) Names and titles of all principals/officers of the Respondent:

Name	Title	Phone Number & email
_____	_____	_____

_____	_____	_____
_____	_____	_____
_____	_____	_____

(5) Please list any applicable certifications and licenses and their associated numbers:

\_\_\_\_\_

(6) Have you or any of your principals ever conducted similar services under a different name or certification or different license number? \_\_\_\_\_.

(a) If yes, give other name, address and certification or license number.

Name \_\_\_\_\_

Address \_\_\_\_\_

License No. (if any) \_\_\_\_\_

(7) How many years has Respondent been in business under its present business name?

\_\_\_\_\_

(8) How many years of experience does Respondent have providing similar services?

\_\_\_\_\_

(9) For how many public agencies has Respondent provided similar services?

\_\_\_\_\_

(10) Please list the public agencies, including any school districts that Respondent has provided similar services for:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(11) Please attach a short history of the Respondent including whether it is local, regional, national, or international as well as approximate number of employees.

Also provide the number of offices and locations.

- (12) Identify preconstruction and lease-leaseback construction services performed for other school districts in accordance with parameters described above.
- (13) Describe how Respondent has successfully provided preconstruction and lease-leaseback construction services such as those described herein.
- (14) Describe the unique or innovative preconstruction and lease-leaseback construction services utilized on previous projects.

## **SECTION B – LEGAL**

- (15) Have you or any of your principals been in any claim, litigation or arbitration of any kind on a question or questions relating to similar services involving a public entity during the prior five (5) years? \_\_\_\_\_.

(a) If yes, provide the name of the public agency and briefly detail the dispute:

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- (16) Have you ever had a service agreement terminated for convenience or cause in the prior five (5) years? \_\_\_\_\_.

(a) If yes, provide details including the name of the other party:

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- (17) Is Respondent, owners, and/or any principal or manager involved in or is Respondent aware of any pending litigation regarding professional misconduct, bad faith, discrimination, or sexual harassment? \_\_\_\_\_.

(a) If yes, provide details:

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- (18) Is Respondent, owners, and/or any principals or manager involved in or aware of any pending disciplinary action and/or investigation conducted by any local, state or federal agency? \_\_\_\_\_.

(a) If yes, provide details:

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- (19) Will Respondent comply with all District, local, state and federal legal requirements, regulations and laws? \_\_\_\_\_.

### **SECTION C – ADDITIONAL INFORMATION**

- (20) Please provide any other information that may assist the District in ascertaining your qualifications, capability and customer service under any resultant agreement.

### **SECTION D – CONFLICT OF INTEREST**

- (21) Have you ever had any direct or indirect business, financial or other connection/relationship with any official, employee or consultant of the District? Identify any conflict of interest in (a):

(a) Please elaborate and discuss any potential, apparent or actual conflict of interest:

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**SECTION E. OBJECTIONS TO LEASE-LEASEBACK AGREEMENTS**

The Firm is required to list any and all objections to the terms in the Lease-Leaseback Agreement in Attachment 3 below. Moreover, the Firm must also include proposed replacement language (use separate pages if necessary). The District will not consider any proposed changes to the Lease-Leaseback Agreements that are not contained herein or attached hereto.

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I certify and declare under penalty of perjury under the laws of the State of California that the information provided in the foregoing Firm Questionnaire is true and correct.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_,  
State of \_\_\_\_\_

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

## **ATTACHMENT 2 – FEE PROPOSAL**

**Prepare this document for each Proposed Project to be considered. If you intend to submit a proposal for both Proposed Projects, you must submit this document for each Proposed Project, but you must also include backup materials clearly demonstrating what, if any, cost savings can be achieved by awarding you both Proposed Projects.**

This fee proposal, "Attachment 2", must be submitted with the proposal. Use additional sheets, if necessary.

Project: **Carmel Del Mar School Modernization**

The Firm proposes the following fees:

1. The preconstruction fee should be expressed as a lump sum firm fixed price based on the construction budget, schedule, and descriptions in this RFP.

**Preconstruction Fee:** [LUMP SUM] \$\_\_\_\_\_

2. The lease-leaseback fee shall include the Firm's overhead, profit, and all other costs (excluding general conditions), and should be expressed as a percentage.

**NOTE:** The lease-leaseback fee is not the GMP. The GMP shall not exceed the final construction budget plus the below-listed lease-leaseback fee.

**NOTE:** Should the Firm try to revise the Contractor's fee so that it exceeds the percentage below, the Firm agrees and acknowledges that the District has the right to deem the Firm's proposal non-responsive, cancel the lease-leaseback contract(s) without owing any fees or costs to the Firm, and award a contract to another contractor/Firm.

**Lease-Leaseback Fee:** \_\_\_\_\_% of construction budget (\$10,000,000).

3. The general conditions should be expressed as a monthly rate based on the construction budget, schedule, and description in this RFP.

**General Conditions:** \$\_\_\_\_\_/month\*

**\*Please provide as backup for the general conditions a line-item listing of the proposed monthly general conditions and the corresponding monthly cost that you propose using for any/each Proposed Project. Failure to include this backup line-item listing will impact your score for this category.**

4. **Total Fee Proposal:**

For purposes of scoring the fee proposals, the monthly fees will be multiplied by the number of estimated construction months to calculate the total fee for evaluation purposes and the total fee will be used to calculate the Best Value Score. The actual

Lease-Leaseback Fee and General Conditions price for the Firm awarded a contract will be based on the final construction budget and term of the lease-leaseback contract.

a) Preconstruction Fee: = \$\_\_\_\_\_

b) Lease-leaseback Fee: \_\_\_\_ % x \$10,000,000 = \_\_\_\_\_

c) General Conditions: \$\_\_\_\_\_/month x 14 months = \_\_\_\_\_

TOTAL PROPOSED FEE: [1+2+3] State the total proposed fee in both words and numbers: \$\_\_\_\_\_

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

Project: **Ashley Falls School Modernization**

The Firm proposes the following fees:

1. The preconstruction fee should be expressed as a lump sum firm fixed price based on the construction budget, schedule, and descriptions in this RFP.

**Preconstruction Fee:** [LUMP SUM] \$\_\_\_\_\_

2. The lease-leaseback fee shall include the Firm's overhead, profit, and all other costs (excluding general conditions), and should be expressed as a percentage.

**NOTE:** The lease-leaseback fee is not the GMP. The GMP shall not exceed the final construction budget plus the below-listed lease-leaseback fee.

**NOTE:** Should the Firm try to revise the Contractor's fee so that it exceeds the percentage below, the Firm agrees and acknowledges that the District has the right to deem the Firm's proposal non-responsive, cancel the lease-leaseback contract(s) without owing any fees or costs to the Firm, and award a contract to another contractor/Firm.

**Lease-Leaseback Fee:** \_\_\_\_\_% of construction budget (\$13,500,000).

3. The general conditions should be expressed as a monthly rate based on the construction budget, schedule, and description in this RFP.

**General Conditions:** \$ \_\_\_\_\_/month\*

**\*Please provide as backup for the general conditions a line-item listing of the proposed monthly general conditions and the corresponding monthly cost that you propose using for any/each Proposed Project. Failure to include this backup line-item listing will impact your score for this category.**

**4. Total Fee Proposal:**

For purposes of scoring the fee proposals, the monthly fees will be multiplied by the number of estimated construction months to calculate the total fee for evaluation purposes and the total fee will be used to calculate the Best Value Score. The actual Lease-Leaseback Fee and General Conditions price for the Firm awarded a contract will be based on the final construction budget and term of the lease-leaseback contract.

d) Preconstruction Fee: = \$ \_\_\_\_\_

e) Lease-leaseback Fee: \_\_\_\_ % x \$13,500,000 = \_\_\_\_\_

f) General Conditions: \$ \_\_\_\_\_/month x 14 months = \_\_\_\_\_

**TOTAL PROPOSED FEE: [1+2+3] State the total proposed fee in both words and numbers: \$ \_\_\_\_\_**

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

## **ATTACHMENT 3 – AGREEMENT FORMS**

1. Site Lease
2. Leaseback Agreement
3. Construction Services Agreement

*(Agreement Forms are also on file with the District Office)*



\_\_\_\_\_ **SCHOOL MODERNIZATION PROJECT  
SITE LEASE**

By and Between

DEL MAR UNION SCHOOL DISTRICT

and

\_\_\_\_\_

Dated as of \_\_\_\_\_

**SCHOOL MODERNIZATION PROJECT  
SITE LEASE**

This \_\_\_\_\_ School Modernization Project Site Lease ("Site Lease"), dated for reference purposes as of \_\_\_\_\_ is made by and between the Del Mar Union School District ("District"), a public school district organized and existing under the laws of the State of California and the lessor herein, and \_\_\_\_\_ ("Contractor"), a \_\_\_\_\_ designated as entity number \_\_\_\_\_ by the California Secretary of State and the lessee herein. The District and the Contractor may be referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

A. California Education Code Section 17406 permits the governing board of a school district to lease to any person, firm, or corporation any real property owned by the school district, if the instrument by which such property is leased requires the lessee to construct or provide for construction of improvements on the leased premises, for the use of the school district during the term of the lease, and provides that title to the improvements shall vest in the school district at the expiration of the lease. Such process of constructing school facilities is known as the lease-leaseback construction delivery method.

B. The District desires to provide for the construction of the \_\_\_\_\_ School Modernization Project (the "Project") using the lease-leaseback construction delivery method. \_\_\_\_\_ School is located at 13030 \_\_\_\_\_ Drive, San Diego, CA 92130, in the County of San Diego ("County"), State of California ("State"). The site of the Project ("Project Site") is depicted and described in Exhibit "A" attached to this Site Lease.

C. Concurrently with entering into this Site Lease, the Parties have also entered into those certain agreements that are entitled: (i) "\_\_\_\_\_ School Modernization Project Leaseback Agreement" ("Leaseback Agreement" or "LBA"); and (ii) "Construction Services Agreement for the \_\_\_\_\_ School Modernization Project" ("Construction Services Agreement" or "CSA"). With the exception of the Preconstruction Work to be provided per Exhibit A of the CSA, the remaining activities, including any construction of the Project, shall not occur, be authorized or an obligation of the District, unless the Project is approved and all approvals received following completion of California Environmental Quality Act ("CEQA"). The purpose of this Site Lease, the Leaseback Agreement, and the Construction Services Agreement (collectively, the "LLB Agreements") is to provide for the construction of the Project using the lease-leaseback construction delivery method authorized by Education Code Section 17406. Exhibit "A" to the Construction Services Agreement sets forth a general description of the Project.

D. The District's Governing Board of Trustees ("District Board") has determined that, subject to the conditions precedent set forth in this Site Lease and the other LLB Agreements, it is in the best interests of the District to construct the Project using the lease-leaseback construction delivery method authorized by Education Code Section 17406 by: (i) leasing the Project Site to the Contractor under this Site Lease; (ii) leasing the Project and the Project Site back from the Contractor under the LBA; and (iii) establishing additional terms and conditions for construction of the Project under the CSA to ensure that the work and services required to be performed by the Contractor under the LLB Agreements ("Work") will meet the District's expectations. Therefore, the Parties intend that: (i) the LLB Agreements shall be interpreted as an integrated and interrelated set of agreements; (ii) the LLB Agreements shall concurrently

take effect; and (iii) any capitalized terms used, but not defined, in this Site Lease shall have the meanings ascribed to such terms in the other LLB Agreements.

E. The Contractor is duly licensed in the State as a general building contractor, is qualified and experienced in construction of the type of educational facilities included in the Project and is willing to perform the Work.

**Now**, in consideration of the foregoing and of their respective rights and obligations under the LLB Agreements, the Parties hereby agree as follows:

## **AGREEMENT**

**Section 1. Lease to Contractor.** Subject to the provisions of this Site Lease, the District hereby leases the Project Site to the Contractor, and the Contractor hereby leases the Project Site from the District. During the Site Lease Term (defined in Section 3 herein), the Contractor shall have a leasehold interest in the Project Site, including, without limitation, any and all improvements thereto made in accordance with the LLB Agreements.

**Section 2. Effective Date.** With the exception of the “Preconstruction Work” (defined in Exhibit A to the CSA), but otherwise notwithstanding anything to the contrary, the LLB Agreements shall have no force or effect until the date all of the following events have occurred (“Effective Date”): (i) each Party has approved, signed, and delivered all of the LLB Agreements; and (ii) the District has completed CEQA review and obtained any and all approvals required to commence the Work. Such required approvals may include, but are not limited to, any approvals by: (i) the California Department of Education (“CDE”); (ii) the Department of General Services, Division of State Architect (“DSA”); (iii) the State Allocation Board (“SAB”); (iv) the Office of Public School Construction (“OPSC”); and/or (v) the Department of Toxic Substances Control (“DTSC”).

**Section 3. Construction Period and Site Lease Term.** Upon satisfaction of the conditions precedent set forth in Section 2 herein, and if any and all other applicable conditions set forth in the LLB Agreements have been satisfied, the District, in accordance with Section 4 of the CSA, shall issue a notice to the Contractor to proceed with the Work (“Notice to Proceed”). Subject to contrary dates in the Notice to Proceed, the Work must commence on \_\_\_\_\_ (“Required Commencement Date”) and must be fully and satisfactorily completed no later than \_\_\_\_\_ (“Required Completion Date”). The Contractor must complete each portion of the Work that is subject to a milestone completion date not later than the applicable milestone completion date. The term of this Site Lease (“Site Lease Term”) shall commence on the Required Commencement Date and (unless the Site Lease Term is extended, or this Site Lease is earlier terminated as provided in any of the LLB Agreements) shall expire concurrently with the Required Completion Date or any other earlier termination under the LLB Agreements.

**Section 4. Possession and Use by Contractor.** The Contractor may use the Project Site solely for: (i) purposes related to performance of the Work in accordance with the LLB Agreements; and (ii) leasing the Project Site and the Project back to the District. The Contractor and, to the extent reasonably necessary for such purposes, its officers, employees, subcontractors, consultants, agents and other representatives (collectively, “Contractor Representatives”) shall have the right at all reasonable times during the Site Lease Term to enter in and upon the Project Site for purposes of performing the Work, examining and inspecting the Work, and undertaking any and all actions necessary and/or convenient regarding the Work. Except for such authorized uses and any uses by the District in accordance with the



LLB Agreements, the Contractor shall not allow any other use of the Project Site or facilities on the Project Site. Except as provided in the LLB Agreements, the Contractor, at its own expense, must obtain or otherwise have in effect all permits, licenses and similar authorizations for its activities on and in the Project Site and the facilities on the Project Site. The Contractor must not use, operate or maintain the Project Site or facilities on the Project Site improperly or carelessly, and, during the Site Lease Term, the Contractor must comply with all applicable laws and any applicable orders or rules of any governmental entity with competent jurisdiction over the Project Site and/or the Project. However, nothing shall be deemed to prohibit the Contractor from non-compliance with any such law, order or rule during any action or other proceeding undertaken in good faith by the Contractor to contest the validity or application of the law, order or rule, but the Contractor shall indemnify, defend, and hold-harmless the District Indemnitees as provided in the CSA with respect to any such non-compliance.

**Section 5. Performance of Work.** The Contractor shall: (i) perform the Work in strict accordance with the LLB Agreements and other documents incorporated therein or approved in accordance therewith; and (ii) complete the Work within the Site Lease Term, as it may be modified from time to time in accordance with the LLB Agreements. The compensation payable to the Contractor for performance of the Work shall be determined as provided in the LBA and CSA.

**Section 6. Quiet Enjoyment.** Except as permitted in the LLB Agreements, the District shall not take any action during the Site Lease Term to prevent the Contractor's quiet enjoyment of the Project Site for the purposes authorized under this Site Lease. In the event any challenge to the District's fee title to the Project Site results in or is likely to result in interference with the Contractor's right to occupy or use the Project Site for such purposes, the District shall use such of its governmental powers at its disposal, including the power of eminent domain, as necessary to obtain unencumbered fee title to the Project Site. The District shall defend the Contractor's right to so occupy and use the Project Site for the purposes set forth in the LLB Agreements. No use of the Project Site or the facilities on the Project Site by the District that is contemplated in or by the LLB Agreements shall be deemed or construed to constitute interference with the Contractor's right to occupy and use the Project Site.

**Section 7. No Waste or Illegal Acts.** At all times that it occupies or is otherwise in possession of the Project Site or any portion thereof, the Contractor shall not commit, suffer, or permit any waste of the Project Site or the facilities on the Project Site, and the Contractor shall not negligently, willfully, or knowingly use or permit the use of the Project Site or the facilities on the Project Site for any illegal act or purpose.

**Section 8. Payment of Rent.** The Contractor shall have no obligation to pay rent unless and until the conditions precedent set forth in Section 2 herein have been satisfied. Within sixty days following the Effective Date, the Contractor shall pay to the District the total amount of \$\_\_\_\_\_ [TYPICALLY \$1 PER YEAR – SO IF PROJECT WILL TAKE 2 YEARS, CHARGE \$2], which shall constitute rent for the lease of the Project Site by the Contractor for up to \_\_\_\_ months from the Effective Date. If the Site Lease Term for any reason exceeds \_\_\_\_ months, then, within thirty days following the end of the initial \_\_\_\_-month period, the Contractor must pay to the District the amount of \$1.00 for each year (or portion thereof) that the Site Lease remains in effect following the initial \_\_\_\_-month period. If, for any reason, this Site Lease is terminated after the Effective Date, the Contractor shall not be entitled to a refund of any rent paid to the District under this Section.

**Section 9. Responsibility for Taxes.** The Contractor, at its sole expense, shall be responsible for payment of all taxes, assessments, fees, and other charges as are attributable to actions by the Contractor or any of the Contractor Representatives in connection with the performance of the Work. In addition, the Contractor, at its own expense, shall be solely responsible for payment of any and all taxes on or measured by: (i) the Contractor's income in connection with the transaction(s) contemplated in the LLB Agreements; and (ii) the operation of the Contractor's business. If the terms of this Site Lease result in the creation of a taxable possessory interest, then, to the extent such possessory interest tax is levied on the Contractor, and notwithstanding the foregoing provisions of this Section, but subject to receipt of sufficient documentary evidence of the obligation and amount, the District shall pay or otherwise satisfy such possessory interest tax.

**Section 10. Title to Property.** Notwithstanding anything to the contrary, upon expiration of the Site Lease Term or other termination of this Site Lease, title to the Project Site and all facilities on the Project Site, including, without limitation, any and all improvements constructed by the Contractor under the LLB Agreements, shall fully vest in the District. Title to improvements constructed on the Project Site under the LLB Agreements shall progressively and proportionally vest in the District as the Contractor is paid under the LLB Agreements, but title shall not fully vest in the District until the Required Completion Date, as such date may be extended.

**Section 11. District Conveyance of Interests In Project Site.** During the Site Lease Term, the District shall not mortgage, sell, assign, transfer or otherwise convey the Project Site or any interest therein to any person or entity without first obtaining the written consent of the Contractor, if such action by the District would unreasonably impair any of the Contractor's rights under the LLB Agreements. The foregoing shall not be deemed or construed to preclude the District from granting utility easements, rights-of-way, or similar interests in the Project Site to facilitate the use and operation of the Project or as required by any governmental or quasi-governmental agency.

**Section 12. District Right of Entry.** At any and all times during the Site Lease Term, the District and/or its officers, employees, and other agents or representatives may enter in and upon the Project Site and the Project for inspection or other purposes related to the Work, or arising in connection with the operation and management of the Project Site and/or the Project. The District shall not, however, unreasonably interfere with the Contractor's right to use and occupy the Project Site and the Project. The foregoing shall be deemed and construed to include the right of the District and its students to occupy and use completed phases of the Work for educational and related purposes. The Contractor shall cooperate and coordinate with the District as necessary to facilitate such uses by the District.

**Section 13. District Representations and Warranties.** The District represents and warrants to the Contractor that, to the best of the District's knowledge:

- (i) The District has good and merchantable fee title to the Project Site and has authority to enter into, and perform its obligations under the LLB Agreements;
- (ii) The District is unaware of any tax, assessment or imposition of any kind applicable to the Project Site that has not been paid in full, excluding any current and future taxes, assessments or impositions that may be assessed in regard to the Project Site;

- (iii) The District is unaware of any pending or threatened litigation involving the Project Site or the facilities on the Project Site that might affect the ability to use them for the intended purposes of the LLB Agreements;
- (iv) Except for asbestos, lead, or other hazardous materials that the District anticipates may be present in or incorporated into existing improvements on and to the Project Site and the facilities on the Project Site, if any such existing improvements/facilities exist, the District is not aware of any dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, regulated pursuant to applicable local, State or federal environmental laws, rules, or regulations, that are located in, on or about the Project Site and that would subject the Contractor to any damages, penalties or liabilities under any such applicable local, State or federal environmental laws, rules, or regulations ("Environmental Laws"); and
- (v) The District has received no notice, from any governmental entity with competent jurisdiction, of any currently existing or alleged violation of any of the Environmental Laws with respect to the Project Site or the facilities on the Project Site.

**Section 14. Contractor Representations and Warranties.** The Contractor represents and warrants to the District that, to the best of the Contractor's knowledge:

- (i) The Contractor is duly organized, validly existing, and in good standing in accordance with the laws of the State, and has full power, authority, and legal right to lease and otherwise acquire and convey interests in real and personal property;
- (ii) The Contractor is aware of the requirements of Education Code section 17406, Education Code section 17407.5, Public Contract Code section 2600 *et seq.*, and Public Contract Code section 20111.6. Public Contract Code section 20111.6 requires that a person, firm, or corporation that constructs the building(s), including, but not limited to, the prime contractor and electrical, mechanical, and plumbing subcontractors be prequalified. Such prequalification is applicable to each public project projected to cost \$1,000,000 or more, regardless of the source of funds to pay for the project (this subdivision (ii) collectively referred to as the "Prequalification Requirement");
- (iii) The Contractor, any person, firm, or corporation that constructs the building, including, but not limited to, the prime contractor, and each MEP subcontractor with one of the specialty licenses specified in Public Contract Code Section 20111.6 has been prequalified under procedures adopted by the District Board;
- (iv) The Contractor has full power, authority and legal right to enter into and perform its obligations under the LLB Agreements, and the execution, delivery and performance thereof has been duly authorized by all necessary actions on the part of the Contractor and does not require any further approvals;
- (v) Execution, delivery and performance of the LLB Agreements does not and/or will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Contractor is a party or by which it or its property is bound; and

- (vi) There are no pending or threatened actions or proceedings before any court or administrative agency that may materially and adversely affect the ability of the Contractor to perform its obligations under the LLB Agreements.

**Section 15. Termination.** Notwithstanding anything to the contrary, the District may unilaterally and immediately terminate the LLB Agreements by giving written notice to the Contractor, if any challenge to the validity of any of the LLB Agreements is filed in any court of competent jurisdiction, in which event neither Party shall thereafter have any obligation to the other Party under the LLB Agreements, except that, upon written request of the Contractor in such event, the District shall pay to the Contractor such amounts as would be payable under Public Contract Code Section 5110 if it were applicable. Upon expiration of the Site Lease Term or other termination of this Site Lease: (i) the Contractor shall quit and surrender the Project Site and the facilities on the Project Site, which must be delivered to the District in the condition as of the date of expiration or other term; (ii) to the extent provided in the LLB Agreements, the District shall remain obligated to compensate the Contractor for the performance of the Work completed as of the date of expiration or other termination; and (iii) in accordance with the LLB Agreements, the Contractor shall release, remove or cure any stop notices, liens and/or other encumbrances arising from the Work.

**Section 16. Events of Default.** Notwithstanding anything to the contrary, any Claim within the scope of Part 22 of the General Provisions: (i) shall be subject to the requirements of such Part 22; and (ii) shall not be subject to this Section or Section 17 of this Site Lease. For all purposes of the LLB Agreements other than any such Claims, each of the following events with respect to a Party shall be deemed a default by such Party of its obligations under the LLB Agreements (each an “Event of Default”):

- (i) The Party fails, within the time required, to pay any undisputed or unexcused payment due or asserted to be due to the other Party, or any undisputed or unexcused portion of a payment due or asserted to be due to the other Party under any of the LLB Agreements; or
- (ii) The Party fails to perform or observe any covenant, condition or agreement to be performed or observed by such Party under any of the LLB Agreements, and such failure materially and adversely affects the other Party’s rights; or
- (iii) Any statement, representation or warranty by the Party and set forth in any of the LLB Agreements is determined to be intentionally misleading or erroneous in any material respect and materially and adversely affects the other Party’s rights; or
- (iv) The Party makes any general assignment for the benefit of creditors, any voluntary or involuntary petition for bankruptcy or for reorganization pursuant to federal bankruptcy law is filed and not withdrawn or dismissed within sixty days of filing, a court of competent jurisdiction appoints a trustee or receiver to manage or control all or substantially all of the Party’s assets, all or substantially all of the Party’s assets are subject to attachment, execution or other judicial seizure, or a court of competent jurisdiction determines that such Party has become insolvent or unable to pay its debts when due.

**Section 17. Notice and Opportunity to Cure.** If a Party is alleged to be responsible for an Event of Default (“Defaulting Party”), the other Party (“Non-Defaulting Party”) may provide written notice thereof to the Defaulting Party, specifying in reasonable detail the nature and extent of the alleged default (“Notice of Default”). If the Defaulting Party has not cured the Event of Default within twenty days after

receipt of the Notice of Default in the case of a monetary default (i.e., failure to pay money or secure the payment of money), or within thirty days after receipt of the Notice of Default in the case of a non-monetary default, the Non-Defaulting Party in its discretion may initiate the dispute resolution provisions set forth in Section 18 of this Site Lease. The giving of a Notice of Default and allowing the period for cure of the Event of Default in accordance with this Section shall be a condition precedent to the Non-Defaulting Party exercising any available remedy in response to the Event of Default. Nothing shall be construed to prohibit the Defaulting Party from disputing that an Event of Default has occurred. Neither the giving of any Notice of Default, nor the initiation by the Non-Defaulting Party of any dispute resolution, legal or equitable action, or other proceeding in connection with an Event of Default, shall by itself operate to terminate this Site Lease.

**Section 18. *Informal Attempts at Dispute Resolution.*** Except for any Claims subject to Part 22 of the General Provisions, if a dispute arises out of or directly or indirectly relates to any of the LLB Agreements (“Dispute”), the Parties shall attempt as provided in this Section to resolve the Dispute as quickly and as amicably as possible, including, without limitation, any Disputes as to the meaning of any provision of the LLB Agreements, the validity of any determination or calculation required under the LLB Agreements, or the rights or obligations of the Parties under the LLB Agreements. If the Dispute does not relate to an Event of Default or is not of such nature that a Party may give a Notice of Default, then the Party alleging the Dispute shall give to the other Party a written notice of the Dispute (“Notice of Dispute”). Within a reasonable time, not in excess of seven calendar days, after receipt of either a Notice of Default or a Notice of Dispute, the Parties shall commence attempts to informally resolve the Dispute as required under this Section. Such attempts shall include good-faith, reasonable, and diligent efforts by both Parties to communicate and, if possible, to reconcile or compromise their respective positions. The participation by a Party in such attempts to informally resolve a Dispute shall be a condition precedent to such Party exercising any available remedy in response to the Dispute. If, after diligently making the attempts required under this Section for at least thirty calendar days, the Parties cannot resolve a Dispute, either Party may give written notice to the other Party that the attempts have been unavailing and, therefore, such informal attempts have been terminated effective upon receipt of the notice.

**Section 19. *Exercise of Available Remedies.*** If attempts at informal resolution of a Dispute under Section 18 are terminated without the Dispute having been resolved to the satisfaction of a Party, the Party may initiate any legal or equitable action or other proceeding in response to the Dispute that is available under applicable law and the LLB Agreements. In addition, however, if a Party fails to respond to, or participate in good faith in, any requests or requirements for attempts at informal resolution of the Dispute, the other Party, in its discretion, without needing to further comply with Section 18 of this Site Lease, may initiate any legal or equitable action or other proceeding in response to the Dispute that is available under applicable law and the LLB Agreements. However, in any case in which a Notice of Default has been provided under Section 17 of this Site Lease, no such legal or equitable action may be initiated until the applicable period for cure of the Event of Default under such Section 17 has expired without cure of the Event of Default.

**Section 20. *Scope and Limitations of Available Remedies.*** Except as provided in this Section or other applicable provisions of the LLB Agreements, each Party may exercise any or all available legal or equitable rights in response to an unresolved Dispute. However, at all times while any informal dispute-resolution attempts, legal or equitable actions, or other authorized proceedings relating to a Dispute are pending, each Party, except to the extent provided in this Section, shall continue to perform its obligations under the LLB Agreements. Notwithstanding the foregoing, a Party shall not be responsible for continued performance of its obligations under the LLB Agreements to the extent an Event of Default by the other

Party makes such performance impossible, impractical, or unreasonable. Except as expressly provided in any of the LLB Agreements, a Party shall be entitled to termination of any of the LLB Agreements in response to an uncured Event of Default only if a court of competent jurisdiction determines that damages and specific performance are not sufficient, appropriate, or available remedies. Any remedies available to a Party shall not be deemed exclusive, and the Party may exercise any remedy individually or in combination with any other remedy it has available.

**Section 21. Indemnification by Contractor.** With respect to any and all claims, demands, causes of action, other proceedings, losses, damages, costs, expenses, attorneys' fees, and other liabilities of any nature that arise in connection with, or are directly or indirectly related to, the Contractor's use and occupancy of the Project Site under this Site Lease, the Contractor shall indemnify, defend, and hold-harmless the District to the extent provided in the CSA. For purposes of the LLB Agreements, such liabilities include, without limitation, any and all matters arising out of any use, disposal, discharge or other release on or about the Project Site of any hazardous materials, substances, or waste. For purposes of this Section, the reference to the District shall be deemed and construed to be a reference also to the District Board and each member thereof, the District's other officers, employees, and agents, and each of them. Notwithstanding the District's above-referenced right to be indemnified for attorney's fees, no person, entity, or party, including but not limited to the District and the Contractor, shall be allowed to recover attorney's fees that are incurred to enforce or defend this Site Lease.

**Section 22. Giving of Notice.** Any notice given by a Party under this Site Lease must be given in accordance with Section 23.10 of the General Provisions in the CSA.

**Section 23. Governing Law and Venue.** The terms and provisions of this Site Lease shall be construed in accordance with the laws of the State. Any action, arbitration, mediation or other proceeding arising from this Site Lease shall be initiated and conducted only in the County.

**Section 24. Modifications.** This Site Lease may not be amended or otherwise modified except by written agreement duly-approved by the District Board, signed, and delivered by the Parties.

**Section 25. Recitals and Exhibits.** The Recitals set forth herein, and all Exhibits referenced herein and attached hereto, are hereby incorporated as operative and effective provisions of this Site Lease.

**Section 26. Counterparts.** This Site Lease may be signed in one or more counterparts, which, taken together, shall constitute one and the same original instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more original copies of this Site Lease bearing original signatures of both Parties.

**Section 27. Due Authority of Signatories.** Each person signing this Site Lease represents and warrants that he or she has been duly authorized by appropriate action of the Party he or she represents to execute, and thereby bind such Party to, this Site Lease.

*(Remainder of page left blank.)*

***In Witness Whereof***, the Parties have executed this Site Lease as evidenced by the signatures, below, of their respective duly-authorized representatives.

**Del Mar Union School District**

\_\_\_\_\_

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

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

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

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

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

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

***EXHIBIT A***  
***Description and Depiction of Project Site***

The Project Site includes the areas outlined, highlighted or otherwise designated in the description and depiction below.

[Insert Site Description & Depiction]





\_\_\_\_\_ **SCHOOL MODERNIZATION PROJECT  
LEASEBACK AGREEMENT**

By and Between

DEL MAR UNION SCHOOL DISTRICT

and

\_\_\_\_\_

Dated as of \_\_\_\_\_

**SCHOOL MODERNIZATION PROJECT  
LEASEBACK AGREEMENT**

This \_\_\_\_\_ School Modernization Project Leaseback Agreement ("Leaseback Agreement" or "LBA"), dated for reference purposes as of \_\_\_\_\_, is made by and between the Del Mar Union School District ("District"), a public school district organized and existing under the laws of the State of California and the lessee herein, and \_\_\_\_\_ ("Contractor"), a \_\_\_\_\_ designated as entity number \_\_\_\_\_ by the California Secretary of State and the lessor herein. The District and the Contractor may be referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

A. Concurrently with entering into this Leaseback Agreement, the Parties also entered into those certain agreements entitled: (i) "\_\_\_\_\_ School Modernization Project Site Lease" ("Site Lease"); and (ii) "Construction Services Agreement for the \_\_\_\_\_ School Modernization Project" ("Construction Services Agreement" or "CSA"). The Site Lease, this LBA and the CSA are defined in the Site Lease, collectively, as the "LLB Agreements."

B. The purpose of the LLB Agreements is to facilitate completion of the Project using the lease-leaseback construction delivery method authorized by Education Code Section 17406 by: (i) leasing the Project Site to the Contractor under the Site Lease; (ii) leasing the Project and the Project Site back to the District under this LBA; and (iii) setting forth additional terms and conditions for construction of the Project in the CSA, to ensure that the Work will meet the District's expectations. Therefore, the Parties intend that: (i) the LLB Agreements shall be interpreted as an integrated and interrelated set of agreements; (ii) the LLB Agreements shall concurrently take effect; and (iii) any capitalized terms used, but not defined, in this LBA shall have the meanings ascribed to such terms in the other LLB Agreements.

**Now**, in consideration of the foregoing and of their respective rights and obligations under the LLB Agreements, the Parties hereby agree as follows:

**AGREEMENT**

**Section 1. Leaseback to the District.** Subject to all provisions herein, the Contractor hereby leases to the District the Project Site and the Project, together with all improvements thereto, whether existing or made during the Site Lease Term, and the District hereby leases the Project Site and the Project from the Contractor. Notwithstanding anything to the contrary, such leaseback to the District shall not cause or result in a merger of the District's leasehold estate under this LBA and its fee estate as lessor under the Site Lease, and the Contractor, subject to the provisions of the LLB Agreements, shall continue to have and hold a leasehold estate in the Project Site under the Site Lease.

**Section 2. Effective Date and Leaseback Term.** This Leaseback Agreement shall have the same Effective Date as the Site Lease. Subject to contrary dates in the Notice to Proceed, the term of this Leaseback Agreement ("Leaseback Term") shall commence on the Required Commencement Date and, unless this LBA is terminated earlier as provided in any of the LLB Agreements, the Leaseback Term shall expire on the Required Completion Date, unless such time is extended by the Parties in writing.

**Section 3. Possession and Use by District.** During the Leaseback Term and subject to any limitations set forth in the LLB Agreements, the District may possess and use the Project Site and the Project: (i) to examine and inspect the Work; (ii) to inspect, maintain, and operate the Project Site and Project; (iii) for purposes of its educational, recreational, and other programs; and (iv) for other reasonable purposes of the District. The District, its officers, employees, contractors, consultants and agents (collectively, the “District Agents”), and others as necessary or convenient for District purposes, shall have the right at all reasonable times during the Leaseback Term to enter in and upon the Project Site in connection with such District uses. However, during the Leaseback Term, the District shall not permit any such use of the Project Site and/or the Project in a manner that unreasonably interferes with the Contractor’s rights under the Site Lease to possess and use the same. The Parties anticipate that the District may conduct educational, recreational or other activities on or in one or more portions of the Project Site at times when Work is not occurring, but no such activities shall be deemed or construed to constitute unreasonable interference with such rights of the Contractor. Except as may be provided in the LLB Agreements, the District, during the Leaseback Term and at its own expense, must obtain or otherwise have in effect all permits, licenses and similar authorizations for its activities on, in, and at the Project Site. During the Leaseback Term, the District shall hold fee title to the Project Site and will obtain from the Contractor the fee title to the improvements constructed under the LLB Agreements, which shall vest progressively as payments are made in accordance with the LLB Agreements, but shall not fully vest until the Required Completion Date, unless such time is extended by the Parties in writing. During the Leaseback Term, the Contractor shall have a leasehold interest in the Project Site as provided in the Site Lease.

**Section 4. Leaseback Payments.** The District shall pay to the Contractor such lease payments as are specified in the Schedule of Leaseback Payments attached as Exhibit “A” to this LBA (each a “Leaseback Payment”). Each Leaseback Payment shall be due and payable as specified in the Schedule of Leaseback Payments. The Contractor shall separately invoice the District for the Leaseback Payments and the Construction Progress Payments due under the General Provisions, and each Party shall maintain adequate records distinguishing between Leaseback Payments and Construction Progress Payments. The District shall pay the undisputed portions of each such Leaseback Payment invoice within thirty (30) days following receipt of the invoice. The District, in its sole discretion, and at any time and without penalty, may prepay any one or more of the Leaseback Payments.

**Section 5. Adequate Consideration.** The Parties hereby acknowledge that payment by the District of the Leaseback Payments shall be full and adequate consideration for the District’s right to use of the Project Site and the Project during the Leaseback Term. The Parties have determined and agreed that the Leaseback Payments are not in excess of the fair rental value of the Project Site and Project, and, in making such determination, the Parties have considered, among other matters: (1) the fair market value attributable to use of the improvements to be completed under the LLB Agreements; and (2) the District’s limited access and use of the Project Site during construction of the Project.

**Section 6. Nature of Payment Obligation; No Acceleration.** The obligation of the District to pay Leaseback Payments under this LBA shall constitute a current expense of the District. Nothing in this LBA shall be deemed or construed to constitute: (i) debt of the District in contravention of any applicable constitutional or statutory limitations; or (ii) a pledge of the general tax revenues, general funds or general monies of the District. Notwithstanding anything to the contrary, in no event shall the Contractor have the right to require accelerated payment of any Leaseback Payment that is not then due or in default, or to otherwise declare any such payment immediately due and payable.

**Section 7. Abatement of Leaseback Payments.** Notwithstanding any damage to or destruction of the Project Site or the Project, or any other substantial interference with the District's rights to possess and use the Project Site and the Project under this LBA, this LBA shall continue in full force and effect. However, in addition to any other conditions on the District's obligation to make Leaseback Payments, any Leaseback Payments due hereunder shall be subject to abatement at any time during the Leaseback Term in which, due to material damage to or destruction of the Project Site or the Project, or for any other reason not the fault of the District, there is substantial interference with the District's rights under this LBA to possess and use the Project Site and/or the Project, or any substantial portion thereof. For each occurrence of potentially-substantial interference with such rights, the District shall reasonably determine: (i) whether abatement shall apply; (ii) the date upon which abatement shall commence; (iii) the portion of the Leaseback Payments to be abated; and (iv) the date such abatement ends. The amount of abatement shall be such that the Leaseback Payments paid by the District during the abatement period do not exceed the fair rental value of the portions of the Project Site and/or the Project that the District reasonably may continue to use in accordance with this LBA.

**Section 8. District Failure to Pay Leaseback Payments.** Except as may be provided in the LLB Agreements, the District's obligation to timely pay the Leaseback Payments to the Contractor shall be absolute and unconditional, and not be subject to any set off. Subject to the foregoing, if the District fails within the time permitted by this LBA to pay the undisputed portion of any Leaseback Payment, then, notwithstanding any other right of the Contractor under this LBA, such unpaid amount shall accrue interest at two percent (2%) simple interest per annum until paid.

**Section 9. District Responsibility for Encumbrances and Taxes.** During the Leaseback Term, the District shall keep the Project Site and the Project free of all newly-imposed levies, liens, and encumbrances other than those that: (i) are normally or reasonably incident to the ownership of real property; (ii) are necessary in connection with the maintenance and operation of the Project Site and/or the Project; or (iii) arise from actions of the Contractor or any of the Contractor Representatives. During the Leaseback Term, the District shall timely pay all taxes, assessments, and similar charges that now or hereafter may duly be imposed upon the District's ownership, leasing, renting, possession, or use of the Project Site and/or the Project.

**Section 10. Responsibility for Utility Services.** Except as may be provided in the LLB Agreements, the District shall contract for and pay the expenses of all utility services required for its possession and use of the Project Site and the Project, including, but not limited to, all electricity, gas, water, and sewer.

**Section 11. Maintenance and Security.** The District, at its expense, shall be responsible for the maintenance and security of such portions of the Project Site and the Project of which it has sole possession and use during the Leaseback Term. Except for the foregoing, the Contractor, at its expense, shall have sole responsibility for the maintenance and security of the Project Site and the Project during the Leaseback Term. Notwithstanding the other provisions of this Section, after District Board acceptance of the Project in accordance with Section 16.8 of the General Provisions, and except for warranty and other obligations of the Contractor under the LLB Agreements, the District shall have sole responsibility for maintenance and security of the Project Site and the Project.

**Section 12. Indemnification of Contractor.** The District shall indemnify, defend and hold harmless the Contractor with respect to any and all claims, demands, causes of action, other proceedings, losses, damages, costs and expenses (attorneys' fees), and other liabilities of whatever nature as arise from, or are directly or indirectly related to, the District's occupancy and use of the Project Site and Project

during the Leaseback Term. The scope of the District's obligations under this Section shall be restricted to liabilities caused by third parties subject to the direct supervision and control of the District, including, without limitation, the District's other contractors, subcontractors, students, and other invitees. Any and all indemnification obligations arising in connection with the performance of the Work shall be governed by Part 21 of the CSA. Notwithstanding anything to the contrary, the District shall not be obligated under this Section to the extent any claim, demand, cause of action, other proceeding, loss, damage, cost and expense (attorneys' fees), or liability within the scope of this Section is attributable to the negligence or willful misconduct of the Contractor or any of its subcontractors, employees, agents, assigns, or other representatives. Notwithstanding the above-referenced right to be indemnified for attorney's fees, no person, entity, or party, including but not limited to the District and the Contractor, shall be allowed to recover attorney's fees that are incurred to enforce or defend this Leaseback Agreement.

**Section 13. District Insurance.** At all times that the District is occupying any portion of the Project during the Leaseback Term, the District, at its expense, shall have in effect liability and property insurance providing coverage in such amounts, and subject to such terms, as the District determines will adequately protect the District's interests in the Project Site and the Project. The District may, in its sole discretion, obtain and maintain any such insurance through an Owner Controlled Insurance Program ("OCIP") and/or through a joint-powers self-insurance cooperative of which the District is a member. The District shall cause such insurance to be endorsed to name the Contractor as an additional insured during the period required by this Section, and the District shall provide to the Contractor, upon request in writing, one or more certificates of insurance and endorsements evidencing the insurance coverage required by this Section. With respect to matters for which the District is responsible under Section 12 herein, and during the period the insurance coverage is required under this Section to be in effect, the District's insurance shall be primary and any coverage provided by the Contractor shall be secondary and non-contributing.

**Section 14. Events of Default.** For purposes of Section 15 herein, the term "Event of Default" shall mean any of the following:

- (i) The District fails to pay to the Contractor the undisputed portion of any Leaseback Payment within thirty (30) days after notice from the Contractor that such amount is overdue;
- (ii) The District fails to perform or otherwise comply with any of its material obligations under this LBA within thirty (30) days following written notice from the Contractor specifying in detail such failure by the District; and
- (iii) The District becomes insolvent, is unable to pay its debts as they become due, makes an assignment to creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of the District or of all or a substantial part of its assets, or a petition for relief is filed by the District under federal bankruptcy, insolvency or similar laws, and the District fails within sixty (60) days thereafter to cause such appointment or filing to be lifted or to otherwise make financial arrangements for payment of Leaseback Payments as are reasonably satisfactory to the Contractor.

**Section 15. Termination.** This LBA shall terminate automatically upon: (i) receipt by the Contractor of all Leaseback Payments due under this LBA; and (ii) expiration of the Leaseback Term. This LBA shall also terminate automatically upon earlier termination of this LBA, at which point no further Leaseback Pay shall be due. The Contractor may terminate this LBA, by giving written notice to the District, in the event the District fails to cure an Event of Default specified in clause (i) or clause (ii) of Section 14

within twenty (20) days. Subject to applicable bankruptcy or other law, the Contractor may terminate this LBA, by giving written notice to the District, in the event the District fails, within the applicable period of time permitted under Section 14 herein, to cure an Event of Default specified in clause (iii) of that Section. Nothing in this LBA shall be deemed or construed to preclude the District from seeking damages from the Contractor or other remedies for wrongful termination.

**Section 16. Additional Representations and Warranties.** In addition to the representations and warranties of the Parties set forth in the Site Lease, the Contractor further represents and warrants that:

- (i) To the best of its knowledge, and except to the extent of any asbestos, lead, or other hazardous materials that may be present in, or incorporated into, the existing improvements on the Project Site, if any such existing improvements exist, the Contractor is not aware of any hazardous materials, substances or wastes that are located in, on or about the Project Site that would subject the District to any damages, penalties or liabilities under any Environmental Laws;
- (ii) The Contractor has received no notice, from any governmental entity with competent jurisdiction, of any currently existing or alleged violation of any Environmental Laws with respect to the Project Site or any facilities on the Project Site; and
- (iii) Except to the extent permissibly incorporated into the Work in accordance with the LLB Agreements, the Contractor shall keep the Project Site and the facilities on the Project Site free of hazardous materials, substances, and wastes.

**Section 17. Giving of Notice.** Each notice from one Party to the other given under this LBA must be given in accordance with Section 23.10 of the General Provisions.

**Section 18. Governing Law and Venue.** The terms and provisions of this LBA shall be construed in accordance with the laws of the State, notwithstanding any choice-of-law, conflict-of-law, or other provision in any federal, state or other law. Any action, arbitration, mediation, or other proceeding arising from this LBA shall be initiated and conducted only in the County.

**Section 19. Modifications.** This LBA may not be amended or otherwise modified except by written agreement duly-approved by the District Board, signed, and delivered by the Parties.

**Section 20. Recitals and Exhibit.** The Recitals set forth herein, and Exhibit A referenced herein and attached hereto, are hereby incorporated as operative and effective provisions of this LBA.

**Section 21. Counterparts.** This LBA may be signed in one or more counterparts, which, taken together, shall constitute one and the same original instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more original copies of this LBA bearing signatures of both Parties.

**Section 22. Due Authority of Signatories.** Each person signing this LBA represents and warrants that he or she has been duly authorized by appropriate action of the Party he or she represents to execute, and thereby bind such Party to, this LBA.

***In Witness Whereof***, the Parties have executed this LBA as evidenced by the signatures, below, of their respective duly-authorized representatives.

***Del Mar Union School District***

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**  
**SCHEDULE OF LEASEBACK PAYMENTS**

**Project:** \_\_\_\_\_ School Modernization Project

Payment Month *	Beginning Balance	Payment	Ending Balance
1	<i>[\$[Initial amount]]</i>		
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			\$ 0.00
Total			

- \* The District's obligation to make Leaseback Payments commences within 10 business days following the Required Commencement Date. The Leaseback Payment shall be thereafter paid on the same day in each subsequent month. For example, if the District pays the first Leaseback Payment on the 23rd of the month, each Leaseback Payment shall be paid on or before the 23rd of the next month. The final Leaseback Payment shall be paid as above or on the Required Completion Date, whichever is earlier.





**CONSTRUCTION SERVICES AGREEMENT**

**FOR THE**

**\_\_\_\_\_ SCHOOL MODERNIZATION PROJECT**

By and Between

DEL MAR UNION SCHOOL DISTRICT

and

\_\_\_\_\_

Dated as of \_\_\_\_\_

**CONSTRUCTION SERVICES AGREEMENT  
FOR THE  
\_\_\_\_\_ SCHOOL MODERNIZATION PROJECT**

This Construction Services Agreement for the \_\_\_\_\_ School Modernization Project ("Construction Services Agreement" or "CSA"), dated for reference purposes as of \_\_\_\_\_, is made by and between the Del Mar Union School District ("District"), a public school district organized and existing under the laws of the State, and \_\_\_\_\_ ("Contractor"), a \_\_\_\_\_ designated as entity number \_\_\_\_\_ by the California Secretary of State. The District and Contractor may be referred to herein individually as a "Party" and collectively as the "Parties."

**RECITALS**

A. Concurrently with entering into this Construction Services Agreement, the Parties also entered into those certain agreements entitled: (i) "\_\_\_\_\_ School Modernization Project Site Lease" ("Site Lease"); and (ii) "\_\_\_\_\_ School Modernization Project Leaseback Agreement" ("Leaseback Agreement" or "LBA"). The Site Lease, the LBA and this CSA are defined in the Site Lease, collectively, as the "LLB Agreements."

B. The purpose of the LLB Agreements is to facilitate completion of the Project using the lease-leaseback construction delivery method authorized by Education Code Section 17406 by: (i) leasing the Project Site to the Contractor under the Site Lease; (ii) leasing the Project and the Project Site back to the District under the LBA; and (iii) setting forth additional terms and conditions for construction of the Project under this CSA to ensure that the Work will meet the District's expectations. The Parties intend, therefore, that: (i) the LLB Agreements shall be interpreted as an integrated and interrelated set of agreements; (ii) the LLB Agreements shall concurrently take effect; and (iii) any capitalized terms used, but not defined, in this CSA shall have the meanings ascribed to such terms in the other LLB Agreements.

**Now**, in consideration of the foregoing and of their respective rights and obligations under the LLB Agreements, the Parties hereby agree as follows:

**AGREEMENT**

**Section 1. Effective Date.** With the sole exception of Preconstruction Work, this Construction Services Agreement: (a) is subject to the approvals referred to in Recitals B and C and Section 2 of the Site Lease including, but not limited to the District's completion of its analysis under CEQA; and (b) shall have the same Effective Date as the Site Lease and the Leaseback Agreement.

**Section 2. Scope of Work.** The scope of the Preconstruction Work and the Work to be completed by the Contractor under the LLB Agreements is generally described in Exhibit "A" attached to this CSA. The Contractor must complete the Preconstruction Work and Work in strict accordance with the Contract Documents.

**Section 3. Component Parts of Contract.**

(a) **The Contract.** This Construction Services Agreement is but one of the agreements and other documents that collectively set forth the complete understanding and agreement of the Parties

with respect to the performance of the Preconstruction Work and the Work (the "Contract"). Each of the Contract Documents, as those may be made or duly amended from time to time, is hereby incorporated as an operative and effective part of the Contract and LLB Agreements. In connection with the execution and delivery of this CSA, and within the times required by this CSA, the Contractor must complete, execute, and deliver to the District each of the various Contract-related forms set forth in Exhibit "B" attached to this CSA ("Required Contract Forms"). As and when required by this CSA during the course of the Work, the Contractor must complete, execute, and deliver to the District the various Project-related forms set forth in Exhibit "C" attached to this CSA ("Required Project Forms"). The Contractor may obtain copies of the Required Contract Forms and the Required Project Forms from the District.

(b) **The Contract Documents.** The "Contract Documents" include, but are not limited to: (i) the Site Lease, the Leaseback Agreement, and this CSA; (ii) any and all drawings, plans, elevations, sections, details, schedules, and diagrams that illustrate any or all of the Work ("Drawings") and any and all written requirements for materials, equipment, construction systems, quality workmanship, services, and other things to be furnished in connection with the Work or the Project ("Specifications") approved for the Project, including, to the extent applicable, by the DSA in accordance with Education Code Sections 17280 through 17316, inclusive; (iii) any and all supplemental drawings, profiles, cross-sections, specifications and other documents approved and/or issued by the Architect for purposes of illustrating or describing the location, character, dimensions, or details of the Work; (iv) the general provisions of this CSA attached as Exhibit "D" to this CSA ("General Provisions"); (v) any and all performance and payment bonds, work schedules, schedules of value, guarantees, and other construction-related documents prepared, provided, approved and/or adopted in connection with the Project and/or Work; (vi) any and all duly-authorized agreements or duly-authorized orders providing for changes in the Work; (vii) any and all forms and other documents duly-submitted by the Contractor in connection with the Work; and (viii) the District's Request for Proposals and the proposal submitted by the Contractor for the Project.

(c) **Complementary Nature.** The Contract Documents shall be deemed and construed to be complementary and an integrated whole. Any requirement or provision set forth in one Contract Document, although not set forth in any one or more of the other Contract Documents, shall be interpreted as if set forth in or applicable to all Contract Documents.

#### **Section 4. Notice of Award and Notice to Proceed.**

(a) **Notice of Award.** The LLB Agreements require that, prior to commencing the Work, the Contractor must provide to the District certain bonds, schedules, forms, and other documentation. To assist in ensuring that the District receives such documentation, the District may issue to the Contractor a written notice that the District has awarded the Project/Contract to the Contractor and of the District's intent to subsequently issue a Notice to Proceed ("Notice of Award"). The Notice of Award, if any, will specify the anticipated date on which the District will issue a Notice to Proceed, and the District shall issue the Notice of Proceed in accordance with the provisions of Sections 2 and 3 of the Site Lease. HOWEVER, IF THE DISTRICT DOES NOT ISSUE A NOTICE OF AWARD, THE CONTRACTOR SHALL NONETHELESS BE OBLIGATED, AS REQUIRED BY THIS CSA, TO SUBMIT ALL SUCH DOCUMENTATION TO THE DISTRICT PRIOR TO COMMENCING THE WORK.

(b) **Notice to Proceed.** The District shall issue to the Contractor a written Notice to Proceed as soon as practicable after all conditions precedent thereto are satisfied. Although the satisfaction of the conditions precedent to issuance of the Notice to Proceed may not be completely within the control of either Party, each Party must make reasonable efforts to ensure that such conditions

precedent are timely satisfied so that the District may issue the Notice to Proceed in time to permit construction to commence in accordance with Section 5 of this CSA. Notwithstanding anything to the contrary, if such conditions precedent are not satisfied concurrently for all portions of the Work (including, but not limited to, because the DSA will be issuing approvals for the Project in increments), the District may issue separate Notices to Proceed for distinct portions of the Work as such conditions precedent are satisfied for such portions of the Work. If, after issuance of any Notice to Proceed, the LLB Agreements are terminated following a challenge to the validity of the LLB Agreements as provided in Section 15 of the Site Lease, any Notice to Proceed shall be deemed to have automatically been rescinded upon such termination.

#### ***Section 5. Commencement and Completion of Work.***

(a) ***Start and Finish Dates.*** Subject to contrary dates in any one or more Notice to Proceed, the Contractor must: (i) commence the Work on the Required Commencement Date; and fully and satisfactorily have completed all of the Work not later than the Required Completion Date. The Contractor must complete each portion of the Work that is subject to milestone completion date(s) not later than the applicable milestone completion date(s). If, despite the reasonable efforts of the Parties, the District is for any reason unable to issue a Notice to Proceed in time to permit the Work to commence on the Required Commencement Date, the District shall issue the Notice to Proceed as soon thereafter as practicable.

(b) ***Extensions of Time.*** The Contractor must commence and perform the Work with such continuous reasonable diligence as will ensure completion of the Work within the time permitted under the Contract ("Contract Time"). The Contract Time may be extended as provided in the Contract Documents or as the Parties otherwise may agree in writing.

(c) ***Scheduling Goals.*** The Contractor acknowledges that the District has scheduled the Work for a specific period of time, in order to promote the best usage of school facilities, to promote an appropriate learning environment for students, and to avoid and/or minimize interference with the District's educational, recreational, and other programs. The Contractor further acknowledges that compliance with scheduling requirements for the Work is mandatory in order to accomplish such goals and, therefore, that time is of the essence with respect to the performance of the Work.

(d) ***Project on Hold during Preconstruction Work.*** Notwithstanding anything to the contrary, if there is a delay while in the preconstruction phase based upon, but not limited to, a lack approvals, the District Board may make findings that it is in the District's best interest that the Project be paused. If the District Board makes such findings, the District shall give written notice to Contractor and Contractor shall perform no further services and/or shall not charge the District for services occurring after the date of such written notice. If the District Board does not restart the Project within six (6) calendar months following the notice pausing the Project, either the Contractor or the District may terminate the LLB Agreements in their entirety, and without penalty. No further compensation will be owed to Contractor other than for the Preconstruction Work already duly performed.

#### ***Section 6. Compensation to Contractor.***

(a) ***Guaranteed Maximum Price.*** The total compensation payable to the Contractor under the LLB Agreements shall not exceed the cost for the Preconstruction Work and a specific maximum amount for the Work in exchange for which, as described in more detail in Subsection (f) of this Section,

the Contractor guarantees that it will perform all of its obligations under the LLB Agreements in strict accordance with the Contract Documents (the “Guaranteed Maximum Price” or “GMP”). The Preliminary GMP and/or Final GMP payable to the Contractor under the LLB Agreements is set forth and itemized in Exhibit “E” attached to this CSA. The GMP shall include District payments to the Contractor of Construction Progress Payments and Leaseback Payments.

(b) **Preliminary Estimated GMP.** The preliminary estimate of the GMP payable to the Contractor pursuant to the LLB Agreements (“Preliminary GMP”) is set forth and itemized in Exhibit “E” attached to this CSA. The Contractor represents and warrants that it has reviewed the Preliminary GMP and has confirmed that, subject to adjustment as described in Subsection (c) of this Section, the amounts comprising the Preliminary GMP are sufficient and appropriate compensation to the Contractor for performance of the Work. However, as noted, the Preliminary GMP is an estimate and it may vary from the GMP determined in accordance with Subsection (c) of this Section that, as adjusted in accordance with the Contract Documents, will be payable to the Contractor under the LLB Agreements.

(c) **Determining the Final GMP.** After completion of the Preconstruction Work, the approval of the plans, Drawings, and Specifications by DSA, and the competitive process required pursuant to this CSA for selection of the Subcontractors that will perform portions of the Work, the Parties shall determine the total amount of the GMP payable to the Contractor pursuant to the LLB Agreements (“Final GMP”). The Final GMP shall be based on adjustment of the Preliminary GMP to reflect: (i) the difference between the estimates of the Subcontractors’ costs included in the Preliminary GMP and the actual Subcontractors’ costs determined through the applicable competitive process; and/or (ii) such other factors as the Parties may agree in writing. Except as the Parties so may agree, the other components of the Preliminary GMP (including, without limitation, the cost of any Work to be self-performed by the Contractor) shall be deemed sufficient compensation to the Contractor and, although, in determining the Final GMP, such components may be decreased as agreed by the Parties, such components shall not be increased. Education Code section 17406, subdivision (a)(3), requires District Board approval of the Final GMP at public meeting before the Contractor can commence the Work. If the District Board does not approve the amount of the Final GMP as determined pursuant to this Subsection for any reason including, but not limited to, if the District Board determines that it does not or will not have sufficient funding to pay the Final GMP, the District may provide written notice to the Contractor to thereby terminate the LLB Agreements, in which case neither Party shall have any obligations to the other Party under the LLB Agreements and Contractor shall not be entitled to any additional funds except for those previously due to Contractor for the Preconstruction Work. The Final GMP, as it may be adjusted pursuant to this CSA, shall be deemed sufficient compensation to the Contractor for full and satisfactory completion of the Project and performance of its other obligations pursuant to the LLB Agreements, including, without limitation, the Contractor’s guarantee as described in Subsections (a) and (f) of this Section.

(d) **Contingencies and Allowances Included in GMP.**

(1) **Project Contingency.** The GMP shall include a contingency amount to be held by, and for the benefit of, the District (“Project Contingency”) in the maximum amount specified in Exhibit “E” to this CSA. As directed by the District, the Project Contingency shall be used to pay costs for which the District is or might be responsible and that are attributable to: (i) errors, omissions, or other discrepancies in the Drawings and Specifications; (ii) unforeseen changes in any applicable federal, State or local laws, ordinances, codes, rules, regulations, standards, orders, and other requirements of any governmental and quasi-governmental entities with competent jurisdiction (each a “Legal Requirement”); and (iii) fires, windstorms, floods, earthquakes, or other acts of nature resulting in a natural disaster for which no person(s) can be held responsible. Any of the foregoing shall not qualify to be paid using the

Project Contingency unless it materially affects and increases the cost and performance of the Work. Any portion of the Project Contingency remaining after completion of all Work shall be returned to the District entirely.

(2) **Contractor Contingency.** The GMP shall include a maximum contingency amount to cover reasonably unanticipated Contractor issues ("Contractor Contingency") in the amount specified in Exhibit E to this CSA. Upon prior approval by the District in writing, the Contractor Contingency may be used to pay unanticipated costs associated with performance of the Work or items reasonably necessary for the Contractor to complete the Project. Any portion of the Contractor Contingency remaining after completion of all Work shall be considered a savings to the District and shall be returned to the District.

(3) **Allowances.** To the extent any line-item included in the GMP consists of an "allowance" for a particular cost component of the Project: (i) if the total cost for such component ultimately exceeds the "allowance" amount, the difference shall, as directed by the District in writing, be paid using available Project Contingency or otherwise shall be the District's responsibility; and (ii) if the total cost of such component ultimately is less than the "allowance" amount, the difference shall be a credit to the District or otherwise serve to reduce the GMP. Each proposed allocation, use, or expenditure of any portion of any such "allowance" shall be subject to the advance written approval of the District. An "allowance" shall only be used for items listed in Exhibit "E" to this CSA.

(e) **Adjustment and Payment of the GMP.** The GMP shall be subject to increase and/or decrease as provided in the Contract Documents. The District shall pay the total amount of the adjusted GMP to the Contractor, in partial payments from time to time, as provided in the General Provisions. Under no circumstances shall the sum total of the Construction Progress Payments (including, without limitation, payments of Retention) and Leaseback Payments made to the Contractor ever exceed the GMP. Upon completion of all Work, the Contractor shall provide a "final" change order to the District that establishes the total cost of the Work, including, without limitation, amounts attributable to sharing of savings, and the difference, if any, between such total cost and the GMP as adjusted under the Contract Documents.

(f) **Limitation on Compensation.** The District's sole and exclusive liability for compensating the Contractor for full and satisfactory performance of its obligations under the LLB Agreements and other Contract Documents shall be deemed and construed to be limited to an amount equal to the GMP as it may be adjusted in accordance with the Contract Documents. The Contractor hereby represents and guarantees that it can and shall satisfactorily and completely perform all of its obligations under the LLB Agreements, including, without limitation, performing all Work in strict accordance with the Contract Documents, without seeking funds from the District in excess of the GMP, as may be adjusted, or requesting a redesign or change in scope of the Work in order to reduce the Contractor's costs, and regardless of any anticipated or unanticipated increases in costs of labor, materials, equipment, or other services or things necessary in connection with the Work. The Contractor shall be solely responsible for any and all costs it incurs in performing its obligations under the LLB Agreements and other Contract Documents that are in excess of the GMP, as may be adjusted, without right to reimbursement from the District.

(g) **Prepayment Option.** The District shall have the option at any and all times during the performance of the Work, in its sole discretion, to prepay some or all of the Construction Progress Payments. Notwithstanding anything to the contrary, no election by the District to exercise such option

and no such prepayment by the District shall be deemed or construed to release the Contractor from any of its obligations under the LLB Agreements.

(h) ***Obligation to Minimize Cost of Project.*** The Parties have entered into the LLB Agreements with the understanding that, through use of the lease-leaseback construction delivery method, they will make reasonable efforts to minimize the cost of the Project and, with respect to such efforts, will cooperate with each other and their respective consultants and/or subcontractors. When planning and preparing to undertake construction of the Project, and during the course of construction of the Project, the Contractor shall make reasonable attempts to identify and implement measures, construction techniques, and administrative procedures as will assist in minimizing the cost of the Project. As applicable, such measures, techniques, and procedures shall include, but are not limited to:

- (i) Identify and suggest to the District any value-engineering or other design changes as may result in a lower overall Project cost;
- (ii) Maintain forward-looking perspective sufficient to identify and resolve early any design, materials availability, and other issues, thereby avoiding adverse impacts on the critical path of the Project;
- (iii) Efficiently schedule, track, and use rented and owned equipment;
- (iv) Purchase in advance any materials anticipated to be subject to price increases;
- (v) Appropriately secure, track and use materials to prevent losses and unnecessary waste, and ensure that materials are acquired only if needed for the Project;
- (vi) Allocate only such administrative assistance and other direct and indirect overhead costs as are not in excess of what is reasonably necessary for the Project;
- (vii) Efficiently administer and use “general conditions,” falsework, and other temporary facilities;
- (viii) Award multiple Subcontracts for a particular component of the Work if additional competitiveness among Subcontractors would be likely; and
- (ix) Ensure Work is ready for inspection prior to scheduling inspection, thereby minimizing re-inspections.

The Parties have entered into the Contract with the understanding that: (i) the Contract shall not be deemed or construed to be a “stipulated sum” or “fixed price” contract; (ii) the Contractor’s records relating to costs of the Project shall be accessible by the District at all reasonable times on an “open book” basis; and (iii) the Contractor shall be entitled to compensation under the Contract up to the amount of the GMP, as may be adjusted, but only for such costs as reasonably are attributable to and necessary for the Work. Nothing in this Subsection (h) shall be deemed or construed to limit or otherwise condition the Contractor’s obligations under Subsection (f) of this Section 6.

#### ***Section 7. Contractor Insurance.***

(a) The Contractor must comply with the insurance-related requirements set forth in Exhibit “F” attached to this CSA. The Contractor must also ensure compliance by its Subcontractors with the applicable provisions of such insurance-related requirements.

(b) During the term of the Site Lease and Leaseback Agreement, and until the subsequent return of the Project and Project Site to the District under the terms of the LLB Agreements, and only for third party Bodily Injury and/or Property Damage loss occurrences, Contractor shall be an additional insured for exposure as an owner or lessee of the project site and not for exposure as a builder or in any other capacity.

**Section 8. Contractor Registration.**

(a) **Labor Code Requirements.** No contractor or subcontractor may engage in the performance of a public work contract unless the contractor or subcontractor is currently registered with the California Department of Industrial Relations ("DIR") and qualified to perform public works under Labor Code Section 1725.5.

(b) **Applicability to Contract.** The Contractor shall be responsible for ensuring that it and all Subcontractors are currently and properly registered with the DIR and qualified to perform public work under Labor Code Section 1725.5. Prior to commencing the Work, the Contractor must complete, execute, and submit to the District the "Certification Regarding Contractor Registration" form included in the Required Contract Forms. Notwithstanding anything to the contrary, if at any time during the performance of the Work, the Contractor or any of its Subcontractors is not duly registered under Labor Code Section 1725.5 (including, without limitation, if the registration expires or the DIR revokes the registration), the District in its sole discretion may terminate the Contract and/or replace the Contractor or Subcontractor with a contractor or subcontractor that is duly registered under Labor Code Section 1725.5, at no cost to the District.

**Section 9. Compliance with Labor Law Requirements.** The Project is a "public works" project as defined in Section 1720 of the California Labor Code ("Labor Code") and, therefore, is subject to Part 7, Chapter 1, of the Labor Code and Title 8 of the California Code of Regulations, Section 16000 *et seq.* (collectively, "Labor Laws"). The Contractor acknowledges that, as provided by Senate Bill 854 (Stats. 2014, Ch. 28), the Project is subject to compliance monitoring and enforcement by the DIR. The Contractor, at no additional cost to the District, must: (i) comply with any and all applicable Labor Law requirements, including, without limitation, requirements for payment of "prevailing wages," inspection and submittal (electronically, as required) of payroll records, interview(s) of workers, *et cetera*; (ii) ensure that its Subcontractors are aware of and comply with the Labor Laws requirements; (iii) in connection with Labor Law compliance matters, cooperate with the DIR, the District and other entities with competent jurisdiction; and (iv) post all job-site notices required by law in connection with the Work, including, without limitation, postings required by DIR regulations. The District will coordinate and conduct any mandatory pre-construction conference, and the Contractor and each of its Subcontractors must attend the conference in order to ensure they are aware of applicable labor-law requirements. The General Provisions describe additional Labor Law requirements applicable to the Project. The following Labor Code sections are by this reference incorporated into and are a fully operative part of the Contract, and Contractor shall be solely responsible for compliance therewith:

- (i) Section 1735: Anti-Discrimination Requirements;
- (ii) Section 1775: Penalty for Prevailing Wage Rate Violations;
- (iii) Section 1776: Payroll Records;
- (iv) Sections 1777.5, 1777.6, and 1777.7: Apprenticeship Requirements;
- (v) Sections 1810 through 1812: Working Hour Restrictions;
- (vi) Sections 1813 and 1814: Penalty for Failure to Pay Overtime; and



(vii) Section 1815: Overtime Pay.

**Section 10. Disabled Veterans Business Enterprises.** The District has adopted a goal for participation in the Project by disabled veterans business enterprises ("DVBE") of three percent of the overall amount expended by the District for certain new-construction and modernization projects each year. The Contractor must make reasonable efforts to obtain and use DVBE services for performance of portions of the Work, whenever the opportunity arises prior to completion of the Work. Upon completion of the Work, and as a condition to final payment to the Contractor, the Contractor must complete, execute, and submit to the District the "Certification Regarding DVBE Participation" form included in the Required Project Forms.

**Section 11. Employee Background Checks.** The District has considered the totality of the circumstances relating to the Work and the Project (including, without limitation, whether minor-aged students may be present at some or all of the Project Site during performance of the Work) and has determined that, as of the Effective Date, the requirements for criminal-history background checks set forth in Section 8.2 of the General Provisions shall not initially be in effect. Notwithstanding the above, the District and Contractor agree that the District may, at any time during the performance of the Work, and at the District's sole discretion, require Contractor and any Subcontractor to comply with the requirements for criminal-history background checks set forth in Section 8.2 of the General Provisions. If the District requires such compliance, however, and upon request of the Contractor, the District (in its sole discretion and, in each case, with respect to specific circumstances) may consent to the Contractor implementing one or more alternatives to such background-check requirements as provided in Subsection 8.2.4 of the General Provisions. If the District requires such compliance, and the Contractor or any Subcontractor is a sole proprietor, the District shall prepare and submit the Contractor's/Subcontractor's fingerprints per Education Code section 45125.1. Any Contractor/Subcontractor that is a sole proprietor shall have an immediate and affirmative duty to inform the District of such status in order to allow the District to comply with Education Code section 45125.1.

**Section 12. Regular Working Hours.** For purposes of Section 11.2 of the General Provisions, "Regular Working Hours" shall mean any day, Monday through Friday, commencing at or after such time, and ending by or prior to such time, as may be specified in either an applicable local ordinance or any "Mitigation Monitoring Plan" adopted by the District under the California Environmental Quality Act, whichever is more restrictive.

**Section 13. Liquidated Damages.** The agreed amount of the liquidated damages, applicable if the Contractor is responsible for any delay in completion as provided in Section 11.8 of the General Provisions, shall be two thousand dollars (\$2,000) for each day or portion thereof.

**Section 14. Copies of Drawings and Specifications.** The District will provide one electronic copy of the Drawings and Specifications (in portable document format (or "pdf") or such other format as agreed by the Parties) to the Contractor at no charge. The Contractor shall be responsible, at its cost, for making such electronic or paper copies of the Drawings and Specifications as necessary for it to perform its obligations in connection with the Contract.

**Section 15. Representatives and Contacts.**

(a) **Authorized District Representatives.** The employees or consultants of the District who are authorized to represent the District in connection with the LLB Agreements for day-to-day communication and formal Notices (each an "Authorized District Representative") are identified in Exhibit

“G” attached to this CSA, which also specifies their address and contact information. Contractor acknowledges that the Authorized District Representatives do not have authority to approve change orders, modifications to the Contract Documents, authorize extra or out of scope work to be performed, or take any action to commit the District contractually. Any and all such actions must be brought to the District Board for its approval. The authority of the Authorized District Representatives is also subject to the District Board’s power and to any limitations described in the LLB Agreements. The District may at any time change any of the Authorized District Representatives, and the District shall provide notice of any such change to the Contractor. Notwithstanding that the Project is being completed using the LLB construction delivery method, the District, in its sole discretion, may at any time contract for program management, construction management, project management and/or other consultant services in connection with the Project, in which event some of the District’s and/or Architect’s duties in regard to the Project, as well as additional duties in regard to the Project, may be assigned to or otherwise performed by the program manager, construction manager, project manager, or other consultant.

(b) **Authorized Contractor Representatives.** The officers and staff of the Contractor who are authorized to represent the Contractor for purposes of the LLB Agreements (each an “Authorized Contractor Representative”) are identified in Exhibit G to this CSA, which also specifies their address and other contact information. The Contractor hereby agrees that the Authorized Contractor Representatives have such authority to represent the Contractor as required under the LLB Agreements. Subject to any applicable provisions of the Contract Documents, the Contractor may change any of the Authorized Contractor Representatives, and the Contractor shall provide notice of any such change to the District.

(c) **Architect Contacts.** The architect of record for the Project (“Architect”) is identified in Exhibit G to this CSA. The officers and/or staff of the Architect who are authorized to represent the Architect in connection with the Project are also identified in Exhibit G, together with their address and other contact information. Subject to any applicable provisions of its agreement with the District, the Architect may change any of its representatives, and the Architect or the District shall provide notice of any such change to the Contractor. Notwithstanding the foregoing, if no Architect or Architect representative is specified in Exhibit G to this CSA, the District shall delegate any duties specified in the LLB Agreements as being the responsibility of the Architect, to the extent such duties are applicable to the Project.

**Section 16. Modifications.** Except as may be permitted by the Contract Documents, this CSA may be amended or otherwise modified only by means of a written agreement duly-approved by the District Board, signed, and delivered by the Parties.

**Section 17. Recitals and Exhibits.** The Recitals set forth herein and the Exhibits referenced herein and attached hereto are hereby incorporated as operative and effective provisions of this CSA.

**Section 18. Counterparts.** This CSA may be signed in one or more counterparts, which, taken together, shall constitute one and the same original instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more original copies of this CSA bearing original signatures of both Parties.

**Section 19. Contracts regarding the Russian Federation.** The Contractor may be subject to Executive Order N-6-22, dated March 4, 2022, which was issued by the Governor of California. Executive Order N-6-22 (“EO”) involves sanctions in response to the military conflict between the Russian Federation and the Ukraine. The Contractor will be responsible for compliance with the EO and shall submit with its

proposal the "Certification regarding Executive Order N-6-22 by Governor of the State of California Regarding Contracts and Sanctions on the Russian Federation" form.

**Section 20. Compliance with California Air Resources Board Regulations.** The California Air Resources Board ("CARB") has implemented regulations for the use of certain vehicles on public works projects. For any project awarded after January 1, 2024, and under the regulations (see Cal. Code Regs., tit. 13, § 2449), the District must obtain valid Certificates of Reported Compliance ("CRC") from all contractors and listed subcontractors before awarding a project. The District will be required to retain CRCs for three years after the project is complete, and the CRCs are subject to review by the CARB upon five calendar days' notice. The Contractor and Subcontractors shall comply with the foregoing requirements and shall submit the "California Air Resources Board Compliance Form."

**Section 21. Due Authority of Signatories.** Each person signing this CSA represents and warrants that he or she has been duly authorized by appropriate action of the Party he or she represents to execute, and thereby bind such Party to, this CSA.

**In Witness Whereof,** the Parties have executed this CSA as evidenced by the signatures of their authorized representatives below.

**Del Mar Union School District**

\_\_\_\_\_

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

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

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

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

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

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

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**EXHIBIT A**  
**DESCRIPTION OF WORK**

The Project and the LLB Agreements contemplate both preconstruction services and construction services. While the construction services (defined below and referred to in the LLB Agreements as the “Work”) will not be authorized until the requirements of Sections 2 and 3 of the Site Lease are met, the Parties intend that preconstruction services will begin upon authorization and full execution of the LLB Agreements.

Preconstruction Work

The preconstruction services (defined here and referred to in the LLB Agreements as the “Preconstruction Work”) consists of reviewing the Proposed Project’s Drawings and Specifications during the design of the Project to identify and note all deficiencies, incongruities and inconsistencies that may affect constructability of the Project including, but not limited to, design and specification omissions, incomplete and/or inconsistent plans, details and specifications, and any lack of coordination, together with all other appropriate, necessary and/or required services to facilitate and prepare for the successful development and construction of the Project.

The Preconstruction Work also includes, but is not limited to, the following tasks: (i) design meetings with the Architects and engineers (“A/E”); (ii) review and validation of estimates prepared by the Architect; (iii) preparation of a master critical path method schedule for the Project; (iv) value engineering; and (v) preparation of cost estimates or updated cost estimates as follows:

- (a) At the end of architectural schematic design and engineering basis of design reports. Cost estimating by Contractor will include life cycle cost analysis for building systems, which will allow District to decide direction for A/E team;
- (b) At the end of design development. Contractor will participate in A/E building information modeling clash detection process as constructibility advisor;
- (c) Construction documents 50% - same as design development above, plus Contractor will estimate Final GMP for grading/utility construction at this point including allowances, contingencies, general conditions, costs and fees; and
- (d) Construction documents 100% - same as design development above, plus Contractor will provide Final GMP for remainder of construction at this point including allowances, contingencies, general conditions, costs and fees;

Constructability reviews; value engineering; construction planning and phasing, and cost proposal strategies shall be performed and completed all with the goal that the DSA-approved plans and specifications for the Project will be complete such that the Project can be constructed by a competent licensed general building contractor in strict accordance with the DSA-approved plans and specifications without change orders, delays, or additional charges to District.

Contractor shall not provide any Preconstruction Work or Work that requires a contractor's license pursuant to Business and Professions Code section 7065 et seq. unless and until: (1) the District has received approval from DSA; and (2) the District has authorized Contractor to commence the Work as required by the LLB Agreements.

All Preconstruction Work must be individually priced out by line item and no Preconstruction Work may occur unless the District gives prior written consent.

#### The Work

The Work consists of all labor, materials, equipment, tools, utilities, temporary facilities, transportation, goods, and other services and things of any nature whatsoever as are expressly and impliedly necessary to timely and satisfactorily complete the Project in strict accordance with the LLB Agreements, the Drawings and Specifications prepared by the Architect and, to the extent applicable, approved by the DSA, and all other Contract Documents for the Project, including any Contract Documents providing for changes to the initial scope of the Work.

The Project consists, generally, of all of the following: The complete modernization of the \_\_\_\_\_ School located at 13030 \_\_\_\_\_ Drive, San Diego, CA 92130.

**EXHIBIT B**  
**REQUIRED CONTRACT FORMS**

1. Certification Regarding Workers Compensation
2. Payment Bond
3. Performance Bond
4. Certification Regarding Drug-Free Workplace
5. Certification Regarding Tobacco-Free Workplace
6. Certification Regarding Asbestos
7. Notice and Certification Regarding Lead-Free Materials
8. Certification Regarding Iran Contracting Act
9. Certification Regarding Contractor Registration

**CERTIFICATION REGARDING WORKERS COMPENSATION**  
(Labor Code § 1861)

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, under penalty of perjury under the laws of the State of California, that all of the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor; and
- (iii) The Contractor is aware of the provisions of Labor Code Section 3700 *et seq.*, which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and the Contractor shall comply with such provisions prior to commencing and throughout the entirety of performance of the Work on the Project.

Representative Name: \_\_\_\_\_

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

Representative Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## PAYMENT BOND

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Surety:** \_\_\_\_\_

**Bond #:** \_\_\_\_\_

**Penal Sum:** \_\_\_\_\_ (\$ \_\_\_\_\_)

**WHEREAS**, the Project identified above is a public works project in accordance with applicable law, and the District identified above awarded to the Contractor identified above (herein, the "Principal") a contract providing for completion of the Project ("Contract"); and

**WHEREAS**, the Contract and/or California Civil Code Section 9550 *et seq.* require that the Principal furnish a labor and materials payment bond to the District that ensures the faithful performance of the Principal's obligations under the Contract to pay for materials, labor, and other things as required by law, which bond must have a penal sum equal to one hundred percent of the total amount payable by the District to the Principal under the Contract; and

**WHEREAS**, the Surety identified above hereby represents to the District that the Surety is an "admitted surety insurer" in accordance with Section 995.120 of the California Code of Civil Procedure;

**NOW, THEREFORE**, we, the Principal and Surety, are hereby held and firmly bound to the District in an amount of lawful money of the United States of America equal to the Penal Sum specified above, the payment of which well and truly to be made, we hereby bind, jointly and severally, ourselves and our heirs, executors, administrators, and successors.

**THE CONDITION OF THIS OBLIGATION** is that, if the Principal, or any of its heirs, executors, administrators, successors or assigns, or any of its subcontractors, fail in connection with the Project to pay as and when required (1) any of the persons authorized by California Civil Code Section 9100 to assert a claim against the Payment Bond, (2) amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or (3) any amounts required to be deducted, withheld, and paid over to the Employment Development Department from wages of employees of the Principal or any of its subcontractors under Section 13020 of the Unemployment Insurance Code with respect to such work and labor, then the Surety shall pay, in full, any and all claims for such amounts, in a total amount not in excess of the penal sum set forth herein, and also, in case suit is brought upon this Payment Bond, such reasonable attorneys' fees as are fixed by the court.

This Payment Bond shall inure to the benefit of any and all of the persons named in California Civil Code Section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Payment Bond.

The Surety hereby stipulates and agrees that this Payment Bond shall not be exonerated and the Surety shall not be released from its obligations under this Payment Bond on account of: (1) any extension of time, change, amendment or other modification of the Contract or other Project documents, or of the Principal's rights and/or obligations pursuant thereto, and Surety hereby waives notice of any and all such modifications; (2) any rescission or attempted rescission of the Contract or this Payment Bond; (3) any fraud of any person or entity other than fraud of a claimant in making a claim on this Payment Bond; or



(4) any breach of any contract by the District, the Principal, or any person or entity for whose benefit Surety has issued this Payment Bond. The Surety further stipulates and agrees that this Payment Bond shall be construed most strongly against the Surety and in favor of the persons and entities for whose benefit Surety has issued this Payment Bond.

The Surety shall not be deemed to have fully and appropriately executed this Payment Bond unless Surety has provided all of the following information:

**SURETY'S SOUTHERN CALIFORNIA/LOCAL  
REPRESENTATIVE**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Telephone Number

**SURETY'S REPRESENTATIVE FOR FILING  
CLAIMS**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Telephone Number

***(The remainder of this page intentionally left blank.)***

Each person that signs this Payment Bond on behalf of the Principal or the Surety thereby represents and warrants that the party he or she represents has duly authorized him or her to sign, and thereby bind such party to, this Payment Bond.

**IN WITNESS WHEREOF**, the Principal and Surety have executed this Payment Bond as evidenced by the signatures, below, of their respective, duly-authorized representatives.

**PRINCIPAL**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Title

\_\_\_\_\_  
Date Signed

**Principal: Attach Notary acknowledgment to this Payment Bond and, if applicable, imprint corporate seal in the space below this line.**

**SURETY**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Title

\_\_\_\_\_  
Date Signed

**Surety: Attach Notary acknowledgment and power of attorney to this Payment Bond and imprint corporate seal in the space below this line.**

## PERFORMANCE BOND

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Surety:** \_\_\_\_\_

**Bond #:** \_\_\_\_\_

**Penal Sum:** \_\_\_\_\_ (\$ \_\_\_\_\_)

**WHEREAS**, the Project identified above is a public works project in accordance with applicable law, and the District identified above awarded to the Contractor identified above (herein, the "Principal") a contract providing for completion of the Project ("Contract"); and

**WHEREAS**, the Contract requires that the Principal furnish a bond to the District that ensures the faithful performance of the Principal's obligations under the Contract to fully and satisfactorily perform the work and services required by the Contract, which bond must have a penal sum equal to one hundred percent of the total amount payable by the District to the Principal under the Contract; and

**WHEREAS**, the Surety identified above hereby represents and warrants to the District that the Surety is an "admitted surety insurer" in accordance with Section 995.120 of the California Code of Civil Procedure;

**NOW, THEREFORE**, we, the Principal and Surety, are hereby held and firmly bound to the District in an amount of lawful money of the United States of America equal to the Penal Sum specified above, the payment of which well and truly to be made, we hereby bind, jointly and severally, ourselves and our heirs, executors, administrators, and successors.

**THE CONDITION OF THE FOREGOING PAYMENT OBLIGATION** is that, if the Principal (or, to the extent permitted by the Contract, its heirs, executors, administrators, successors or assigns) shall fully perform all of the undertakings, terms, covenants, conditions, agreements and other obligations required of the Principal under the Contract and any amendments or changes thereto, in full and strict conformance with the requirements thereof, and all within the time and in the manner designated therein, in all respects according to their true intent and meaning, then such obligation shall become null and void; otherwise, it shall remain in full force and effect.

A condition precedent to the satisfactory completion of the Contract is that, after the acceptance of the Project by the District, the payment obligation of this Performance Bond shall remain in full force and effect, in the penal sum set forth herein, during all periods in which the Principal has any obligations under the Contract (including, without limitation, the obligations to make full, complete, and satisfactory repair and replacements of any defective materials and/or faulty workmanship, to pay liquidated damages and/or to indemnify the District or any other party), and the obligation of Surety hereunder shall continue so long as any such obligation of Principal continues to exist. The obligations of Surety under this Performance Bond are exclusive of and distinct from any obligations Surety may have under any labor and materials payment bond applicable to the Project.

Whenever the District declares the Principal to be in default of its obligations under the Contract, the District having performed its obligations thereunder, the Surety, promptly within the time required by the Contract, shall remedy the default or, at the District's discretion, shall:

- (i) Complete the Project in strict accordance with the terms and conditions of the Contract, including, without limitation, provisions for the time(s) within which the Surety must act; or
- (ii) Obtain, or permit the District to obtain, one or more bids or proposals for any and all work required to complete the Project in strict accordance with the terms and conditions of the Contract, and upon determination of each lowest responsive and responsible bidder or proposer, arrange for such bidder or proposer and the District to enter into a contract, which may be in accordance with Education Code Section 17406, and make available as the work progresses sufficient funds, up to and including a total amount equal to the penal sum set forth herein less the balance of the contract amount, to pay the cost of completing the Project.

The term "balance of the contract amount," as used in the foregoing paragraph, shall mean the total amount payable by the District to Principal under the Contract and any amendments and changes thereto, less the amounts thereof previously paid by the District to the Principal.

In performing its obligations under this Performance Bond, the Surety expressly agrees that: (i) absent the express written consent of the District, the Surety shall neither use the Principal nor accept a bid or proposal from the Principal for purposes of completing the Project; and (ii) the District shall have the right, in its reasonable discretion, to reject any contractor or subcontractor that the Surety may propose to fulfill such obligations. In the event the District provides notice to the Surety that the Principal is in default of its obligations under the Contract and, therefore, the Surety is required, as provided herein, to complete the Project or to arrange for the District to contract for completion of the Project, and, through no fault of the District, the Surety has exceeded the time permitted under the Contract for doing so, the District may arrange to use replacement contractor(s) selected and contracted for by the District to complete the Project and, in such event, the Surety's payment and other obligations under this Performance Bond shall not be thereby voided, diminished, or otherwise limited.

Notwithstanding anything to the contrary, in the event the District determines that the Principal has not met, or likely will be unable to meet, any deadline required under the Contract, or that Principal's performance does not conform with the requirements of the Contract, the District may notify the Surety. In such event, the Surety must make reasonable attempts to assist the Principal to resolve or avoid the default by the Principal. The Surety and Principal expressly agree that neither the giving of such notice by the District nor the giving of such assistance by the Surety shall be deemed or construed to constitute interference by the District or the Surety with the Contract or the ability of the Principal to obtain any bond(s) in any amount(s) from any surety insurer(s).

For value received, the Surety hereby stipulates and agrees that this Performance Bond shall not be exonerated and the Surety shall not be released from its obligations under this Performance Bond by any change, amendment or other modification of the Contract or other Project documents, or of the Principal's rights and/or obligations pursuant thereto, and Surety hereby waives notice of any and all such modifications.

***(The remainder of this page intentionally left blank.)***

The Surety shall not be deemed to have fully and appropriately executed this Performance Bond unless Surety has provided all of the following information:

**SURETY'S SOUTHERN CALIFORNIA/LOCAL  
REPRESENTATIVE**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Telephone Number

**SURETY'S REPRESENTATIVE FOR FILING  
CLAIMS**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Telephone Number

***(The remainder of this page intentionally left blank.)***

Each person that signs this Performance Bond on behalf of the Principal or the Surety thereby represents and warrants that the party he or she represents has duly authorized him or her to sign, and thereby bind such party to, this Performance Bond.

**IN WITNESS WHEREOF**, the Principal and Surety have executed this Performance Bond as evidenced by the signatures, below, of their respective, duly-authorized representatives.

**PRINCIPAL**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Title

\_\_\_\_\_  
Date Signed

**SURETY**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Representative Signature

\_\_\_\_\_  
Representative Name

\_\_\_\_\_  
Representative Title

\_\_\_\_\_  
Date Signed

**Principal:** Attach Notary acknowledgment to this Performance Bond and, if applicable, imprint corporate seal in the space below this line.

**Surety:** Attach Notary acknowledgment and power of attorney to this Performance Bond and imprint corporate seal in the space below this line.

## CERTIFICATION REGARDING DRUG-FREE WORKPLACE

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, under penalty of perjury under the laws of the State of California, that all of the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor;
- (ii) The Contractor, in accordance with Government Code Section 8350 *et seq.*, the Drug-Free Workplace Act of 1990, shall provide a drug-free workplace by doing all of the following:
  - (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying actions which will be taken against employees for violations of the prohibition.
  - (2) Establishing a drug-free awareness program to inform employees about all of the following:
    - (a) The dangers of drug abuse in the workplace;
    - (b) The Contractor's policy of maintaining a drug-free workplace;
    - (c) Availability of drug counseling, rehabilitation and employee-assistance programs; and
    - (d) The penalties that may be imposed upon employees for drug abuse violations.
  - (3) Requiring that each employee engaged in the performance of Work on the Project be given a copy of the statement required by subdivision (1), above, and that, as a condition of employment on the Project, the employee agrees to abide by the terms of the statement.
- (iii) The Contractor hereby acknowledges and agrees that, if the District determines that either (a) the certification herein is false, or (b) the Contractor violated this certification by failing to carry out the requirements of Section 8355, then the Contract awarded to the Contractor shall be subject to termination, suspension of payments, or both, and the Contractor shall be subject to debarment in accordance with the requirements of Section 8350 *et seq.*

Representative Name: \_\_\_\_\_

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

Representative Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## CERTIFICATION REGARDING TOBACCO-FREE WORKPLACE

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, under penalty of perjury under the laws of the State of California, that all of the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor; and
- (ii) The Contractor shall ensure a tobacco-free workplace by doing both of the following:
  - (1) Providing the following provision, in writing, to each person providing any labor or services on or at the Project Site, including, without limitation, any delivery personnel:

All properties and facilities operated by the Del Mar Union School District, including, without limitation, the Project Site, are tobacco-free work places. It is strictly forbidden while in, on, or at any District property or facility (whether owned or leased) to smoke, chew or otherwise use tobacco products, including e-cigarettes or so-called “vape” accessories. The Contractor shall require each person (including, without limitation, any employee of the Contractor or any subcontractor or supplier) found in violation of these requirements to permanently leave the Project Site, and the Contractor shall not thereafter permit such person to be present in, on or at the Project Site.

- (2) Enforcing the requirements specified in the foregoing provision.

Representative Name: \_\_\_\_\_

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

Representative Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_



## CERTIFICATION REGARDING ASBESTOS

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, under penalty of perjury under California law, that:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor.
- (ii) The Contractor is aware and acknowledges that, for purposes of this certification: (a) asbestos is any of chrysotile, crocidolite, amosite, anthophyllite, tremolite, actinolite or other minerals generally known as asbestos; and (b) an asbestos-containing material is any material or thing, or any component thereof, that contains, consists of, or is made up of greater than one-tenth of one percent (0.1%) asbestos.
- (iii) The Contractor shall not use on, or incorporate into, the Project any asbestos or asbestos-containing materials, including, without limitation, in any tools, devices, clothing, or equipment used in the construction of any portion of the Project.
- (iv) The Contractor has instructed its employees and subcontractors in regard to such prohibition against asbestos and asbestos-containing materials, and in regard to the hazards, risks and liabilities involved in the use of asbestos and asbestos-containing materials.
- (v) The Contractor acknowledges and agrees that:
  - (a) Each dispute as to whether any material, equipment or other thing used on, or incorporated into, the Work contains asbestos or is an asbestos-containing material shall be settled by electron microscopy; and
  - (b) The costs of any such tests shall be paid by the Contractor if the material is found to contain asbestos at a level greater than as specified herein; and
  - (c) The District shall reject any and all materials or other things incorporated into the Work that are determined to contain asbestos or asbestos-containing materials, and the Contractor, at no cost to the District, must remove, replace and/or repair as necessary any and all affected portions of the Work.

Representative Name: \_\_\_\_\_

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

Representative Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## NOTICE AND CERTIFICATION REGARDING LEAD-FREE MATERIALS

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

### NOTICE:

If the Work is other than entirely new construction, the Work may disturb lead-containing or lead-based paint and other building materials that may be incorporated into existing buildings or other improvements located on the site for construction of the Project ("Project Site"). Until sampling and testing confirms otherwise, it shall be presumed that all school buildings and improvements built in 1992 or earlier contain lead-based or lead-containing paint. The Contractor must complete, sign and submit a copy of this Notice and Certification Regarding Lead-Free Materials to the District prior to commencing the Work.

The Contractor shall be responsible for ensuring that its employees and subcontractors fully and adequately comply with, and that the Work is performed in conformance with, all applicable laws, ordinances, rules and regulations governing lead-based or lead-containing paint and other materials, including, but not limited to: (i) Education Code Section 32240 *et seq.*; (ii) Title 8, California Code of Regulations, Section 1532.1; and (iii) Title 17, California Code of Regulations, Section 35001, *et seq.*

If the Work involves renovation, modernization or other disturbance of any existing school buildings or improvements, the Contractor shall sample and test all materials as appropriate to determine whether lead-based paint or other materials are present and may present a hazard or threat during any such renovation or modernization. The Contractor shall provide the District with the results of any and all such testing, whether conducted prior to commencement of the Work, during the Work, or after completion of the Work.

Any and all Work that may result in the disturbance of lead-containing building materials must be coordinated through the District. Consistent with applicable law, when a lead-based hazard is identified, the Contractor shall utilize personnel certified by the California Department of Public Health to perform lead-related services. The District may at any time request that Contractor provide the training and certification records of each employee of the Contractor or subcontractor who provides lead-related services. The Contractor shall be solely responsible for proper disposal, in conformance with all applicable laws, of any and all lead-containing, lead-based or hazardous waste products including, but not limited to, paint chips, residue, and any other material that may be exposed or disturbed during the course of the Work.

California law prohibits, in the construction of any new school facility or in the modernization or renovation of any existing school facility, the use of lead-containing or lead-based paint, plumbing, solders, and other materials that may constitute a potential source of lead contamination.

In the event the Contractor or its employees or subcontractors fail to comply with all applicable laws, rules and regulations related to lead-containing or lead-based paints and other materials, or fail to comply with any other requirements set forth in this Notice and Certification Regarding Lead-Free Materials, the Contractor shall be held solely responsible for any and all costs associated with any investigative and/or corrective actions deemed necessary by the District, and shall indemnify, defend and hold harmless the

District, under the indemnification provisions of the Contract for the Work, with respect to any and all claims, demands, actions, damages, costs, expenses, and other liabilities arising therefrom.

**CERTIFICATION:**

The undersigned, under penalty of perjury, hereby certifies that: (i) the undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor; (ii) the Contractor has received notice that lead-containing or lead-based paint or other materials may be located on the Project Site; (iii) the Contractor has received notice that it must comply with all applicable laws, rules and regulations governing work with, and disposal of, such materials; and (iv) the Contractor shall comply with all such applicable laws, rules and regulations, as well as the other requirements of this Notice and Certification Regarding Lead-Free Materials.

Representative Name: \_\_\_\_\_

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

Representative Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**CERTIFICATION REGARDING IRAN CONTRACTING ACT**

(Public Contract Code Section 2200 *et seq.*)

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, under penalty of perjury under the laws of the State of California, that the following is true and correct:

- (i) I am a duly-authorized representative of the Contractor and, in that capacity, I have executed this certification on behalf of the Contractor.
- (ii) The appropriate box is checked immediately below (check only one box), and the statement relating to the Contractor's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) following such box is true and correct.

☐ The Contractor is not:

- (i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or
- (ii) a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

☐ The District has exempted the Contractor from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, the District will be unable to obtain the goods and/or services to be provided under the Contract.

☐ The maximum total amount payable to the Contractor in connection with the Project, as of the date of this certification, does not exceed one million dollars (\$1,000,000.00).

Representative Name: \_\_\_\_\_

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

Representative Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Note:** In accordance with Public Contract Code Section 2205, false certification of this form may result in civil penalties equal to the greater of \$250,000 or twice the Contract Amount, termination of the Contract and/or ineligibility to bid on contracts for three years.

## CERTIFICATION REGARDING CONTRACTOR REGISTRATION

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, under penalty of perjury under the laws of the State of California, that the following is true and correct:

- (i) I am a duly-authorized representative of the Contractor and, in that capacity, I have executed this certification on behalf of the Contractor.
- (ii) The Contractor is aware and acknowledges that, except as authorized by Business and Professions Code Section 7029.1 and Public Contract Code Section 20103.5, no contractor may bid on a public works project unless the contractor is, and no subcontractor may be listed in any bid for a public works project unless the subcontractor is, currently registered with the DIR and qualified to perform public work under Labor Code Section 1725.5.
- (iii) The Contractor is aware and acknowledges that no contractor or subcontractor may be awarded a contract for work on a public works project, or may perform any work on a public works project, unless the contractor or subcontractor is currently registered with the DIR and qualified to perform public work under Labor Code Section 1725.5.
- (iv) The Contractor is aware and acknowledges that, notwithstanding anything to the contrary, if at any time during the performance of the Work, the Contractor or any of its Subcontractors is not duly registered under Labor Code Section 1725.5 (including, without limitation, if the registration expires or the DIR revokes the registration), the District may cancel the Contract and/or replace the Contractor or Subcontractor with a contractor or subcontractor that is duly registered under Labor Code Section 1725.5, and the Contractor and/or its surety shall be responsible for any and all associated costs incurred by the District.
- (v) The Contractor and each Subcontractor who will perform any of the Work are duly registered with the DIR under Labor Code Section 1725.5.
- (vi) Evidence (in the form described in the note below) that the Contractor and each Subcontractor are duly registered with the DIR under Labor Code Section 1725.5 is attached to this certification.

Representative Name: \_\_\_\_\_

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

Representative Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Note:** This certification must be accompanied by print-outs of the applicable screens on the DIR website evidencing that the Contractor and all Subcontractors are currently registered under Labor Code Section 1725.5.

**EXHIBIT C**  
**REQUIRED PROJECT FORMS**

1. Certification Regarding Employee Background Checks
2. Daily Time and Materials Report
3. Progress Payment Request
4. Conditional Waiver and Release (Progress Payment)
5. Unconditional Waiver and Release (Progress Payment)
6. Conditional Waiver and Release (Final Payment)
7. Unconditional Waiver and Release (Final Payment)
8. Certification Regarding Readiness for Inspection
9. Contractor Guarantee
10. Certification Regarding DVBE Participation
11. Short Interval Schedule

## CERTIFICATION REGARDING EMPLOYEE BACKGROUND CHECKS

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, under penalty of perjury under the laws of the State of California, that all of the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor;
- (ii) The Contractor has fully complied with the requirements of Section 8.2 of the General Provisions for employee background checks, including, without limitation, with respect to employees of any subcontractors that the Contractor intends to use on the Project;
- (iii) All of the employees of the Contractor and its subcontractors who will enter in or upon the Project Site, or be in the vicinity of the Project Site, in connection with the Project are identified on the Attachment(s) to this certification;
- (iv) None of the employees of the Contractor or its subcontractors who are identified on the Attachment(s) to this certification have been convicted of a violent or serious felony as defined in Subdivision (c) of Education Code Section 45125.2; and
- (v) Except for the employees identified on the Attachment(s) to this certification (and except for the employees identified on attachment(s) to other certifications using this form that the Contractor has submitted to the District in connection with the Project), the Contractor shall not suffer or permit any employees of the Contractor or any of its subcontractors to enter in or upon the Project Site, or to be in the vicinity of the Project Site, in connection with the Project.

Representative Name: \_\_\_\_\_

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

Representative Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## ATTACHMENT TO CERTIFICATION REGARDING EMPLOYEE BACKGROUND CHECKS

### Instructions

- (1) For each employee, insert all required information (as specified in the table below) in one row of the table.
- (2) In the “Driver License/Identification” column in the table below: (i) specify the number of the employee’s driver’s license or, if the employee does not have a driver’s license, the number of the employee’s state-issued identification; and (ii) specify the state that issued the driver’s license or identification.
- (3) If identifying more than 15 employees: (i) use copies of this Attachment to identify the additional employees; and (ii) on each such copy, specify the page number and total number of pages where indicated at the bottom of this Attachment.

	Employer (Company)	Employee Name and Position	Sex	Date of Birth	Height	Weight	Hair Color	Eye Color	Driver License/Identification
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									

Page \_\_\_\_ of \_\_\_\_



## DAILY TIME AND MATERIALS REPORT

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Description of Work:** \_\_\_\_\_

**Report No.:** \_\_\_\_\_ **Date Work Performed:** \_\_\_\_\_ **Date of Report:** \_\_\_\_\_

### LABOR:

No.	Hourly Rate	Time	Description	Cost
TOTAL				

### EQUIPMENT:

No.	Hourly Rate	Time	Description	Cost
TOTAL				

### MATERIALS:

Quantity	Unit Cost	Description	Cost
TOTAL			

**CONTRACTOR CERTIFICATION:** The undersigned hereby certifies to the District, under penalty of perjury under the laws of the State of California, that: (i) the undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this Report on behalf of the Contractor; (ii) the descriptions of the labor, equipment and materials employed in completing the Work covered by this Report are true, accurate, and complete.

Representative Name:

\_\_\_\_\_

Representative Title:

\_\_\_\_\_

Representative Signature:

\_\_\_\_\_

Date Signed:

\_\_\_\_\_

**ACKNOWLEDGEMENT BY INSPECTOR OF RECORD:** Based on personal observation, the undersigned believes that the descriptions of the labor, equipment and materials employed in completing the Work covered by this Report are true, accurate, and complete. This acknowledgement does not constitute approval on behalf of the District.

Inspector Name:

\_\_\_\_\_

Inspector Signature:

\_\_\_\_\_

Date Signed:

\_\_\_\_\_

## PROGRESS PAYMENT REQUEST

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Payment Request No:** \_\_\_\_\_

**Request Date:** \_\_\_\_\_

**For period to:** \_\_\_\_\_

**Date Request Received** (to be completed by Architect): \_\_\_\_\_

**CONTRACTOR'S REQUEST FOR PROGRESS PAYMENT:** The Contractor hereby requests payment in connection with the Project, as shown below and on attached Continuations Sheet(s).

1. Original GMP..... \$ \_\_\_\_\_
2. Net approved and executed Change Orders (from Continuation Sheet(s)) \$ \_\_\_\_\_
3. GMP as adjusted to date (line 1 + line 2)..... \$ \_\_\_\_\_
4. Total Work completed to date (including this Progress Payment Request) \$ \_\_\_\_\_
5. Retention from total Work completed to date (per Contract) ..... \$ \_\_\_\_\_
6. Total Work completed less total Retention (line 4 – line 5) ..... \$ \_\_\_\_\_
7. Total prior Progress Payment Requests paid..... \$ \_\_\_\_\_
8. Payment due for this Progress Payment Request (line 6 – line 7) ..... \$ \_\_\_\_\_
9. Balance to finish, including Retention (line 3 – line 4) ..... \$ \_\_\_\_\_

**CONTRACTOR CERTIFICATION:** The undersigned hereby certifies to the District, under penalty of perjury under the laws of the State of California, that: (i) the undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this Progress Payment Request on behalf of the Contractor; (ii) the portion of the Work covered by this Progress Payment Request has been completed in strict accordance with the Contract Documents; (iii) the amount specified on Line 8, above, is now due and payable; and (iv) the Contractor has paid all Subcontractors and others due any payment attributable to Work covered by prior Progress Payment Requests.

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

**ARCHITECT CERTIFICATION:** The undersigned hereby certifies to the District, under penalty of perjury under the laws of the State of California, that: (i) the undersigned is a duly-authorized representative of the Architect and, in that capacity, has executed this Request for Progress Payment on behalf of the Architect; (ii) the Architect has determined based on site-observations and the data substantiating this Progress Payment Request that the Work has progressed as indicated herein, the quality of the Work is in accordance with the Contract Documents, and the Contractor is hereby entitled to payment of the amount specified on Line 8, above.

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

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

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Inspector of Record Acknowledgement of Review:

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

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

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

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

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

District Acknowledgement of Review:

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

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

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## PROGRESS PAYMENT REQUEST – CONTINUATION SHEET

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Payment Request No:** \_\_\_\_\_

**Request Date:** \_\_\_\_\_

**For period to:** \_\_\_\_\_

A	B	C	D	E	F	G	H	I
Item No.	Description of Work	Scheduled Value	Work Completed		Total Complete To Date (D+E)	% (F/C)	Balance to Finish (C-F)	Retention
			All prior Applications	This Period				
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								
9.								
10.								
11.								
12.								
13.								
14.								
15.								
16.								
17.								
	<b>Sub-Total</b>							
	<b>Change Order Work</b>							
	Change Order No. 1							
	Change Order No. 2							
	Change Order No. 3							
	Change Order No. 4							
	Change Order No. 5							

	<b>Total To Date</b>							

<b>Change Order Summary</b>	<b>Additions</b>	<b>Deductions</b>	<b>Net Change to Date</b>
Total of all prior Change Orders			
Change Orders approved this month			
Total Additive/Deductive Changes to Date			

Continuation Sheet \_\_\_\_\_ of \_\_\_\_\_

**CONDITIONAL WAIVER AND RELEASE (PROGRESS PAYMENT)**  
(Civil Code Section 8132)

**NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

IDENTIFYING INFORMATION

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

Through Date: \_\_\_\_\_

CONDITIONAL WAIVER AND RELEASE

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, under a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_

Amount of Check: \$ \_\_\_\_\_

Check Payable to: \_\_\_\_\_

EXCEPTIONS

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:  
Date(s) of waiver and release: \_\_\_\_\_  
Amount(s) of unpaid progress payment(s): \$ \_\_\_\_\_
- (4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

SIGNATURE

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**UNCONDITIONAL WAIVER AND RELEASE (PROGRESS PAYMENT)**  
(Civil Code Section 8134)

**NOTICE: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.**

IDENTIFYING INFORMATION

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

Through Date: \_\_\_\_\_

UNCONDITIONAL WAIVER AND RELEASE

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, under a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment: \$ \_\_\_\_\_

EXCEPTIONS

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

SIGNATURE

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_



**CONDITIONAL WAIVER AND RELEASE (FINAL PAYMENT)**  
(Civil Code Section 8136)

**NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.**

IDENTIFYING INFORMATION

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

CONDITIONAL WAIVER AND RELEASE

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, under a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_

Amount of Check: \$ \_\_\_\_\_

Check Payable to: \_\_\_\_\_

EXCEPTIONS

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ \_\_\_\_\_

SIGNATURE

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**UNCONDITIONAL WAIVER AND RELEASE (FINAL PAYMENT)**  
(Civil Code Section 8138)

**NOTICE: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.**

IDENTIFYING INFORMATION

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

UNCONDITIONAL WAIVER AND RELEASE

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, under a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. This claimant has been paid in full.

EXCEPTIONS

This document does not affect any of the following:

Disputed claims for extras in the amount of: \$ \_\_\_\_\_

SIGNATURE

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

## CERTIFICATION REGARDING READINESS FOR INSPECTION

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Inspection requested for** (check only one of the following):

~ **All of the Work**      ~ **Portion of the Work, described as:** \_\_\_\_\_

---

**(Note:** District approval required, in advance, for inspection of only a portion of the Work.)

---

The undersigned hereby certifies to the District, under penalty of perjury under the laws of the State of California, that all of the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor;
- (ii) All inspection and testing of the Work has been completed as required by the Contract Documents and applicable law, including, without limitation, in the presence of, as applicable, the District, the Architect, the Inspector of Record, and other consultants, inspectors and government agency representatives;
- (iii) The Contractor has determined, in accordance with Section 16.1 of the General Provisions, that the Work has been satisfactorily performed in accordance with the Contract Documents (including, without limitation, that all equipment and systems installed in connection with the Work are fully operational), and the Work is now ready for inspection for purposes of determining whether the Work has been substantially completed;
- (iv) If this certification is submitted in connection with a re-inspection of any Work, the previously incomplete and/or unsatisfactory portions of the Work have been completed and/or corrected in accordance with the Contract Documents; and
- (v) The Contractor acknowledges that, as provided in Section 16.7 of the General Provisions, the Contractor shall be solely responsible and liable for any and all costs incurred by the District if the Contractor requests an inspection of any portion of the Work in any of the following circumstances:
  - (1) It is reasonably apparent that such portion of the Work is not complete and ready for inspection;
  - (2) In the reasonable opinion of the District, Architect, construction manager or Inspector of Record, the Contractor is using the inspection as a means to define or determine the scope of such Work or the scope of the uncompleted portions of any Work;

- (3) In the reasonable opinion of the District, Architect, construction manager and/or Inspector of Record, the Contractor is using the inspection as a means to accelerate the Work of any Subcontractor;
- (4) The Work fails to pass the inspection due to any negligence or misconduct of the Contractor or any Subcontractor or other person or entity on, at or in the vicinity of the Project Site on account of the Work;
- (5) Work noted as incomplete and/or unsatisfactory during a prior inspection is not reasonably complete and/or satisfactory upon re-inspection; or
- (6) The Work is not ready for inspection and it is reasonably apparent that, for any other reason, the Contractor did not request the inspection in good faith.

Representative Name: \_\_\_\_\_

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

Representative Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## CONTRACTOR GUARANTEE

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

The undersigned, under penalty of perjury under the laws of the State of California , hereby certifies that:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor;
- (ii) The Contractor hereby acknowledges its obligations under the Contractor Guarantee (defined in Section 18.2 of the General Provisions), including, without limitation, the obligation, at its cost, to repair, replace or otherwise correct any Defective Work (defined in Section 18.1 of the General Provisions) that is discovered prior to the expiration of any applicable Guarantee Period (defined in Section 18.4 of the General Provisions);
- (iii) The Contractor hereby acknowledges that, except as the Contract Documents may otherwise provide:
  - (1) The Guarantee Period applicable to the Work generally shall commence on the Substantial Completion Date (defined in Section 17.1 of the General Provisions) and end on the date that is one year after the Project Acceptance Date or the date that is two years after the Substantial Completion Date, whichever is sooner;
  - (2) The Guarantee Period applicable specifically to heating, ventilation and air conditioning equipment, controls, *et cetera*, shall commence when such portion of the Work first begins and shall end on the date that is two years after the Project Acceptance Date or the date that is three years after the Substantial Completion Date, whichever is sooner; and
  - (3) The Guarantee Period applicable specifically to roofing materials, membranes, sheet-metal, *et cetera*, shall commence when such portion of the Work first begins and shall end on the date that is five years after the Substantial Completion Date;
- (iv) The Contractor hereby acknowledges that any provision of the Contract Documents that specifically requires a longer Guarantee Period shall govern over the foregoing clause (iii), and in no event shall any applicable Guarantee Period serve as a limitation with respect to latent defects in the Work, which remain subject to applicable statute(s) of limitation and/or repose.
- (v) The Contractor hereby acknowledges that, in no event shall the Contractor Guarantee be deemed or construed to limit, in any manner, any manufacturer or other third-party guarantee or warranty. At all times while the Contractor Guarantee is in effect during an applicable Guarantee Period, the Contractor must assist the District in processing any manufacturer and other third-party guarantee or warranty claims with respect to systems, equipment, materials and/or other things incorporated into the Project as part of the Work.

- (vi) The Contractor, at no cost to the District, must perform Guarantee Work (defined in Section 18.7 of the General Provisions) within ten days after receipt of written notice from the District or, if the Guarantee Work reasonably cannot be completed within ten days of notice from the District, within such reasonable time as determined by the District. The Contractor must coordinate all Guarantee Work with the District in order to avoid interfering with District operations and/or endangering anyone. The Contractor must provide written notice to the District upon completing any Guarantee Work.
- (vii) The Contractor hereby acknowledges that the District, at the Contractor's cost, may cause any required Guarantee Work to be performed if: (1) the Contractor fails to undertake and/or complete the Guarantee Work within the time permitted under the foregoing clause (vi); or (2) if the District reasonably determines that an emergency situation exists. In no event shall the District so causing any Guarantee Work to be performed be deemed or construed to limit or otherwise condition the responsibilities and/or liabilities of the Contractor under the Contractor Guarantee.
- (viii) The Contractor hereby acknowledges that this Contractor Guarantee form is a summary, and not a complete restatement, of the provisions of Part 18 of the General Provisions. In the event of a conflict between any provision of Part 18 of the General Provisions and the provisions of this Contractor Guarantee form, the General Provisions shall govern.

Representative Name: \_\_\_\_\_

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

Representative Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## CERTIFICATION REGARDING DVBE PARTICIPATION

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

The undersigned hereby certifies to the District, under penalty of perjury under the laws of the State of California, that all of the following is true and correct:

- (i) The undersigned is a duly-authorized representative of the Contractor and, in that capacity, has executed this certification on behalf of the Contractor;
- (ii) The California-certified DVBE entities listed on the attachment sheet(s) to this certification participated in the Contract to the extent described on the attachment sheet(s); and
- (iii) The dollar amount of the DVBE participation in the Contract totaled:  
\_\_\_\_\_ dollars (\$\_\_\_\_\_),  
which represents approximately \_\_\_\_\_ percent (\_\_\_\_ %) of the total  
GMP, including any and all Change Orders.

Representative Name: \_\_\_\_\_

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

Representative Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Note:** This certification page must be accompanied by the list of DVBE entities on the following attachment sheet. Make and use copies of the attachment sheet, as necessary, to list additional DVBE entities.

**CERTIFICATION REGARDING DVBE PARTICIPATION -- ATTACHMENT SHEET**

**District:** Del Mar Union School District

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Attachment Sheet** \_\_\_\_ **of** \_\_\_\_

---

1. DVBE \_\_\_\_\_ Entity \_\_\_\_\_ Name: \_\_\_\_\_

State DVBE Certification No.: \_\_\_\_\_ Telephone \_\_\_\_\_ No.: \_\_\_\_\_

Business \_\_\_\_\_ Address: \_\_\_\_\_

Participation in Contract: \$ \_\_\_\_\_  
Type \_\_\_\_\_ of \_\_\_\_\_ Participation: \_\_\_\_\_

2. DVBE \_\_\_\_\_ Entity \_\_\_\_\_ Name: \_\_\_\_\_

State DVBE Certification No.: \_\_\_\_\_ Telephone \_\_\_\_\_ No.: \_\_\_\_\_

Business \_\_\_\_\_ Address: \_\_\_\_\_

Participation in Contract: \$ \_\_\_\_\_  
Type \_\_\_\_\_ of \_\_\_\_\_ Participation: \_\_\_\_\_

3. DVBE \_\_\_\_\_ Entity \_\_\_\_\_ Name: \_\_\_\_\_

State \_\_\_\_\_

DVBE Certification No.: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

Business \_\_\_\_\_ Address: \_\_\_\_\_

Participation in Contract: \$ \_\_\_\_\_



Type \_\_\_\_\_ of \_\_\_\_\_ Participation: \_\_\_\_\_

4. DVBE \_\_\_\_\_ Entity \_\_\_\_\_ Name: \_\_\_\_\_

State DVBE Certification No.: \_\_\_\_\_ Telephone \_\_\_\_\_ No.: \_\_\_\_\_

Business \_\_\_\_\_ Address: \_\_\_\_\_

Participation in Contract: \$ \_\_\_\_\_

Type \_\_\_\_\_ of \_\_\_\_\_ Participation: \_\_\_\_\_

**Note:** Types of DVBE participation may include, but are not limited to: (i) construction; (ii) architectural and/or engineering; (iii) suppliers of materials, equipment and/or supplies; and (iv) information technology.

**EXHIBIT D**  
**GENERAL PROVISIONS**

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**PART 1**  
**ACKNOWLEDGMENT, ORGANIZATION, AND**  
**INTERPRETATION OF GENERAL PROVISIONS**

**1.1 Contractor Acknowledgment of General Provisions.** These General Provisions are an integral component of the Contract Documents. The Contractor: (i) acknowledges that it had the opportunity to review and seek clarification of any and all provisions of these General Provisions from the District and/or Architect and/or from independent legal counsel, if any; and (ii) acknowledges and agrees that the Contractor shall be deemed and construed to have read and that it fully understands these General Provisions.

**1.2 Organization of General Provisions.** These General Provisions are organized according to general subject matter. However, requirements applicable to any particular item, material, service, scope, *et cetera*, may be included in multiple provisions of these General Provisions. Therefore, unless expressly stated otherwise, the requirements of any one provision in these General Provisions shall not be deemed or construed to govern or apply exclusively over other provisions in these General Provisions applicable to the same item, material, service, scope, *et cetera*.

**1.3 Guides for Interpreting General Provisions.** As used in these General Provisions, “shall” and “must” shall be deemed and construed as mandatory, and “may” shall be deemed and construed as permissive. Any pronoun, term or phrase in these General Provisions that is stated in either the masculine or feminine sense (e.g., “materialman”), unless otherwise required by context, shall be interpreted as including both or either of such genders. Any reference in these General Provisions to a number of “days,” unless specified otherwise, shall mean consecutive calendar days. Any reference in these General Provisions to a number of hours, days, or other units of time, unless specified otherwise, shall mean, respectively, consecutive hours, days or other units of time. Language in these General Provisions to the effect that the Contractor or other person or entity is to provide or furnish something, or words to the same or similar effect, shall be deemed to mean that the thing must be “provided, complete in place,” “furnished and installed,” or otherwise incorporated into the Work and/or used as necessary to complete the Work and/or administer the Contract in accordance with the Contract Documents. For the convenience of the reader and in order to shorten the length of these General Provisions, capitalized terms are used in these General Provisions to designate defined terms. Each term or phrase that is not capitalized or defined shall be construed in accordance with the meaning commonly associated with such term or phrase within the State and region within which the Project is located.

**1.4 Locations of Definitions of Capitalized Terms.** For the convenience of the reader, the following table specifies the location in these General Provisions and other Contract Documents of the definitions of certain capitalized terms used in the Contract Documents. A capitalized term may be used in the Contract Documents in advance of the location in the Contract Documents where the term is defined. The following table may not include all such capitalized terms, whether intentionally or inadvertently, and, therefore, should not be considered to be a comprehensive list of all such defined terms.

<b><i>Defined Term</i></b>	<b><i>Location of Definition in General Provisions</i></b>	<b><i>Location of Definition in Other Contract Documents</i></b>
Abnormal Weather	Subsection 11.3.2	
Accident Report	Section 9.6	
Actual Costs	Section 20.8	
Architect		Subsection 15(c), CSA
Architect Field Directive	Section 15.3	
Asbestos Remediation	Subsection 13.3.3	
As-Built Drawings and Specifications	Section 3.10	
Authorized Contractor Representative		Subsection 15(b), CSA
Authorized District Representative		Subsection 15(a), CSA
Cal-OSHA	Section 9.2	
CCD	Subsection 15.1.2	
Certification of Payment	Subsection 19.9.2	
Change Order	Section 15.2	
Change Order Cost	Section 15.7	
Change Order Request	Section 15.8	
Claim	Section 22.1	
Compensable Delay	Section 11.6	
Construction Change Directive	Subsection 15.1.3	
Construction Progress Payment	Section 19.11	
Contract		Subsection 3(a), CSA
Contract Documents	Section 4.1	
Contractor Guarantee	Section 18.2	
Contract Time		Subsection 5(b), CSA
County		Recital B, Site Lease
DAS	Subsection 10.6	
Defective Work	Section 18.1	
DIR		Subsection 8(a), CSA
DIR Director	Section 10.2	
District Board		Recital D, Site Lease
District Indemnitee	Section 21.1	
Drawings		Subsection 3(b), CSA
DSA		Section 2, Site Lease
DVBE		Section 10, CSA
Early Work Schedule	Subsection 11.1.1	
Emergency	Section 9.5	
Final GMP		Subsection 6(c), CSA
General Provisions		Subsection 3(b), CSA
Guaranteed Maximum Price - GMP		Subsection 6(a), CSA
Guarantee Period	Section 18.4	
Guarantee Work	Section 18.7	
HCP	Section 13.2	
Inspector of Record	Section 2.3	
Job Superintendent	Subsection 3.4.1	
Leaseback Payment		Section 4, LBA

<b><i>Defined Term</i></b>	<b><i>Location of Definition in General Provisions</i></b>	<b><i>Location of Definition in Other Contract Documents</i></b>
Legal Requirement		Subsection 6(d)(1), CSA
LLB Agreements		Recital C, Site Lease
Master Construction Schedule	Subsection 11.1.2	
MSDS	Section 13.2	
Non-Compensable Delay	Section 11.5	
Notice	Subsection 23.10.1	
Notice of Award		Subsection 4(a), CSA
Notice of Completion	Section 16.8	
Notice of Delay	Section 11.9	
Notice of Intent to Terminate for Cause	Subsection 20.1.2	
Notice to Proceed		Section 3, Site Lease
Notice of Termination for Convenience	Section 20.5	
NPDES Permit	Subsection 7.8.1	
OCIP		Section 14, LBA
OPSC		Section 2, Site Lease
OSHA	Section 9.2	
PCC Claims Procedures	Section 22.7	
Payment Bond	Section 6.1	
Performance Bond	Section 6.1	
Preconstruction Work		Exhibit A, CSA
Prevailing Wage Laws	Section 10.1	
Progress Payment Request	Subsection 19.6.1	
Progress Payment Review Meeting	Section 19.5	
Project		Recital B, Site Lease
Project Acceptance Date	Section 16.8	
Project Site		Recital B, Site Lease
Rain Day	Subsection 11.3.1	
Records of the Work	Section 3.12	
Recovery Schedule	Subsection 11.1.5	
Regular Working Hours		Section 12, CSA
Remaining Work	Section 16.4	
Request for Proposal - RFP	Section 15.7	
Required Commencement Date		Section 3, Site Lease
Required Completion Date		Section 3, Site Lease
Retention	Section 19.10	
RFI	Subsection 3.4.2	
SAB		Section 2, Site Lease
Safety Program	Section 9.2	
Schedule of Values	Section 19.1	
Specifications		Subsection 3(b), CSA
Specified Item	Section 12.1	
State		Recital B, Site Lease
Subcontract	Subsection 3.5.1	
Subcontractor	Subsection 3.5.1	

<b><i>Defined Term</i></b>	<b><i>Location of Definition in General Provisions</i></b>	<b><i>Location of Definition in Other Contract Documents</i></b>
Substantial Completion Date	Section 17.1	
Surety Bond	Section 6.1	
SWPPP	Subsection 7.8.1	
Trench Safety Plan	Section 9.3	
Work		Recital D, Site Lease
Work by Others	Section 4.2	

**PART 2**  
**DISTRICT ADMINISTRATION OF THE CONTRACT**

**2.1 Status of Authorized District Representatives.** The Authorized District Representatives (i.e., those who are authorized to represent the District in connection with the Contract and the Project are identified in Exhibit G to this CSA. The Contractor must not rely on any notice, order or other communication from the District that is not signed, given or directed by either the Authorized District Representative, and even then, the Contractor must be aware of the limitations on authority of any Authorized District Representative as set forth in these General Provisions. The District Board may have delegated to one or more Authorized District Representatives the authority to approve changes in the Work costing up to a specific dollar amount and/or an amount not in excess of the limitations set forth in Public Contract Code Section 20118.4. The Contractor shall be responsible for verifying whether the District Board has delegated any such approval authority, as well as any limitations on such approval authority. **EXCEPT AS EXPRESSLY PROVIDED IN THESE GENERAL PROVISIONS WITH RESPECT TO ARCHITECT FIELD DIRECTIVES, NO DISTRICT OFFICER, STAFF MEMBER, CONSULTANT, CONTRACTOR OR OTHER PERSON (REGARDLESS OF WHETHER SUCH PERSON IS AN AUTHORIZED DISTRICT OFFICER) HAS THE ABILITY OR AUTHORITY TO ORDER ANY CHANGE IN THE WORK OR ANY OF THE DRAWINGS, SPECIFICATIONS OR OTHER CONTRACT DOCUMENTS ABSENT ACTION BY THE DISTRICT BOARD TO APPROVE THE CHANGE, WHETHER DIRECTLY OR BY DELEGATION OF AUTHORITY.**

**2.2 Services of Architect.** The Architect will provide services in accordance with the agreement between the District and the Architect, including, without limitation, interpreting and deciding matters related to performance of the Work and requirements of the Contract Documents. The Architect's decisions as to matters within its scope of authority, including, without limitation, matters relating to aesthetic effect, shall be final for the purposes of the Contractor proceeding with the Work.

**2.3 Services of Inspector of Record.** A DSA-certified construction inspector ("Inspector of Record") will be responsible for continuously observing the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Contractor must not perform any portion of the Work absent knowledge by the Inspector of Record that the Work is to occur, and the Contractor must not perform any of the Work that is to occur on the Project Site if the Inspector of Record is not present on the Project Site. The Contractor may not perform any of the Work on any federal or State holiday observed by the Inspector of Record, regardless of whether the Contractor or its Subcontractors observe such federal or State holiday. The Contractor shall, on an ongoing basis, keep the Inspector of Record fully informed regarding the progress and manner of the Work and the type and character of materials and equipment incorporated into the Work. The Contractor shall provide written notice to the Inspector of Record not later than forty-eight hours in advance of each special or other inspection required in connection with the Work.

**2.4 Authority to Reject Non-Conforming Work.** The District, Architect, and Inspector of Record each have the authority to reject Work that does not conform to any requirement of the Contract Documents. If any portion of the Work potentially does not or will not conform to any requirement of the Contract Documents, or if otherwise necessary or advisable to ensure compliance with requirements of the Contract Documents, the District may require additional inspection or testing of Work, whether such Work is then fabricated, installed, or completed. The costs of any such additional inspection or testing shall be paid as provided in Section 7.14 of these General Provisions. In no event shall the District, Architect or Inspector of Record be liable for any failure to identify and/or reject any Work that does not or will not conform to requirements of the Contract Documents, and no such failure shall be deemed or

construed to relieve the Contractor from its obligation to complete the Work in accordance with the Contract Documents.

**2.5 Authority to Stop or Suspend Work.** The District, Architect, and Inspector of Record each have the authority to stop or suspend some or all of the Work if: (i) they determine in their reasonable judgment that conditions are unsuitable for proceeding with the Work, including, without limitation, if harm or damage to persons or property reasonably may result if the Work were to proceed; (ii) the Contractor fails to correct Defective Work as directed; or (iii) the Contractor fails to carry out the Work in a manner that ensures it will be completed in accordance with the Contract Documents. The Contractor shall immediately comply with, and shall cause each Subcontractor to immediately comply with, each order to stop or suspend the Work. The Contractor shall not permit the stopped or suspended portion of the Work to resume until so ordered. In no event shall the District, Architect or Inspector of Record be liable for any failure to identify situations in which the Work arguably should or could have been stopped or suspended, and no such failure shall be deemed or construed to relieve the Contractor from its obligation to complete the Work in accordance with the Contract Documents.

**2.6 Contractor Must Cooperate and Provide Information.** The Contractor must cooperate with the District, Architect and Inspector of Record, and must promptly upon request furnish to the District, Architect and/or Inspector of Record such information, as may be necessary for any of them to fully and adequately perform their duties in connection with the Project.

**2.7 Contractor Responsibility for Additional Professional Services.** If, due to any request, act, omission, failure or default of the Contractor in connection with the Work or the performance under the Contract Documents by the Contractor or any of its officers, employees, agents, Subcontractors or other representatives, it is necessary for the District to provide or obtain professional services (including, without limitation, architectural, engineering, construction management, legal and/or inspection services) in addition to what otherwise would be required in connection with the administration of the Contract, the District shall be entitled to reimbursement from the Contractor for any and all costs of such additional services. The District may deduct such costs from any amounts otherwise due to the Contractor in accordance with the Contract Documents or, if such amounts are insufficient, the Contractor shall pay the difference to the District.

**2.8 Damages Incurred by District Under Other Contracts.** Notwithstanding anything to the contrary, if the District is required, under any other contract entered into by the District in connection with the Project, to pay any damages (whether liquidated under such other contract or otherwise) and/or costs (whether fixed by a court of competent jurisdiction or otherwise), and the District would not have been responsible for such damages and/or costs but for an act or omission for which the Contractor is responsible, then the District may seek indemnification from the Contractor under Part 21 of these General Provisions and/or may pursue such other remedies as are permitted by law and/or the Contract.

**PART 3**  
**CONTRACTOR ADMINISTRATION OF THE CONTRACT**

**3.1 Public Works Project.** The Project is being completed on the basis of a “Lease-Leaseback” construction delivery method as authorized under Education Code Section 17406. Nonetheless, the Project is a “public work” and “public project” within the meaning of various provisions of the Public Contract Code, Labor Code, Civil Code, and other applicable Legal Requirements. Therefore, the performance of the Work is subject to such requirements. The Contract Documents include various provisions relating to public works and public projects as provided by law, and the Contractor must thoroughly review and become familiar with the Contract Documents. However, the Contract Documents do not include comprehensive statements of all Legal Requirements applicable to public works and public projects, and the Contractor shall be deemed and construed to have acknowledged that fact by executing the LLB Agreements. In addition, in executing the LLB Agreements, the Contractor thereby represents and warrants that it is familiar and knowledgeable with respect to all Legal Requirements applicable to public works and public projects generally and to the Work specifically.

**3.2 Status of Contractor.**

**3.2.1 Independent Contractor.** For all purposes of the Contract, the Contractor shall be deemed and construed to be an independent contractor, not an officer, employee, partner, consultant, agent or other representative of the District. The District shall in no event be responsible or liable for any acts, omissions, liabilities or other obligations of the Contractor or any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work.

**3.2.2 Contractor Investments in Iran.** Subject to certain exceptions, the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) prohibits a party that engages in investment activities in Iran, as described in Public Contract Code Section 2202.5, from entering into any contract of \$1,000,000 or more for goods or services to be provided to a public entity. Concurrently with executing and delivering the LLB Agreements to the District, and as a condition to the LLB Agreements taking effect, and using the “Certification Regarding Iran Contracting Act” form, which is one of the Required Contract Forms, the Contractor must certify to the District that: (i) the Contractor is not identified on any list prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; (ii) the Contractor is not a financial institution that, for 45 days or more, extends \$20,000,000 or more in credit to any other person or entity identified on any list prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran; (iii) the District has exempted the Contractor from the prohibition after making a public finding that, absent the exemption, the District will be unable to obtain the goods and/or services to be provided under the Contract; or (iv) the GMP does not exceed \$1,000,000.

**3.3 Contractor Solely Responsible for Work.** Except as expressly provided in the Contract Documents, the Contractor shall be solely responsible and liable for: (i) the construction means, methods, techniques, and procedures employed in connection with the Work; (ii) as applicable, the fabrication, procurement, quality, quantity, shipment, delivery, receipt and installation of any materials, equipment, work or services incorporated into the Work; (iii) safety precautions and/or safety programs required in connection with the Work; (iv) the failure of the Contractor or any Subcontractor to carry out Work in accordance with the Contract Documents; and (v) acts or omissions of the Contractor or any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods



or other things in connection with the Work. Without limiting the foregoing, the Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the performance of the Work, and all Work shall be solely at the Contractor's risk with the exception of damage to the Work in excess of five percent of the GMP caused by any tidal wave or earthquake in excess of 3.5 on the Richter Scale (which exception shall apply only if the damaged portion of the Work had been constructed or otherwise performed in accordance with the Contract Documents). The Contractor shall not be deemed or construed to be relieved, to any extent, from any responsibility for performance of any obligation under the Contract Documents because such obligation is being or will be performed by any Subcontractor.

### **3.4 On-Site Job Superintendent.**

**3.4.1 No Work if Not Present.** At all times during which any portion of the Work is being performed, the Contractor shall have a superintendent for purposes of the Work ("Job Superintendent") present on the Project Site. No portion of the Work that is to occur on the Project Site may commence or continue to be performed if the Job Superintendent is not present at the Project Site, including, without limitation, at any time the Contractor is seeking approval of a replacement Job Superintendent. Prior to commencing any portion of the Work, the Contractor shall provide to the District, in writing, the name and qualifications of the person who will serve as the Job Superintendent. The District, in its reasonable discretion, may approve or disapprove of any Job Superintendent or may require that the Contractor replace any Job Superintendent. The Contractor also may request that the District permit the Prime Contractor to replace any Job Superintendent. The Contractor shall not replace a Job Superintendent unless: (i) the District requires replacement of a Job Superintendent; (ii) the District consents to a request by the Contractor to replace a Job Superintendent; or (iii) a Job Superintendent leaves or is terminated from his or her employment with the Contractor. If it becomes necessary to replace a Job Superintendent, the Prime Contractor shall provide in writing to the District the name and qualifications of a proposed replacement, who shall be subject to District approval as provided herein.

**3.4.2 Responsibilities and Authority.** The Job Superintendent shall be the Contractor's representative for all purposes of the Work, and shall oversee, direct, and be responsible for the Contractor's operations on the Project Site and the performance of the Work. The Contractor shall dedicate the Job Superintendent on a full-time and exclusive basis to the Work, and the Job Superintendent shall not provide services in connections with any other work or project. The Job Superintendent shall receive and accept all directives and other communications given to the Contractor by the District, Architect or Inspector of Record, which communications shall be binding on the Contractor as if given directly to the Contractor. During the course of the Work, only Authorized Contractor Representatives shall be permitted, as provided in Section 4.6 of these General Provisions, to submit any requests for information regarding the Work or the Contract Documents (each an "RFI"), regardless of whether the request originated with the Contractor or any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work. Each and every act and decision of the Job Superintendent shall be deemed and construed to be an act and decision of the Contractor and shall bind the Contractor. Prior to commencing any portion of the Work, the Contractor must take whatever action(s) as may be necessary to authorize the Job Superintendent to the extent provided in this Subsection.

### **3.5 Selecting and Contracting with Subcontractors.**

**3.5.1 Written Subcontracts Required.** For purposes of the Contract, each person and entity that will perform, under direct or indirect agreement with the Contractor (i.e., of any tier), any portion of the Work or supply, manufacture or fabricate any materials, equipment, and/or other things to

be specially designed, made and/or worked in connection with the Work is referred to in these General Provisions as a "Subcontractor." The Contractor shall enter into appropriate, written contracts (each a "Subcontract") with each first-tier Subcontractor. In addition to any other requirements therein, each Subcontract must provide that: (i) the District is an intended third-party beneficiary of the Subcontract; and (ii) upon termination of the Contractor's right to perform the Work, the District may, in its sole discretion, assume the Subcontract in order to continue the Work to be performed by such Subcontractor. No Subcontract or provision thereof shall be deemed or construed to constitute a limitation or waiver of any right of the District under the Contract Documents.

### **3.5.2 Selection of Subcontractors.**

**3.5.2.1 Informal Selection Process.** The selection of Subcontractors shall comply with Education Code section 17406, subdivision (a)(4). Contractor must implement an informal bidding or proposal process for the selection of experienced, knowledgeable, reputable, and responsible Subcontractors for the Project to assist in fostering competition and ensuring reasonable pricing of the Work. Contractor must: (i) provide public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the school district, including a fixed date and time on which qualifications statements, bids, or proposals will be due; (ii) establish reasonable qualification criteria and standards regarding Subcontractors; and (iii) award the subcontract either on a best value basis or to the lowest responsible bidder. The foregoing process may include prequalification (different from the prequalification requirements of Public Contract Code section 20111.6, which is also applicable to the Project) or short-listing. The foregoing process shall not apply to Subcontractors listed in the original proposal, if any. The Contractor must require that each bidder submits with its bid a noncollusion affidavit in accordance with Public Contract Code Section 7106. The Contractor shall inform all contractors from which it seeks bids or proposals that the District will not be a party to any contracts with the selected Subcontractors. The Contractor shall notify and permit the District to be present for opening of bids and/or proposals, to review the bids and/or proposals upon opening and at any reasonable time thereafter, and to make the bids and/or proposals available for public review. The Contractor shall review each bid and/or proposal and ensure that it fully encompasses the scope of work intended for the applicable portion of the Work.

**3.5.2.2 Balance of Cost and Other Factors.** The Parties intend that the process for selection of Subcontractors under this Subsection 3.5.2 shall take into consideration the cost of the Work and other factors important to timely and efficient completion of the Work. Therefore, if the Contractor proposes to use other than the contractor with the monetarily-lowest bid or proposal for any trade or other component of the Work, the Contractor shall document in reasonably-detailed writing to the District all reasons for using other than the contractor with the monetarily-lowest bid or proposal and, in conjunction therewith, shall provide to the District any documentation in support of such reasons. The Parties may agree to seek additional or new bids or proposals for any trade or other component of the Work if necessary or advisable in the best interests of the Project and the District, including, without limitation, if any selected contractor fails or refuses to enter into a Subcontract.

**3.5.2.3 Contracting with Selected Subcontractors.** Upon the Parties agreeing on the final selection of Subcontractors under this Subsection 3.5.2, the Contractor must: (i) provide to the District an updated list of all Subcontractors providing services in connection with the Project; (ii) complete, execute and submit a copy of the "Certification Regarding Contractor Registration" included in the Required Contract Forms that is applicable to all Subcontractors not covered by any such form previously submitted by the Contractor in connection with the Project; and (iii) to the extent Public Contract Code Section 20111.6 applies, ensure that the Subcontractors are prequalified by the District

prior to commencing any of the Work. Each Subcontractor that will perform any portion of the Work, to the extent required by any applicable Legal Requirement, must be duly and appropriately licensed by the Contractors State License Board prior to commencing such portion of the Work. Within five days of entering into any Subcontract, the Contractor must provide to the District a copy of the Subcontract, including, without limitation, any and all exhibits and/or attachments thereto.

**3.5.2.4 Replacement of Subcontractors.** All Subcontractors awarded construction subcontracts, no matter when they were selected, shall be afforded all the protections of the Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code). Upon the occurrence of one of the situations listed in Public Contract Code section 4107, the District shall permit the Contractor to replace any Subcontractor as provided in this Subsection. If the Contractor proposes to replace any Subcontractor, the Contractor must set forth in a reasonably-detailed written request to the District all reasons for replacing the Subcontractor and, in conjunction therewith, shall provide to the District any documentation in support of such reasons. The District shall not unreasonably deny, withhold, or condition its consent to replace any Subcontractor if such replacement complies with the law. Except if the District in its discretion consents in writing, or except in the event of an Emergency that reasonably makes it impractical or infeasible, the Contractor shall select the replacement Subcontractor using the procedures set forth in the foregoing provisions of this Subsection 3.5.2.

**3.6 Subcontractors Have No Contractual Privity with District.** Nothing in the Contract Documents or any Subcontract shall be deemed or construed to create any contractual relationship between the District and any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work. The Contractor is and shall remain fully responsible and liable to the District for all acts and omissions of any and all Subcontractors, materialmen, or other individuals or entities that furnish any labor, materials, services, goods or other things on behalf of the Contractor and in connection with the Work, and their respective contractors, employees, agents and other representatives.

**3.7 Prohibition Against Unlawful Discrimination.** In connection with the LLB Agreements and performance of the Work, including, without limitation, in regard to their employment practices, the Contractor and each Subcontractor of every tier must comply with, and must not discriminate or provide preferential treatment in violation of, any and all applicable District policies or regulations, federal, State and other anti-discrimination laws, rules, regulations and requirements, as amended from time to time, including, but not limited to:

- (i) The Fair Employment and Housing Act (Cal. Gov. Code Section 12900 *et seq.*);
- (ii) The Unruh Civil Rights Act (Civil Code Section 51 *et seq.*);
- (iii) California Government Code Section 11135 *et seq.*;
- (iv) California Labor Code Section 1101 *et seq.*;
- (v) California Labor Code Section 1735;
- (vi) The Federal Civil Rights Act of 1964 (42 U.S.C. Section 2000e *et seq.*);

- (vii) The Americans With Disabilities Act of 1990 (42 U.S.C. Section 12101 *et seq.*);
- (viii) The Age Discrimination in Employment Act (29 U.S.C. Section 621 *et seq.*);
- (ix) The Rehabilitation Act of 1973 (29 U.S.C. Section 701 *et seq.*); and
- (x) Presidential Executive Order 11246.

**3.8 Contractor Responsible for Subcontractor Compliance.** Each Subcontractor and other person or entity on, at or in the vicinity of the Project Site on account of the Work must comply with all applicable provisions of these General Provisions (including, without limitation, standards of behavior), notwithstanding that: (i) various obligations set forth in these General Provisions are characterized as the Contractor's obligations; or (ii) the Contractor is expressly responsible in accordance with various provisions of these General Provisions for including certain obligations in its agreements with Subcontractors and others. The Contractor must ensure that each Subcontractor is aware of and understands: (i) the respective authority of the District, Architect, and Inspector of Record under the Contract Documents; and (ii) all general requirements set forth in these General Provisions and other Contract Documents that are applicable to the Subcontractor. In no event shall the failure of any such Subcontractor to have any such awareness and/or understanding be deemed or construed to constitute a basis or excusable cause for any extension of the Contract Time or increase in the GMP. The Contractor shall be responsible and liable for any and all costs arising from any failure by the Contractor to comply with the foregoing obligations.

**3.9 Contractor Must Maintain Reference Materials at Project Site.** The Contractor shall maintain in good order at the Project Site: (i) the As-Built Drawings and Specifications, and copies of all addenda, Bulletins, Interpretations, Clarifications, Change Orders, Architect Field Directives, Construction Change Directives, and other documents that modify, illustrate or explain the Contract; and (ii) at least one copy each of all approved shop drawings, product data sheets, samples, and similar submittals of the Contractor. The Contractor must continuously update or otherwise maintain current versions of such reference materials. Upon request, the Contractor must make any or all such reference materials available to the District, Architect and/or Inspector of Record.

**3.10 As-Built Drawings and Specifications.** During the course of performing the Work, the Contractor must, in accordance with the Architect's instructions, carefully and accurately illustrate, locate, dimension, note or otherwise describe on one full-size set of the Drawings and Specifications ("As-Built Drawings and Specifications") any and all deviations, corrections, deletions, additions, enhancements, expansions and/or clarifications of, from, or to the Work initially prescribed or shown in the Drawings and Specifications. Not as a limitation on the foregoing, the As-Built Drawings and Specifications must illustrate and/or specify any and all: (i) Work performed or completed differently than as initially shown or required; (ii) changes ordered under Architect Field Directives, Construction Change Directives and/or Change Orders; (iii) authorized substitutions of Specified Items; (iv) final location of all electrical and mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant elements of the Work; and (v) all existing improvements, including, without limitation, any existing substructures, encountered during the performance of the Work that were not demolished or otherwise removed or relocated. No portion of the Work shall be permanently sealed or covered until all required information relating to such portion of the Work has been recorded for purposes of preparing the As-Built Drawings and Specifications.

**3.11 Updates to As-Built Drawings and Specifications.** At each Progress Payment Review Meeting, the Contractor must submit, for approval, three copies of each sheet and/or page of the As-Built Drawings and Specifications showing all changes made since the Contractor submitted the immediately preceding Progress Payment Request. Each update of the As-Built Drawings and Specifications is subject to approval by the District, Architect and the Inspector of Record, and the Contractor must promptly revise the updated As-Built Drawings and Specifications if required. The approval of the updated As-Built Drawings and Specifications, and certification by the Contractor that the updated As-Built Drawings and Specifications fully and accurately reflect the Work as actually completed and in progress as of the end of the period covered by the associated Progress Payment Request, shall be conditions precedent to payment to the Contractor under such Progress Payment Request.

**3.12 Contractor Must Maintain Records of the Work.** The Contractor shall prepare, update and maintain on file, in its principal office, records of the Work containing all significant documentation related to the Work ("Records of the Work"), including, without limitation, copies of each Contract Document, Change Order, Architect Field Directive, Construction Change Directive, shop drawing, product data sheet, sample, submittal, approval, RFI, invoice, payment receipt, conditional waiver, unconditional waiver, punch-list, *et cetera*. The Contractor shall organize and maintain the Records of the Work in a logical manner, based on subject matter and/or portion of the Work and chronologically.

**3.13 Review and Audit of Records of the Work.** In accordance with Government Code Section 8546.7, the State has the right to examine, review, audit and/or copy the Records of the Work during the three-year period following final payment to the Contractor under the Contract. In addition, the District, DSA, SAB and OPSC each hereby has the right to examine, review, audit and/or copy the Records of the Work during the four-year period following final payment to the Contractor under the Contract. Therefore, the Contractor shall preserve and retain all such Records of the Work for a period of four years commencing upon final payment to the Contractor under the Contract or, if an examination, review or audit is commenced but not completed within such four-year period, until such examination, review or audit has been completed. The Contractor, upon request, shall make the Records of the Work available for the purposes described in this Section at all reasonable times during the period the Contractor is required to preserve and maintain the Records of the Work.

**PART 4**  
**THE CONTRACT AND CONTRACT DOCUMENTS**

**4.1 Construing the Contract Documents.** The “Contract Documents” consist of all documents that establish the entire understanding and agreement between the District and the Contractor, regardless of when prepared or entered into, including, without limitation, the documents described in Subsection (b) of Section 3 of the Construction Services Agreement. The Contract Documents are intended to be complementary and, as described herein, inclusive of the Work to be completed by the Contractor. The Contract Documents are to be construed collectively as a whole; therefore, any item of Work required by any one or more of the Contract Documents, but not required by others, shall be provided by Contractor as if specifically required by each of the Contract Documents. However, if there is an inconsistency in the requirements of the Contract Documents, then: (i) the Construction Services Agreement shall be deemed and construed to govern over the General Provisions; (ii) the General Provisions shall be deemed and construed to govern over the Drawings and Specifications; (iii) the Specifications shall be deemed and construed to govern over the Drawings as to materials, workmanship, and installation procedures; and (iv) a requirement in the Specifications that is more stringent, requires a higher quality and/or requires a greater quantity shall be deemed and construed to govern over other requirements in the Specifications.

**4.2 Work to be Inferred from Contract Documents.** The Drawings, Specifications, and other Contract Documents may not specifically illustrate or describe every item of Work required to complete the Contractor’s scope of work and to deliver to the District a complete Project. The Contract Documents are intended to sufficiently describe the Work required so that the Contractor may determine the materials, labor, services and other things of any nature required for the proper execution and completion of the Work, including, without limitation, any requirements for materials, labor, services or other things that should be inferred from the Contract Documents. Therefore, in addition to completing all Work as expressly illustrated or described in the Contract Documents, the Contractor shall be responsible for providing all materials, labor, services, and other things of any nature necessary to complete the Work as may be inferred from the Contract Documents so that, in conjunction with any work in connection with the Project contracted for by the District or work accomplished using the District’s own forces (“Work by Others”), the District receives a fully complete and operational Project as intended.

**4.3 Geotechnical and Soils Reports.** The District or Architect may determine that, in connection with the Project, it is required or advisable to obtain one or more geotechnical and/or soils reports. In such event, the District, at its expense, may provide copies of such report(s) to the Contractor. However, if the District provides any such report to the Contractor, the report in no event shall be deemed or construed to be part of the Contract Documents, and the District shall be deemed and construed to have provided the reports solely for the convenience of, and as supplementary information to, the Contractor. The District shall not be deemed or construed to have made any representation or warranty as to the information or recommendations set forth in any geotechnical and/or soils reports provided by the District in connection with the Project, or as to the soils, groundwater, or other surface and subsurface conditions of the Project Site. The information included in any such report shall be deemed and construed as approximate only, and the Contractor shall be responsible for inspecting and verifying the actual conditions of the Project Site.

**4.4 Contractor Must Know and Understand Applicable Legal Requirements.** The Contractor is hereby required to, and shall be deemed for all purposes of the Contract to, be aware of, know and understand all Legal Requirements applicable to public works projects generally and to the Work

specifically. Therefore, each and every Legal Requirement that is, or is required to be, set forth or summarized in the Contract Documents that, for any reason, is omitted from, or is incorrectly set forth or summarized in, the Contract Documents, shall nonetheless be deemed to be included in the Contract Documents, and the Contract shall be construed and enforced as though such omitted or incorrect provision were properly and correctly set forth in the Contract Documents. All Legal Requirements that apply to public works projects generally and to the Work specifically, but which are not required to be listed or summarized in the Contract Documents, shall also be incorporated as if fully set forth herein.

**4.5 Pre-Construction Review of Contract Documents.** Prior to when required to initially proceed with the Work, the Contractor shall complete a careful and detailed review of all Contract Documents in order to: (i) determine and confirm all materials, labor, services, and other things of any nature required to fully complete the Work in accordance with the Contract Documents; (ii) determine whether there are any errors, inconsistencies, conflicts, ambiguities, omissions, or lack of sufficient detail or explanation in the Drawings, Specifications or other Contract Documents; (iii) determine whether the requirements of the Drawings, Specifications and other Contract Documents conform with all Legal Requirements applicable to the Work, including, without limitation, Title 21 and Title 24 of the California Code of Regulations, applicable building codes, and utility-company requirements. The Contractor must provide prompt written notice to the District and the Architect if the Contractor perceives any issues as described in the foregoing clauses (ii) or (iii). Neither the requirements of this Section, nor any delay by the Contractor in complying with such requirements, shall be deemed to relieve the Contractor from complying with requirements for commencing and/or completing the Work, and Contractor shall schedule and complete its pre-construction activities to accommodate the review required under this Section. Aside from its review obligations under this Section 4.5, nothing in the Contract Documents shall be deemed or construed to make the Contractor responsible for any errors or omissions in any portion of the Drawings and Specifications or other design documents for the Project prepared by or under the direction of the Architect.

#### **4.6 Requests for Information.**

**4.6.1 Submittal By Contractor.** To the extent reasonable, the Contractor may submit to one or more RFIs, in writing, as provided in this Section 4.6. The Contractor must submit each RFI to the Inspector of Record and the Architect, with a copy thereof to the District. The Contractor must submit an RFI sufficiently in advance as will avoid and/or prevent any delays in the Work or any Work by Others. Each RFI must: (i) identify the specific portion of the Contract Documents that is the subject of the RFI, including, without limitation, Drawing and detail number, Specification section, page number, *et cetera*; (ii) describe in reasonable detail what the Contractor does not understand, what the Contractor believes is not sufficiently detailed or provided for, or other matter or question that is the subject of the RFI; and (iii) describe the Contractor's interpretation or suggested resolution of the matter or question that is the subject of the RFI. Prior to submitting an RFI, the Contractor must review the RFI to ensure that it is clear (not ambiguous) and asks a question not previously answered.

**4.6.2 Response By Architect.** The Architect will respond in writing to each sufficiently-detailed RFI, taking into consideration any comments provided by the Inspector of Record, within fifteen days or such other reasonable time as will be dependent on the number of then-pending RFIs and other submittals, the complexity of the issues raised by any RFIs and/or other submittals, the relative importance or priority of the RFIs and other submittals, *et cetera*. In no event shall the Architect's response to an RFI be deemed or construed to constitute, accept, acknowledge, or acquiesce to any change to, or variance from, the Drawings, Specifications or other Contract Documents unless: (i) the RFI expressly and unambiguously specifies that the Contractor is seeking a change to, or variance from, the

requirements of the Contract Documents and the Architect's response to the RFI expressly acknowledges and consents to such change or variance; or (ii) the Architect initiates the change to, or variance from, the Contract Documents and expressly and unambiguously states in its response to the RFI that such response, or any particular portion thereof, constitutes a change to, or variance from, the Contract Documents.

**4.7 Costs of Erroneous or Non-Conforming Work.** If the Contractor or any Subcontractor performs any portion of the Work that does not comply with the Contract Documents or applicable Legal Requirements, the Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction, without increase or adjustment to the GMP or the time for performance.

**4.8 Ownership and Rights to Contract Documents.** For all purposes related to the Contract, the Drawings, Specifications, and other Contract Documents are deemed to be and shall remain the property of the District. Except for the District and, to the extent provided in its agreement with the District, the Architect, no person or entity (including, without limitation, the Contractor and anyone performing any work or services under the Contract on behalf of the Contractor) may own or claim a copyright in the Drawings, Specifications, or other Contract Documents. Neither the Contractor, nor any other person or entity other than the District, may use any of the Contract Documents for any purpose other than in connection with the Work. Upon final completion and acceptance of the Project in accordance with these General Provisions, the Contractor must return to the District all originals and copies of any and all of the Contract Documents, except that the Contractor may retain one complete set of the Contract Documents for the Contractor's records.



## **PART 5**

### **SUBMITTALS**

**5.1 General Requirements for Submittals.** The Contractor is responsible for submitting to the Authorized District Representatives and Architect any and all shop drawings, samples, deferred approvals, and other submittals required under the Contract Documents, including, without limitation, any submittals prepared or otherwise provided by or on behalf of any Subcontractor. A Subcontractor may not provide a submittal directly to the Authorized District Representatives and Architect because the Contractor has responsibility for full compliance with the requirements of this Part 5. The Contractor must submit each submittal accompanied by a separate transmittal letter for each submittal item or group of items for which a submittal is required under the Contract Documents. Each submittal, and the transmittal letter and other information submitted with the submittal, must be legible in all respects. All shop drawings, samples, deferred approvals, and other submittals required under the Contract Documents shall be deemed and construed to become property of the District upon submittal under this Part 5. The Contractor may not use the submittal process, in lieu of complying with the procedures for substitution set forth in Part 12 of these General Provisions, to request substitution of any Specified Item.

**5.2 Contractor Must Identify Deviations from Contract Requirements.** If a shop drawing, sample, deferred approval or other submittal required under the Contract Documents does not conform in every respect with all requirements of the Contract Documents (including, without limitation, any qualification of, modification of, or other deviation from such requirements), such deviation must be expressly identified and explained in detail in the submittal, noted in the accompanying transmittal letter, and, as applicable, identified by “clouding” on the submittal.

**5.3 Review and Approval of Submittals.** The Architect shall review all shop drawings, samples and other submittals required under the Contract Documents and, as applicable, request additional information, request correction and resubmittal, and/or approve the submittals. The Contractor must make all corrections requested by the Architect and must resubmit the revised submittal to the Architect within the time specified by the Architect. In no event shall the review and/or approval of any submittal be deemed or construed to: (i) constitute verification or approval of any specific dimensions, field conditions, or quantities; (ii) constitute a comprehensive analysis and verification that the submittal is free of all errors and deficiencies; (iii) relieve the Contractor from responsibility for any deviation in the submittal from the requirements of the Contract Documents that was not expressly stated in the submittal as being a deviation from such requirements; (iv) relieve the Contractor from responsibility for any error or deficiency in the submittal not within the scope of review and approval; (v) relieve the Contractor from responsibility for any deficiency in the Work, any failure to coordinate or ensure that the item(s) fit with other portions of the Work or any Work by Others, or any other failure to perform the Work in accordance with the Contract Documents; or (vi) relieve the Contractor from any responsibility for violation of any patent or other right of any person or entity.

**5.4 No Work or Deliveries Permitted Absent Approved Submittals.** In no event may the Contractor commence any portion of the Work that requires any shop drawing, sample or other submittal under the Contract Documents, unless and until the Architect has reviewed and approved the submittal in accordance with this Part 5. In addition, if DSA approval is required for any submittal, the Contractor may not commence the portion of the Work requiring the submittal unless and until: (i) the Architect has obtained the required DSA approval; or (ii) the Architect directs the Contractor, in writing, to commence such portion of the Work.

**PART 6**  
**PERFORMANCE AND PAYMENT BONDING REQUIREMENTS**

**6.1 Surety Bonds a Condition Precedent to Commencing the Work.** Within seven days after receipt of the Notice of Award (if issued by the District) or prior to the Required Commencement Date, whichever is sooner, the Contractor must provide to the District: (i) a material and labor payment bond to ensure satisfaction of any claims of materials suppliers and of mechanics and laborers employed in connection with the Work ("Payment Bond"); and (ii) a bond to ensure faithful (including, without limitation, timely) performance by the Contractor of its obligations under the Contract Documents ("Performance Bond"). The Payment Bond and the Performance Bond (each a "Surety Bond") must be in the forms provided by the District as one of the Required Contract Forms or, in the District's sole discretion, may be in such forms as are approved by legal counsel for the District in advance of the Contractor commencing the Work. Neither of the Surety Bonds shall have a stated expiration date, and each shall remain in effect at all times that Contractor has any obligation under the Contract.

**6.2 Penal Sums of Surety Bonds.** Each of the Surety Bonds initially must have a penal sum equal to 100% of the GMP. If the GMP is increased in accordance with the Contract Documents, then, within seven days after such increase, the Contractor must increase the amount of each of the Surety Bonds to equal the total increased GMP. In addition, the Contractor shall review and renew or amend either or both of the Surety Bonds within seven days after receiving notice from the District that either or both have become insufficient.

**6.3 Surety Qualifications.** Each of the Surety Bonds must be issued by a surety that is authorized and admitted to transact business in the State in accordance with Code of Civil Procedure Section 995.120. Each of the Surety Bonds must be signed by the duly-authorized representatives of both the Contractor and the surety, and the signatures must be notarized. In addition, for each of the Surety Bonds, the Contractor must provide to the District: (i) a print-out of information from the website of the Department of Insurance confirming that the surety is an admitted surety insurer; or (ii) a certificate from the Clerk of the County that the surety is an admitted surety insurer. Such print-out or certificate must be attached to the associated Surety Bond. Should any surety lose its status as a State-admitted surety, the Contractor shall immediately provide written notice thereof to the District, and the District shall make no further payments to the Contractor under the Contract Documents until such time as the surety regains its status or the Contractor obtains and the District qualifies and approves a substitute surety.

**PART 7**  
**PERFORMANCE OF THE WORK GENERALLY**

**7.1 Contractor Awareness of Existing Site Conditions.** During the period leading up to the Parties entering into the LLB Agreements, the Contractor acknowledges that it has had opportunities to inspect the Project Site and become fully acquainted with the conditions under which the Work will be performed and to fully understand the facilities, difficulties, restrictions, and requirements attendant to the performance of the Work on and at the Project Site. By entering into the LLB Agreements, the Contractor shall be deemed and construed to have so inspected the Project Site and to know and understand the conditions of the Project Site existing as of the Effective Date. Therefore, the Contractor shall not be relieved of any obligation under the Contract as a result of any failure by the Contractor: (i) to know or understand all such existing conditions; (ii) to have discovered or learned of any such existing condition; or (iii) to have correctly ascertained the existence, extent, scope, magnitude, or limitations of any such existing condition. Except as expressly provided in the Contract Documents, the Contractor shall not be entitled to any additional compensation in connection with the Project as a result of any condition of, at, or in the immediate vicinity of the Project Site that differs from what the Contractor may have anticipated.

**7.2 Contractor Must Furnish Everything Required.** Except to the extent the Contract Documents expressly provide otherwise, the Contractor must obtain, furnish, or otherwise make available or have in effect, all at its own cost, any and all labor and other services, materials (including, without limitation, any that will not be incorporated into the Work), systems and building equipment, tools, construction equipment and machinery, heat, air conditioning, water, electricity, other utilities, transportation, temporary and permanent facilities, permits and licenses, layout, surveys and other things as are necessary or convenient for the Contractor to undertake and properly complete the Work in accordance with the Contract Documents, including, without limitation, all assemblies and systems specified in the Contract Documents and anything that is not specified in, but that reasonably may be inferred from, the Contract Documents as described in Section 4.2 of these General Provisions. The Contractor shall be solely responsible and liable for paying all applicable federal, State, and local taxes and other charges assessed or levied on or in connection with such labor, materials, and other services and things. For purposes of the Contract, the Work includes each and every obligation described or otherwise specified in the Contract Documents that must be undertaken, performed and completed by the Contractor in connection with the Project, including, without limitation: (i) any Work inferred as provided in Section 4.2 of these General Provisions; and (ii) any Work performed on behalf of the Contractor by any Subcontractor or other person or entity.

**7.3 Contractor Responsible for Permits and Fees.** Except for initial DSA approval of the Drawings and Specifications, if any, the Contractor shall not assume that the District or some other Party has obtained any and all permits, licenses, approvals, and inspections, or paid any and all fees and other costs, necessary for the Contractor to perform the Work. The Contractor must ascertain for itself whether any permits, licenses, approvals or inspections must be obtained, or any fees or other costs paid, in order for the Contractor to properly and legally perform the Work. Unless the Contract Documents expressly provide otherwise, the Contractor must complete the application processes (including, as required, obtaining the signature of an Authorized District Representative on any such application) and obtain all permits, licenses and similar authorizations that are necessary for or in connection with performance of the Work, including, without limitation, any construction, encroachment, or other permits necessary for off-site improvements and utility facilities. The Contractor shall be responsible for ensuring that it and each Subcontractor has applied for, obtained, and maintains in effect at all times during the performance

of the Work, any and all permits and licenses as are required by applicable Legal Requirements to be in effect in connection with performance of the Work. As between the District and the Contractor, the Contractor shall be solely responsible for paying the costs of all such permits, licenses, and authorizations, including, without limitation: (i) fees for any business, contractor's, or other license or permit required for the Contractor to conduct its business; (ii) any filing and plan-check fees for deferred approvals or other approvals that the Contractor must obtain in accordance with the Contract Documents; and (iii) any royalties, rental, and/or license fees arising from the use of any material, machine, method or process used in performing the Work.

**7.4 Contractor Must Comply with Applicable Legal Requirements.** At all times during and in connection with performance of the Work, the Contractor must fully comply with, give any and all notices required by, and undertake any and all actions required under, all applicable Legal Requirements, including, without limitation, applicable building, mechanical, plumbing, fire and other codes. The Contractor shall be solely responsible and liable for any failure to comply with such requirements in connection with the Work, and shall bear the cost of additional work arising from any such failure, including without limitation, any costs arising from any stop-work order issued by the DSA or other governmental entity as a result of the Contractor failing to perform the Work in compliance with applicable Legal Requirements.

**7.5 Coordination of the Work.** The Contractor must: (i) appropriately and adequately coordinate and time the various portions of the Work to ensure that all Work is properly completed within the time(s) required under the Master Construction Schedule; and (ii) determine when completed or in-progress portions of the Work are sufficient and ready for subsequent portions of the Work. The Contractor must coordinate, time, and perform all portions of the Work so as to avoid and/or prevent any interference with any Work by Others. The Contractor must at all times furnish a sufficient number of workers to ensure that the Work is efficiently and timely undertaken and completed in accordance with the Master Construction Schedule. The Contractor shall permit the Work to be performed only by workers who are appropriately qualified and skilled in the work assigned to them. Notwithstanding the foregoing, apprentices may perform portions of the Work if enrolled in an appropriate apprenticeship program and appropriately supervised at all times during performance of such portions of the Work.

**7.6 Impacts of Work by Others.** The District, in its sole discretion, may: (i) enter into other contracts to provide for Work by Others in connection with the Project, or may perform any such Work by Others using its own forces and/or (ii) provide for phasing of various portions of the Project. The Contractor must ascertain for itself the overall scope and nature of the Project, the scope and nature of any Work by Others required to complete the Project and the potential impacts of any Work by Others on the coordination, timing, scheduling and performance of the Work, including, without limitation, the impacts of any phasing of the Project. The Contractor must accommodate all such potential impacts, and shall be deemed and construed to have accommodated all such potential impacts, when: (i) preparing the proposed Master Construction Schedule; (ii) coordinating, timing, and scheduling the Work; and (iii) performing the Work. If the Contractor believes that any delay in any Work by Others has caused or resulted in any unreasonable delay and/or unreasonably increases the cost of performing the Work, the Contractor may provide notice and a request for Change Order as provided in Sections 11.9 and 11.10, respectively, of these General Provisions.

**7.7 Contractor Must Preserve Survey Monuments and Markers.** At all times prior to completion of the Work, the Contractor must employ reasonable caution to avoid removing, dislocating, covering or otherwise disturbing any survey monuments, stakes, markers, devices, or implements. In the event any

such monument, stake, marker, device, or implement is disturbed by any person on, at or in the vicinity of the Project Site on account of the Work, regardless of whether due to negligence, accident or other cause, the Contractor shall be solely responsible and liable for all costs attributable to such disturbance, including, without limitation, costs of replacement and/or other correction by a licensed land surveyor or registered civil engineer and any necessary compliance with requirements to file records thereof with appropriate governmental authorities.

#### **7.8 NPDES Permit and SWPPP.**

**7.8.1 District to Obtain Coverage.** The District shall be responsible for obtaining any required coverage for the Project from the State Water Resources Control Board under the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities ("NPDES Permit"), including, without limitation, filing the required "Permit Registration Documents," which includes a Notice of Intent, Storm Water Pollution Prevention Plan ("SWPPP"), and other compliance related documents. The District may contract with a consultant for the preparation and processing of some or all of such documents, including, without limitation, the SWPPP.

**7.8.2 Implementation and Compliance.** If NPDES Permit requirements are applicable to the Project, the Contractor must not commence work on the Project until the District has provided a copy of the NPDES Permit and the SWPPP to the Contractor, and it shall be the Contractor's responsibility to incorporate such requirements into all Subcontracts. The Contractor shall be responsible for implementing and complying with the provisions of the NPDES Permit and the SWPPP, including, without limitation, the standard provisions, monitoring and reporting requirements as required by the NPDES Permit. The Contractor shall provide copies of all reports and monitoring information to the District and Architect. The GMP shall be deemed and construed to include compensation to the Contractor for all costs of compliance with specified requirements of the NPDES Permit and SWPPP. The Contractor shall be responsible for removal and clean-up of all run-off and other control measures upon completion of the Work.

**7.8.3 Consequences of Failure to Comply.** Failure to comply with the NPDES Permit is in violation of federal and State law. The Contractor shall be solely responsible and liable for any and all costs and/or delays arising from any failure of the Contractor to comply with any of the requirements described in this Section.

**7.9 Contractor Must Comply with Run-Off Control Requirements.** At all times during performance of the Work, the Contractor must comply with all federal, State, and local governmental and quasi-governmental requirements providing for control of erosion, run-off, drainage, and/or discharges into any storm drain systems and/or watercourses including, without limitation, all applicable requirements of any city, County and/or flood-control district, and any NPDES Permit and SWPPP applicable to the Work and/or the Project. The Contractor must ascertain for itself the requirements applicable to the Work and the Project. The Contractor shall be solely responsible and liable for any and all costs and/or delays arising from any failure of the Contractor to comply with any of the requirements described in this Section.

**7.10 Contractor Must Not Disturb Run-Off Control Measures.** Except for removal upon completion of all other Work, the Contractor must not remove, relocate, damage, destroy or otherwise disturb any on-site or off-site erosion and/or run-off control measures established in connection with the

Project. The Contractor must replace and/or restore any such control measures disturbed by any person or entity on, at, or in the vicinity of the Project Site on account of the Work. The Contractor shall be solely responsible and liable for any and all costs and/or delays arising from any failure of the Contractor to comply with any of the requirements described in this Section.

**7.11 Contractor Must Protect Site and Existing Improvements.** At all times prior to completion of the Work, the Contractor must adequately secure, preserve and protect all: (i) completed and in-progress portions of the Work; (ii) materials and equipment used in connection with the Work; (iii) all Work by Others and other existing improvements in the immediate vicinity of, affected by, or receiving any portion(s) of, the Work; and (iv) the portion(s) of the Project Site in the vicinity of the Work. The foregoing shall be deemed to require, among other things, that the Contractor: (i) install barricades around any shrubs or trees that the Contract Documents or the District requires to be preserved or protected, but that may be adversely affected by performance of the Work; (ii) drain, remove or otherwise mitigate any water, mud, dust, debris, et cetera, as necessary for proper performance of the Work; (iii) avoid driving over, parking on, and placing any loads (including, without limitation, stabilization legs of cranes or other equipment) on, any curbs, gutters and sidewalks on, at or in the vicinity of the Project Site; and (iv) avoid overloading any completed or partially completed building, structural members or elements, or other improvements, with workers, materials and/or equipment. The Contractor must promptly repair, replace or otherwise correct any damage to property caused by the Contractor or any other person or entity performing any of the Work or, alternatively, the District may cause any such damaged property to be repaired, replaced or otherwise corrected by another party at the Contractor's expense. The Contractor shall be solely responsible and liable for any costs and/or delays arising from any failure of the Contractor to provide adequate security, preservation and protection as provided herein.

**7.12 Requirements for Cuts, Patches and Attachments.** The Contractor must obtain the written consent of the Architect prior to: (i) cutting and/or patching any completed portions of the Work, any Work by Others, or existing improvements on, at or in the vicinity of the Project Site; and/or (ii) cutting, boring or drilling into, or attaching anything onto, any structural members or elements, including, without limitation, columns, shear walls, trusses, *et cetera*. The Contractor must resolve any doubt regarding whether something is a structural member or element by consulting with the Architect. The Architect may impose reasonable conditions on any such approval, including, without limitation, conditions relating to the appearance, quality, functionality, integrity and/or safety of the Work and any Work by Others. The Contractor shall be solely responsible and liable for any and all costs arising from any action within the scope of this Section that is performed without consent of the Architect, performed contrary to direction or instructions of the Architect, or is otherwise defective or improperly performed, including, without limitation, any costs arising from the need to obtain Architect, DSA and/or other approvals.

**7.13 Testing and Inspection.** The Contractor must provide written notice to the District, Architect and Inspector of Record sufficiently in advance of when it is necessary for any required testing or inspection to occur, in order to: (i) permit the District to arrange for such testing or inspection, including, without limitation, if materials and/or equipment are required to be inspected at the place of manufacture or other source of supply; and (ii) avoid and/or prevent any delays in performing the Work and any Work by Others. The District, Architect, Inspector of Record and/or entity performing any test shall select each sample of material that must be tested, not the Contractor. If the Contractor incorporates into the Work any materials and/or equipment that are required to be tested and/or inspected prior to such materials and/or equipment having been tested and approved, or closes or otherwise makes inaccessible any assembly or assemblies that must be tested prior to being closed or otherwise becoming inaccessible, the District may require that the Contractor open, uncover or otherwise deconstruct that

portion of the Work in order to permit the required inspection(s) to occur. In such event, the Contractor shall be solely responsible and liable for any costs arising from the need to open, uncover, or deconstruct such portion of the Work and to thereafter replace or otherwise correct such portion of the Work.

**7.14 Special or Additional Testing or Inspection.** If necessary or advisable, the District may require special or additional testing and/or inspection, not otherwise required, of any portion of the Work and/or any materials and/or equipment incorporated or to be incorporated therein. To the extent required, the Contractor must open, uncover, or deconstruct any portions of the Work or any assemblies incorporated therein in order to reveal hidden portions of the Work. If the special or additional testing and/or inspection reveals that the Work conforms to all requirements of the Contract Documents, the District shall be responsible for the cost of the testing and/or inspection and for costs incurred by the Contractor, as required, to open, uncover, or deconstruct any portions of the Work and, thereafter, correct such Work and any Work by Others disturbed by the additional testing and/or inspection. If the special or additional testing and/or inspection reveals that the Work does not substantially conform to all requirements of the Contract Documents, the Contractor shall be solely responsible for the cost of the testing and/or inspection and for costs incurred by the Contractor, as required, to open, uncover or deconstruct any portions of the Work and, thereafter, correct such Work and any Work by Others disturbed by the additional testing and/or inspection.

**7.15 Contractor Must File Verified Reports.** From time to time during the performance of the Work and as otherwise required by the DSA, the Contractor and each other person or entity performing any portion of the Work that is required by any applicable Legal Requirement, must prepare and file with the DSA any and all verified reports required under Education Code Section 17309, Section 36 of Title 21 of the California Code of Regulations, and Section 4-366 of Title 24 of the California Code of Regulations.

**7.16 Contractor Must File Daily Reports.** For each day on which any portion of the Work is performed, regardless of the scope or amount of such Work, the Contractor must provide to the District, Architect, and Inspector of Record a report describing all activities in connection with performance of the Work that day, listing all workers performing any Work that day and their respective trades, experience levels and employers, and any equipment or materials delivered and/or installed or incorporated into the Work that day. The above-described report shall include a daily sign-in sheet for Contractor's employees and the employees of any Subcontractor and/or supplier who are on the Project Site for any given work day. For each day on which the Contractor conducts any safety meeting, the Contractor must submit minutes and the sign-in or attendance sheet for the safety meeting with the daily report for that day.

**7.17 Contractor Must Control Noise and Dust.** At all times during performance of the Work, the Contractor must ensure that all construction equipment used in connection with the Work are properly fitted with appropriate and adequate noise-reduction devices or mechanisms, and that all such devices and mechanisms are properly and well maintained. The Contractor also must take all such actions as are necessary to prevent dust and/or debris attributable to the Work from blowing into, or otherwise creating a nuisance or polluting, any other areas on or off the Project Site. If the Work is to be performed at any time school is in session, the risk of the District stopping the Work on account of any such disturbance shall be deemed and construed as foreseeable, and the Contractor in no such event shall be entitled to an extension of the Contract Time or an increase in the GMP.

**7.18 Contractor Must Keep Project Site Clean.** The Contractor must at all times keep the Project Site free of (and not less than daily must collect and remove) any and all trash, debris, dust, excess water, excess materials, unused equipment, *et cetera* attributable to the Work, and shall maintain the Project

Site and all structures or other improvements in a clean and orderly condition. The Contractor must comply with any and all reasonable directions of the District, Architect and Inspector of Record with respect to clean-up of the areas in which the Work is or was being performed, and any other areas affected by such Work (including, without limitation, adjacent streets, sidewalks, gutters, *et cetera*), break areas, lunch areas, *et cetera*. If the Contractor fails at any time to keep such areas clean and free of trash, debris, *et cetera*, the District may cause such areas to be cleaned by others, and the cost thereof shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor under the Contract.



**PART 8**  
**PROJECT SITE DECORUM**

**8.1 Performance of Work at Operating School Facilities.** This Section 8.1 shall be applicable to the Contract if the Work or any portion thereof is to be performed at any existing and operating school facility. The Contractor and each Subcontractor and other person or entity on, at or in the vicinity of the Project Site on account of the Work must: (i) become informed of and take into account the age and maturity of the students on the Project Site; (ii) control their behavior accordingly; (iii) avoid or, if avoidance is not possible, minimize interactions with any students who are not accompanied by an adult; (iv) coordinate, schedule and perform any Work that may cause inconvenience, interference or other disturbance of any classes or other school operations during times that will eliminate or minimize the disturbance; (v) enclose the area in which the Work is to occur with a substantial barricade or take other safety precautions as directed by the District; and (vi) comply with directions from the District regarding the timing and performance of the Work that are intended to avoid unnecessarily disturbing school operations. Each person at, on, or in the vicinity of the Project Site on account of the Work must remain in the immediate vicinity of the portion of the Work he or she is to perform, and must not stray to other areas of the Project Site; provided that the foregoing shall not be construed to prohibit any such person from accessing, as reasonably necessary, his or her work area(s), restrooms, any designated lunch area, or any designated parking area.

**8.2 Procedures to Prevent Contact with Students.**

**8.2.1 Significance of Requirements.** This Section 8.2 shall be applicable to the Contract only if so provided in Section 11 of the Construction Services Agreement. If this Section 8.2 is applicable, it is because the District has determined that persons assigned to the Work or who otherwise will be present at, on or in the vicinity of the Project Site on account of the Work may have more than "limited contact" with minor-aged students.

**8.2.2 Criminal-History Background Checks.** Unless the Contractor is a sole proprietor, as discussed in Section 11 of the Construction Services Agreement, the Contractor, in conformance with Education Code Section 45125.1, shall require and be responsible for ensuring that each person who will be at, on or in the vicinity of the Project Site on account of the Work shall comply with all California Department of Justice guidelines and requirements relating to fingerprinting and criminal-history background checks. The Contractor shall certify in writing to the District, using the "Certification Regarding Employee Background Checks" form, which is one of the Required Project Forms, that no person assigned to the Work or who otherwise will be present at or on the Project Site has been convicted of any serious or violent felonies (as described in Education Code Section 45122.1). The Contractor must attach to the executed Certification of Employee Background a list of all persons to whom the certification applies. The Contractor shall prohibit and prevent each and every person who will be at, on or in the vicinity of the Project Site on account of the Work (including not only all persons assigned to the Work directly by the Contractor, but also all persons assigned to the Work by any Subcontractor, materialman, or other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work) from being present at, on or in the vicinity of the Project Site unless and until the Contractor provides the required certification including such person to the District.

**8.2.3 Responsibility for Subcontractor Compliance.** The Contractor shall require in each Subcontract that, if the Subcontractor will assign any person to the Work or otherwise will cause or permit any person to be present at or on the Project Site, the Subcontractor must cooperate in regard to, and fully comply with, the requirements of this Section 8.2. The Contractor may on that basis delegate

responsibility for compliance with this Section 8.2 to any such Subcontractor; however, the Contractor at all times retains full responsibility and/or liability for such compliance or lack thereof.

**8.2.4 Alternatives to Fingerprinting and Background Checks.** Upon request of the Contractor with respect to any particular situation and/or duration of time, the District in its sole discretion may consent to the Contractor implementing measures intended to protect the District's minor-aged students, which measures would be in lieu of the Contractor complying with Subsections 8.2.2 and 8.2.3 herein. Subject to District approval, such alternative measures might include, but are not necessarily limited to: (i) installing a physical barrier to limit contact between students and the employees and other representatives of the Contractor, Subcontractors, and others present on or at the Project Site on account of the Work; (ii) providing for the continuous supervision and monitoring of such employees, representatives, and others by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice; or (iii) providing for the surveillance of such employees, representatives, and others by a District employee. The Contractor must implement any such approved alternative measures at no additional cost to the District, and the Contractor shall be responsible for ensuring compliance with such alternative measures by or with respect to all persons assigned to the Work or who otherwise will be present at, on, or in the vicinity of the Project Site on account of the Work.

**8.2.5 Consequences of Non-Compliance with Requirements.** Due to the possible adverse consequences of contact with students and other minor-aged individuals, any failure by the Contractor to ensure compliance with the requirements of this Section 8.2 shall be deemed and construed to constitute a material breach of the Contract, upon which the District, in its sole discretion, may immediately terminate the Contract without any further compensation to Contractor and/or pursue all other rights and remedies it may have against the Contractor under law or the Contract.

**8.3 Courteous and Professional Conduct and Appearance.** The District may require that the Contractor remove and either temporarily or permanently bar from the Project Site any person on or in the vicinity of the Project Site on account of the Work who: (i) does not act in a courteous and professional manner; (ii) does not wear clothing appropriate for the Work being performed and the situation in which the Work is being performed; (iii) wears any clothing or other thing with any obscene, violent, derogatory, or other inappropriate depiction or message, or that depicts or advertises any drug, alcohol, tobacco, or other controlled substance prohibited to minors.

**8.4 Requirements for Use of Restrooms.** If the Contract Documents do not require that the District make restroom facilities available at the Project Site, the Contractor shall be responsible for providing portable restroom facilities (including, without limitation, hand-washing area and soap) for use by all persons at, on, or in the vicinity of the Project Site on account of the Work. In no circumstances may any such person urinate, defecate or expectorate (i.e., spit) anywhere at, on or in the vicinity of the Project Site other than, as appropriate, into a urinal or toilet inside a restroom facility.

**8.5 Control of Break-Time Activities.** The Contractor must control the break-time activities of all persons present on the Project Site on account of the Work. The Contractor shall ensure that break areas are cleaned after each break and that all refuse (including, without limitation, soda cans, food wrappers and containers, plastic bottles, and uneaten food) are placed in appropriate trash or recyclable-materials receptacles. No person may bring onto, or keep in the vicinity of, the Project Site any glass bottle or other glass food or beverage container.

**8.6 Prohibition Against Drugs (including Alcohol) and Tobacco.** All District properties, including, without limitation, the Project Site, are “drug-free” workplaces and, therefore, the Contractor is hereby made subject to the requirements of Government Code Sections 8350 *et seq.*, the Drug-Free Workplace Act of 1990. In addition, all District properties, including, without limitation, the Project Site, are “tobacco-free” workplaces. No person at, on or in the vicinity of the Project Site on account of the Work may: (i) engage in the unlawful manufacture, dispensation, possession or use (including being under the influence) of any illegal or controlled substance; (ii) possess or use any alcoholic beverage; (iii) use any legal substance that results or likely will result in serious or significant impairment of normal abilities; or (iv) smoke, inhale, chew, or otherwise use or consume tobacco products, including via devices known as e-cigarettes or “vape pens.” Within seven days after receipt of the Notice of Award (if issued by the District) or prior to the Required Commencement Date, whichever is sooner, the Contractor must submit to the District an executed copy of the “Certification Regarding Drug-Free Workplace” and “Certification Regarding Tobacco-Free Workplace” forms included in the Required Contract Forms.

**8.7 Parking Restrictions.** Each person who brings a personal or work vehicle or equipment to the Project Site must fully comply with any parking controls and/or program established by the District. If the District has not designated an on-site or off-site parking area for use in connection with the Work, then no personal or work vehicles or equipment: (i) may be parked on the Project Site except as expressly authorized by the District; or (ii) may be parked in the vicinity of the Project Site in any manner that is illegal or otherwise creates a safety hazard or nuisance.

**8.8 Work Vehicles and Equipment.** Any work vehicles and/or equipment used on the Project Site must be removed from the Project Site or, if applicable, removed to a designated location, promptly after completion of the portion of the Work for which the vehicle or equipment is required. The Contractor shall be responsible for damage to the Project Site or any necessary repair or other work at the Project Site resulting from use of any such vehicle or equipment. The Contractor and/or the individual owners of any personal or work vehicles or equipment at, on or at the Project Site shall be and remain responsible for the security, safety and condition of such vehicles and equipment. None of the District, Architect or Inspector of Record shall be responsible or liable for any theft or damage that occurs to any vehicles and/or equipment at, on, or in the vicinity of the Project Site.

**PART 9**  
**PROJECT SITE SAFETY**

**9.1 General Safety-Related Responsibilities.** Without limiting any other provision of the Contract Documents, the Contractor has, and shall at all times retain, the ultimate responsibility for: (i) keeping the areas at, on, and in the vicinity of the Project Site free of safety hazards arising from performance of, or in any way connected with, the Work; (ii) performing the Work in a manner that ensures the safety of persons and property at, on, or in the vicinity of the Project Site; (iii) providing all physical safety measures required in connection with the Work to adequately protect persons and property at, on or in the vicinity of the Project Site, whether required by the Contract Documents, any Legal Requirement, or because dictated by conditions in which the Work will be performed; (iv) complying with all Legal Requirements applicable to job-site and worker safety, including, without limitation, posting of all required information regarding protection of workers and giving of any and all required notices, warnings and disclosures; (v) protecting the Work and all materials, equipment and other things to be incorporated into the Work or used in connection with the Work, whether on or off the Project Site; and (vi) protecting property at, on or in the vicinity of the Project Site that may be affected by the Work, including, without limitation, structures, streets, sidewalks, gutters, paved areas, utilities, trees, shrubs and lawns that will not be removed or replaced in connection with the Project.

**9.2 Compliance with Safety Requirements.** The Contractor shall prepare in writing any and all safety, loss-prevention and/or injury and illness prevention plans and/or programs required in connection with the Work, whether required by the Contract Documents or by any applicable Legal Requirement, including, but not limited to, Cal-OSHA requirements (each a "Safety Program"). The Contractor shall provide a copy of each Safety Program to the District prior to commencing any portion of the Work. An insurance loss-prevention agent and/or other District representative, including, without limitation, in connection with an applicable OCIP, may implement a Safety Program in connection with the Project, in which case, the Contractor and each Subcontractor shall fully comply with all requirements of such Safety Program. As directed by the District, the Contractor shall coordinate its Safety Program procedures and requirements with those of any other Safety Programs applicable to the Project. The Contractor shall be responsible for implementing and ensuring compliance with any and all procedures, training and other requirements of each applicable Safety Program, including, without limitation, training of workers in regard to security of the Project Site and the transportation, storage and use of hazardous materials. The Contractor shall also be responsible for compliance with any and all applicable Legal Requirements relating to job-site and work safety, including, without limitation, requirements for fully-stocked and adequate first-aid supplies at the Project Site consistent with U.S. Department of Labor, Occupational Safety and Health Administration ("OSHA") and California Department of Industrial Relations, Division of Occupational Safety and Health ("Cal-OSHA") requirements.

**9.3 Trench Safety Plans.** If the GMP exceeds \$25,000, then, prior to undertaking the excavation of any trench that will or reasonably might be five feet or more in depth, the Contractor must submit to the District a detailed plan showing the design of the shoring, bracing, sloping or other mechanisms for protection of workers and others from collapse or cave-in of the trench ("Trench Safety Plan"). Without limiting any other requirement applicable to contents of a Trench Safety Plan, each Trench Safety Plan must also: (i) provide for safe means for workers, as necessary, to enter and exit the trench; (ii) consider active and surcharge loads, and specify minimum required distances between the trench edges and adjacent buildings, embankments, subsurface utilities, construction equipment, spoils, *et cetera*; and (iii) provide for daily inspection of the trench by a competent person prior to each work shift and after any change in existing conditions. Each Trench Safety Plan must be prepared by an appropriately skilled,

experienced and licensed civil or structural engineer, who must certify that the Trench Safety Plan complies with minimum requirements of all applicable Construction Safety Orders of Cal-OSHA. If a Trench Safety Plan varies from the standards established by applicable Construction Safety Orders, the Contractor must obtain Cal-OSHA approval of the Trench Safety Plan. The Contractor shall not commence the excavation of a trench within the scope of this Section until the Contractor has provided (and the District has accepted) the applicable Trench Safety Plan and a copy of the excavator's current and valid Cal-OSHA Construction Activity Permit. Neither anything in this Section nor any review and/or acceptance by the District of any Trench Safety Plan shall be deemed or construed to: (i) impose any tort liability on the District; or (ii) relieve the Contractor from responsibility for providing shoring, bracing, sloping, or other mechanisms adequate to protect workers and others on, at or in the vicinity of the Project Site in connection with any trench to be excavated by or on behalf of the Contractor.

**9.4 Notice and Correction of Non-Compliance.** Upon being notified of any actual or potential hazard to the health or safety of any person or property at, on or in the vicinity of the Project Site, the Contractor must immediately undertake action to correct, cure or otherwise eliminate the hazard. If the Contractor fails to eliminate, or fails to implement reasonable efforts to eliminate, the actual or potential hazard within a reasonable time, not to exceed twenty-four hours in any case, the District may, but shall not be obligated to, eliminate such hazard, and the cost thereof shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor under the Contract. In no event shall the failure by the District or any other party to provide notice to the Contractor of any actual or potential hazard be deemed or construed to relieve the Contractor from any responsibility or liability whatsoever attributable to such hazard. Unless and only to the extent set forth in the Contract Documents, the District assumes no responsibility or liability for the physical condition or safety of the Project Site, any ongoing or completed construction thereon, or any equipment, supplies or materials present at, on or in the vicinity of the Project Site.

**9.5 Contractor Response to Emergency Situations.** In the event of an Emergency that endangers or reasonably might endanger the health, safety or welfare of any person(s) or property, the Contractor shall take such action as the Contractor, in its reasonable discretion, determines is necessary to prevent the threatened damage or injury to person(s) or property, including, without limitation, rendering first aid to any injured person. For purposes of these General Provisions, an "Emergency" is defined as a sudden, unexpected occurrence that creates a clear and imminent danger and that requires immediate action to prevent or mitigate any injury to any person (including death) or any damage to, or loss of, property or essential public services.

**9.6 Accident Reports.** The Contractor must file a written report with the District as provided in this Section (each an "Accident Report") in each case in which, due to any cause: (i) any significant accident occurs (regardless of whether any injury or damage occurs), any person is injured (including death), or any property on, at or in the vicinity of the Project Site is damaged, in connection with the performance of the Work or by any person at, on or in the vicinity of the Project Site on account of the Work, and regardless of whether such portion of the Work is being or to be performed by the Contractor or any Subcontractor; or (ii) the Contractor renders aid to any person as described in Section 9.5 of these General Provisions. The Contractor shall provide an Accident Report to the District within twenty-four hours of the incident detailed in the Accident Report.

**PART 10**  
**COMPLIANCE WITH LABOR LAWS**

**10.1 Contractor Must Comply with Prevailing Wage Laws.** The Contractor must be, and shall be deemed and construed to be, aware of and understand the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.*, and Title 8 of the California Code of Regulations, Section 16000 *et seq.* (collectively, “Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on certain “public works” and “maintenance” projects. The Project is a “public works” project, as defined by the Prevailing Wage Laws, and the Contractor must perform all of the Work as a public works project. The Contractor must fully comply, and must ensure full compliance by all Subcontractors and other persons and entities as required, with all applicable Prevailing Wage Laws.

**10.2 Copies of Prevailing Wage Rates.** Prior to commencing any portion of the Work, the Contractor must: (i) obtain from the Director of Industrial Relations (“DIR Director”) the general prevailing rate of per-diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed for each craft, classification, or type of worker needed to perform the Work, in effect as of the date the District sought proposals for the Work; and (ii) provide copies of such prevailing wage rates to the District. The Contractor also must make copies of the prevailing rates of per-diem wages for each craft, classification or type of worker needed to perform the Work available to interested parties upon request, and must post copies at the Contractor’s principal place of business and at the Project Site.

**10.3 Penalties for Violations of Prevailing Wage Laws.** In accordance with Labor Code Section 1775, the Contractor and any Subcontractor shall forfeit, as a penalty to the District, not more than \$200 and, subject to limited exceptions, not less than certain amounts specified by law, for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the DIR Director for the work or craft in which the worker is employed. The Contractor or the applicable Subcontractor shall pay to each worker the difference between such prevailing wage rates and the amount paid to the worker for each calendar day or portion thereof for which the worker was paid less than the applicable prevailing wage rates.

**10.4 Labor-Compliance-Related Requirements.** The Contractor and each Subcontractor must comply with all labor-related requirements, as described in Section 9 of the Construction Services Agreement, at no extra cost to the District.

**10.5 Prohibition Against Debarred Subcontractors.** No Subcontractor may perform any portion of the Work if the Subcontractor is ineligible to perform work on a public works project under Section 1777.1 or Section 1777.7 of the Labor Code. Any contract relating to a public works project entered into by the Contractor and any such “debarred” party is void as a matter of law, and a debarred party may not receive any public money for performing work as a contractor or subcontractor on any public works project. The Contractor must refund to the District any public money that has been paid to a debarred party in connection with the Work. The Contractor shall be responsible for the payment of wages to workers of any debarred party that is allowed to perform any of the Work.

**10.6 Employment of Apprentices; Skilled and Trained Workforce.**

**10.6.1 Apprentice-Related Requirements.** The Contractor and each Subcontractor shall be responsible for compliance with the provisions of law relating to employment of apprentices, including, without limitation, Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code. As provided by Labor

Code Section 1777.7, violations of Labor Code Section 1777.5 may result in forfeiture not to exceed \$100 for each full calendar day of non-compliance. Information regarding apprenticeship standards, wage schedules, and other requirements may be obtained from the DIR Director, ex officio the Administrator of Apprenticeship, San Francisco, California, or from the DIR's Division of Apprenticeship Standards ("DAS") and its branch offices.

**10.6.2 Skilled Workforce-Related Requirements.** To the extent Project is subject to Education Code Section 17407.5, the Contractor shall be solely responsible and liable for ensuring compliance by it and each of its Subcontractors at every tier with the requirements of Section 17407.5, and Public Contract Code Section 2600 *et seq.*, to perform the Work using a "skilled and trained workforce," including, without limitation, as such requirements progressively take effect over time or are amended. Each month during the Site Lease Term, and until the District Board acceptance of the Project under Section 16.8 of these General Provisions, the Contractor must submit a written report to the District that demonstrates compliance with the requirements of Public Contract Code Section 2600 *et seq.* by the Contractor and its Subcontractors at every tier. Each such report shall be a public record and available for public inspection. **IF THE CONTRACTOR FAILS TO SUBMIT ANY MONTHLY REPORT REQUIRED UNDER THIS SECTION OR PUBLIC CONTRACT CODE SECTION 2600 ET SEQ., OR SUBMITS A REPORT THAT DOES NOT DEMONSTRATE COMPLIANCE WITH PUBLIC CONTRACT CODE SECTION 2600 ET SEQ., THE DISTRICT: (i) SHALL IMMEDIATELY CEASE MAKING ANY PAYMENTS THAT OTHERWISE ARE PAYABLE OR BECOME PAYABLE TO THE CONTRACTOR IN ACCORDANCE WITH THE LLB AGREEMENTS AS PROVIDED IN PUBLIC CONTRACT CODE SECTION 2602; AND (ii) WILL NOT RESUME MAKING ANY SUCH PAYMENTS UNLESS AND UNTIL THE CONTRACTOR CURES ITS NONCOMPLIANCE. THE CONTRACTOR, AND EACH SUBCONTRACTOR AT EVERY TIER, SHALL CONTINUE PERFORMING WORK ON THE PROJECT WITH NO WORK STOPPAGES. THE DISTRICT SHALL NOT BE LIABLE WHATSOEVER FOR THE CONTRACTOR'S FAILURE, OR ANY SUBCONTRACTOR'S FAILURE, TO COMPLY WITH PUBLIC CONTRACT CODE SECTION 2600 ET SEQ. THE CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE DISTRICT FOR ANY FAILURE TO COMPLY WITH EDUCATION CODE SECTION 17407.5 OR PUBLIC CONTRACT CODE SECTION 2600 ET SEQ.**

**10.7 Limitations on Daily Hours of Work.** Except as provided in this Section, the Contractor and each Subcontractor shall not permit any person performing any of the Work to work more than eight hours during any one calendar day or more than forty hours during any one calendar week. The Contractor and any Subcontractor shall forfeit, as a penalty to the District, \$25 for each worker employed in the execution of the Work by the Contractor or the Subcontractor who is required or permitted to work more than eight hours in any one calendar day or forty hours in any calendar week in violation of Sections 1810 through 1815, inclusive, of the Labor Code. However, notwithstanding the foregoing, in accordance with Labor Code Section 1815, the Contractor or a Subcontractor may permit a worker to work in excess of eight hours per day, or forty hours per week, if all work in excess of such limits is compensated at a rate not less than one and one half times the worker's basic rate of pay.

**10.8 Payroll Records.** The Contractor and each Subcontractor must comply with all applicable provisions of Labor Code Sections 1776 and 1812, which relate to preparing and maintaining accurate payroll records, and making such payroll records available for review and copying by the District, the DIR's Division of Labor Standards Enforcement, and the DAS. The payroll records must be certified, maintained at the principal offices of the Contractor, and made available as required under Labor Code Section 1776. The Contractor must inform the District of the location at which the payroll records are located, including the street address, city, and county, and must, within five working days, provide a notice of any change of location and address. The Contractor and any Subcontractor that fails to timely comply with requests for

certified public records shall forfeit, as a penalty to the District, \$100 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, and, in addition to penalties as provided by law, may be subject to debarment under Labor Code Section 1771.1.

**10.9 Contractor Must Know and Comply with All Labor Laws.** Notwithstanding anything to the contrary, the Contractor shall be responsible and liable for ascertaining, knowing, understanding and complying with all Legal Requirements applicable to the matters addressed in this Part 10, including, without limitation all such requirements specifically cited in this Part 10. If any provision of this Part 10 conflicts with, or is not a complete statement of, any provision of an applicable Legal Requirement, such Legal Requirement shall be deemed, respectively, to govern over or to expand on such provision of this Part 10, and the Contractor and each Subcontractor shall be required to comply in all respects with the applicable Legal Requirement.



**PART 11**  
**SCHEDULING OF WORK AND DELAYS**

**11.1 Early Work Schedule and Master Construction Schedule.**

**11.1.1 Early Work Schedule.** Within seven days after receipt of the Notice of Award (if issued by the District) or prior to the Required Commencement Date, whichever is sooner, the Contractor must submit to the District and the Architect, for review and approval, a proposed schedule that specifies the Contractor's Project-related activities for the first 60 days of the Work ("Early Work Schedule"). If the District or the Architect requires revisions to the Early Work Schedule, the Contractor must correct and resubmit the Early Work Schedule promptly and within such time as will avoid any delay in the Work.

**11.1.2 Initial Submission of Master Construction Schedule.** Within fifteen days after the Required Commencement Date, the Contractor must submit to the District and the Architect a schedule for completion of all of the Work ("Master Construction Schedule") that: (i) provides for a logical and orderly progression of the Work to completion within the Contract Time; and (ii) specifies time for accomplishing all activities and events needed for completion of the Project, including, without limitation, order deadlines for long-lead-time items, delivery dates for critical or special equipment and/or materials, and time for completion of commissioning and close-out activities. The Contractor must submit the Master Construction Schedule to the District and the Architect for review and approval. If the District or the Architect requires revisions to the Master Construction Schedule, the Contractor must correct and resubmit the Master Construction Schedule promptly and within such time as will avoid any delay in the Work. Upon approval of the Master Construction Schedule, it shall supersede the Early Work Schedule, and it may be changed only as provided in the Contract Documents. The Master Construction Schedule shall be developed using Primavera P6 format showing one defined critical path and illustrating the duration, start, and finish of any milestones.

**11.1.3 Modifications.** The Master Construction Schedule shall be subject to reasonable modification by the District from time to time during the course of construction of the Project, due to changes in the Project, circumstances beyond the control of the District, *et cetera*, and such modifications may result in the Master Construction Schedule not including any float that previously had been included in the Master Construction Schedule.

**11.1.4 Updates and Revisions.** Not less than once per month (starting with the second month after the Work commences), the Contractor must update and, as necessary, revise the Master Construction Schedule to accommodate authorized changes in the Work and/or Contract Time, as well as any other authorized modifications to the Master Construction Schedule. Each update of the Master Construction Schedule must also specify the actual commencement and completion dates for the scheduled activities. The Contractor must submit a narrative explaining any schedule modifications along with each monthly schedule update. The Contractor must submit copies of each such updated and/or revised Master Construction Schedule and narrative to the District and Architect as provided in Subsection 19.6.2 of these General Provisions.

**11.1.5 Schedule Compliance and Recovery from Delays.** Time is of the essence with respect to the performance of the Work. If the performance of any portion of the Work falls behind what is required by the Master Construction Schedule, the Contractor must, at its cost, accelerate and/or do all other things as necessary to complete the Project within the time specified in the Master Construction Schedule. In such event, the Contractor must submit to the District and the Architect a proposed revision to the Master Construction Schedule that clearly specifies how the Contractor will bring the Work back

into conformance with the Master Construction Schedule (“Recovery Schedule”). Each Recovery Schedule is subject to approval by the District and the Architect.

### **11.2 Work Outside Regular Working Hours.**

**11.2.1 Requested by Contractor.** If the Contractor desires to perform any portion of the Work on, at or in the vicinity of the Project Site on any days or at any times other than during Regular Working Hours, or for more than eight working hours per day, the Contractor must obtain the written consent of the District, the Inspector of Record and/or any special inspector, and, if necessary, any city, County and other governmental agencies having competent jurisdiction. The Contractor shall in each such case be responsible for paying any and all additional or increased management, supervision, inspection and other costs incurred by the District on account of such work, and such costs shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor under the Contract.

**11.2.2 Required by Contract or District.** The Contractor must perform portion(s) of the Work on any days or at any times other than Regular Working Hours if such requirement is set forth in the Contract Documents. The Contractor also must perform portion(s) of the Work on any day or at times other than Regular Working Hours if required by the District for any reason that is not the fault of, caused by, or otherwise the responsibility of, the Contractor, in which case the District shall be responsible for paying any and all additional or increased management, supervision, inspection and other costs that it incurs.

### **11.3 Delays Resulting from Abnormal Weather.**

**11.3.1 Normal Weather Deemed Foreseeable.** Normal seasonal weather conditions at and in the vicinity of the Project are, for all purposes relating to the Work, hereby deemed foreseeable. Therefore, the Contractor must accommodate in the proposed Master Construction Schedule the anticipated number of work days during which performance of the Work cannot occur or continue due to normal seasonal weather conditions (each a “Rain Day”). The number of Rain Days included in the Master Construction Schedule shall be determined based on weather data compiled by the National Oceanic and Atmospheric Administration that establishes the normal seasonal weather conditions for the general location of the Project Site and the time(s) of the year(s) during which the Work will be performed. The Contractor shall bear the risk attributable to all normal seasonal weather conditions, including, without limitation, precipitation, temperatures, winds, amount of daylight, *et cetera*. The Contractor shall include anticipated Rain Days in the Master Construction Schedule and as part of the critical path of the Project. Any Rain Days not used in any given month may be saved and used in any other month as necessary. Under no circumstances, however, can any saved and unused Rain Day be utilized to extend the Contract Time. Contractor is only entitled to a weather-related extension of time once all Rain Days have been used, and as provided in Section 11.3.2 below.

**11.3.2 Extensions of Time.** The Contractor shall be entitled to a weather-related extension of time to complete the Work only if the performance of the Work is delayed by inclement weather in an amount, frequency, or duration in excess of the number of Rain Days determined under Subsection 11.3.1 of these General Provisions (“Abnormal Weather”). The District shall grant to the Contractor an extension of time for performance of the Work subject to the Contractor establishing, based on sufficient proof, that: (i) the weather conditions constituted Abnormal Weather, i.e., were in excess of “normal” Rain Days; (ii) the delay was caused by the Abnormal Weather; and (iii) the delay affected the critical-path activities of the Work.

**11.4 Delays Arising from Hazardous Materials and Existing Structures.** If any portion of the Project involves or relates to the presence, repair, modification, rehabilitation, reconstruction, demolition, removal or other work on or involving any existing structures, utilities, or other improvements, regardless of whether the Contractor is to perform such work, the District and the Contractor shall be deemed and construed, for purposes of Public Contract Code Section 7102 and otherwise, to have anticipated that asbestos, lead, petroleum distillates and/or other hazardous materials may exist or be discovered during the course of the Work that may delay or otherwise disrupt the performance of the Work. In such event, the Contractor's sole remedy for any delay attributable to the investigation, analysis, removal, abatement, decontamination and/or other actions necessary to correct such condition shall be an extension of time, unless the delay continues for more than ninety days past the date the hazardous materials were discovered, in which case the Contractor may be entitled to additional compensation, as provided in Section 11.6 of these General Provisions, for the period of delay in excess of ninety days.

**11.5 Non-Compensable Delays.** Neither the District nor any person or entity acting on its behalf shall be required to pay any additional compensation to the Contractor or shall otherwise be liable for any costs attributable to a delay (each a "Non-Compensable Delay") if: (i) the cause of the delay was beyond the control of and without the fault of the District; (ii) the delay was reasonable under the circumstances involved; or (iii) the delay was within the contemplation of the District and the Contractor. For purposes of the Contract, delays within the contemplation of the District and the Contractor shall be deemed and construed to include, without limitation, delays attributable to: (i) normal seasonal weather conditions; (ii) coordination of the Work with any Work by Others; (iii) work on the Project that must be completed prior to some or all of the Work being commenced or completed; (iv) discovery of hazardous materials (including, without limitation, asbestos) if the Work or the Project involves or relates to the presence, repair, modification, rehabilitation, reconstruction, demolition, removal or other accommodation of existing structures, utilities, or other improvements; (v) the location, time of year and other conditions in which the Work is to be performed; and (vi) other matters typically attendant to construction projects of the same general type and scope as the Project. The Contractor's sole and exclusive remedy in the event of a Non-Compensable Delay shall be to seek an extension of time for performance of the Work.

**11.6 Compensable Delays.** The Contractor shall be entitled to compensation from the District on account of a delay in the performance of the Work (each a "Compensable Delay") only if: (i) the District caused or otherwise was responsible for the delay; (ii) the delay was unreasonable under the circumstances involved; and (iii) the delay was not within the contemplation of the District and Contractor. A delay shall not be considered to be a Compensable Delay to the extent the delay was caused, contributed to, or continued by the Contractor or any Subcontractor or other party or entity under the control or direction of, or otherwise performing any work or services on behalf of, the Contractor. A delay shall be considered a Compensable Delay only if and to the extent the delay adversely impacts a portion of the Work that is a critical-path item, and the District shall not be required to pay any compensation whatsoever to the Contractor (including, without limitation, any extended overhead, general conditions costs, impact costs, and/or out-of-sequence costs) in the absence of any such adverse impact on the critical-path of the Work. Subject to the Contractor's compliance with applicable requirements of this Part 11, and based on sufficient proof provided by the Contractor or otherwise obtained by or provided to the District, additional compensation to the Contractor for a Compensable Delay shall be set forth in and authorized by a Change Order or Construction Change Directive.

**11.7 Contractor-Caused Delays.** Without limiting anything else in the Contract, The District shall be entitled to compensation from the Contractor on account of delays in the performance of the Work or

any Work by Others caused by, the fault of, or otherwise attributable to the Contractor or any employee, agent, Subcontractor or other person or entity acting on behalf of the Contractor. The Contractor shall not be deemed to be at fault for delays resulting from any tidal waves or any earthquakes in excess of 3.5 magnitude; provided that the portion of the Work thereby damaged had been constructed or otherwise performed in accordance with the Contract Documents. Compensation payable to the District on account of a delay for which the Contractor is responsible shall be at the rate provided in Section 13 of the Construction Services Agreement and per Section 11.8 below.

**11.8 Liquidated Damages for Contractor-Caused Delays.** The District and the Contractor hereby agree that it is impracticable and extremely difficult to ascertain the actual damages and costs the District will incur on account of a delay in completion of the Project or a phase or milestone thereof for which the Contractor is responsible. Therefore, to the extent the Contractor is responsible for any delay in meeting any milestone or final completion date applicable to the Project, or is otherwise responsible for compensating the District in connection with a delay in completing the Project or a phase or milestone thereof, the Contractor shall pay to the District such liquidated damages as provided in the Construction Services Agreement for each day (or portion thereof) of such delay. The District and the Contractor each hereby expressly agree that such liquidated damages amount constitutes fair and reasonable compensation to the District for such delay, regardless of whether such amount is at any time determined not to constitute actual full-compensation. The District may deduct any liquidated damages from amounts otherwise payable to the Contractor in accordance with the Contract and/or may pursue such other remedies as are permitted by law and/or the Contract. Nothing in this Section shall be deemed or construed to limit or preclude any right of the District to recover additional or other damages or costs if such right is allowed by law and/or expressly set forth elsewhere in any of the Contract Documents, including, without limitation, as provided in Section 2.7, Section 2.8, Section 7.4, Subsection 13.3.3, Section 13.6, and Subsection 15.1.4 of these General Provisions.

**11.9 Mandatory Notice of Delay.** Not later than five days after the start of any delay in the performance of the Work, regardless of the cause of the delay, and regardless of whether the delay is then ongoing, the Contractor must provide written notice of the delay to the District and the Architect ("Notice of Delay"). In any case that the Contractor fails to timely provide a Notice of Delay: (i) if it thereafter gives a Notice of Delay, the Contractor shall be deemed and construed to have waived and released any and all rights to an extension of time or additional compensation with respect to any time more than five days prior to the date the District actually receives the Notice of Delay; and (ii) the District may hold the Contractor responsible for any delays and/or increased costs that the District reasonably might have mitigated had the District received a timely Notice of Delay. A Notice of Delay must set forth the cause(s) of the delay and be accompanied by documentation reasonably evidencing and supporting the Contractor's position with respect to the cause(s) of the delay. The District or the Architect may request that the Contractor provide any additional or more detailed information regarding the delay, which the Contractor must provide within five days of request. **THE GIVING OF A NOTICE OF DELAY IN CONNECTION WITH A DELAY SHALL BE DEEMED AND CONSTRUED AS A MANDATORY PREREQUISITE FOR ANY EXTENSION OF TIME AND/OR ADDITIONAL COMPENSATION TO THE CONTRACTOR ON ACCOUNT OF SUCH DELAY.**

**11.10 Requests for Additional Time and/or Compensation for Delays.** If the Contractor desires to receive an extension of time or additional compensation on account of a delay, the Contractor must submit an associated Change Order Request within fourteen days of providing the Notice of Delay for that delay, regardless of whether the delay is still ongoing. If the District grants the Contractor an extension of

time for performance of the Work, the extension shall be proportionate to the actual delay in the performance of the Work, e.g., a half-day extension for a half-day delay. **THE CONTRACTOR'S COMPLIANCE WITH THE FOREGOING PROCEDURAL REQUIREMENTS IN CONNECTION WITH A DELAY SHALL BE DEEMED AND CONSTRUED AS A MANDATORY PREREQUISITE FOR ANY EXTENSION OF TIME OR ADDITIONAL COMPENSATION TO THE CONTRACTOR ON ACCOUNT OF SUCH DELAY, AND FOR FILING OF A RELATED CLAIM IN ACCORDANCE WITH PART 22 OF THESE GENERAL PROVISIONS.**

**11.11 Contractor Claims Arising from Delays.** IF THE CONTRACTOR DISPUTES ANY DETERMINATION MADE BY OR ON BEHALF OF THE DISTRICT IN REGARD TO THE CAUSE OF, RESPONSIBILITY FOR, EXTENSION OF TIME ATTRIBUTABLE TO, OR ADDITIONAL COMPENSATION ATTRIBUTABLE TO, ANY DELAY IN THE PERFORMANCE OF THE WORK, THEN, SUBJECT TO COMPLIANCE WITH THE REQUIREMENTS OF SECTIONS 11.9 AND 11.10 OF THESE GENERAL PROVISIONS, THE CONTRACTOR MAY FILE A CLAIM IN ACCORDANCE WITH PART 22 OF THESE GENERAL PROVISIONS.

**PART 12**  
**SUBSTITUTION OF SPECIFIED ITEMS**

**12.1 Requests for Substitution of Specified Items.** Except as the Contract Documents expressly provide, any material, product, service or thing described in the Contract Documents as being required in connection with the Work and designated by specific brand or trade name (each a “Specified Item”) shall be deemed and construed to set forth the minimum requirements for such Specified Item and to be followed by the words “or equal.” To the extent permitted by this Part 12, the Contractor may offer in place of any Specified Item any substitute item that the Contractor can demonstrate is equal or better in all material respects to the Specified Item and that will adequately and fully accomplish the intended aesthetics, purposes and/or functions of the Specified Item. The District in no event shall be required to permit substitution of any Sole-Source Item designated in accordance with Public Contract Code Section 3400. The Contractor must request a substitution sufficiently in advance to avoid or prevent any delay in the Work or any Work by Others. In no event shall the Contractor substitute any item in place of a Specified Item unless and until the Contractor obtains written approval in accordance with this Part 12.

**12.2 Conditions for Requesting Substitution.**

**12.2.1 Items That Become Commercially Unavailable.** Unless the Contractor suggests a substitution as a means of implementing a value-engineering reduction in the GMP, the Contractor may request substitution of a Specified Item only if the Specified Item becomes commercially unavailable during the course of the Work. The Contractor in such event must provide documentation to the Architect that reasonably evidences that the Specified Item is no longer commercially available. An increase in the cost of a Specified Item shall not be deemed or construed to have made the Specified Item commercially unavailable. The Architect and/or the District may independently verify whether the Specified Item is no longer commercially available.

**12.2.2 Items Still Commercially Available.** The District, in its sole discretion, may, but is not required to, consider a request for substitution of a Specified Item that is still commercially available. However, in any such case, the Contractor shall be solely responsible and liable for: (i) any delays arising from the need to obtain approval of a proposed substitute item from the DSA and/or other governmental entity with competent jurisdiction; (ii) any costs of professional design services necessary to process and obtain any required approvals by the DSA and/or any other governmental entity with competent jurisdiction; and (iii) any costs of professional design services necessary to redesign or otherwise ensure coordination of the proposed substitute item with other portions of the Work or any Work by Others.

**12.3 Substantiation of Requests for Substitution.** The Contractor shall be solely responsible for providing to the District and the Architect such documents, samples and other information as will reasonably substantiate that a proposed substitute item: (i) is equal or better in all material respects to the Specified Item; and (ii) will adequately and fully accomplish the intended aesthetics, purposes and/or functions of the Specified Item. Factors that the District and Architect will consider in determining whether a proposed substitute item satisfies the foregoing requirements may include, without limitation, whether the proposed substitute item will or will not: (i) have comparable durability and expected useful life; (ii) be consistent with the design and intended aesthetics of the Work and the Project; (iii) fit with, or require any change in the construction of, the Work and/or the Project; (iv) result in the District incurring more or less operations, maintenance and/or other costs; (v) have replacement parts and service available at least to the same extent as the Specified Item; and (vi) require any increase in the GMP and/or extension of the Contract Time. The Contractor must provide any and all information that would tend to indicate that a proposed substitute item is not suitable as a substitute for the Specified Item, and the Contractor

shall have breached its obligations under the Contract if it intentionally or negligently fails to provide all of such information. The types or forms of information submitted by the Contractor in connection with a request for substitution of a Specified Item must include, without limitation, all illustrations, specifications, catalog cut-sheets, manufacturer's brochures and other documentation that describe the characteristics, quality, and aesthetics of the proposed substitute item.

**12.4 Certification of Requests for Substitution.** The Contractor must certify each request for substitution, on a form either provided by or approved by the District, and subject to penalty of perjury, that the Contractor: (i) has made all reasonable efforts to obtain all information relevant to the request for substitution of the Specified Item; (ii) has provided all of such information to the District and the Architect; and (iii) reasonably and in good faith believes that the proposed substitute item is equal or better in all material respects to the Specified Item, will adequately and fully accomplish the intended aesthetics, purposes and/or functions of the Specified Item, and otherwise satisfies all requirements of this Part 12.

**12.5 Approval of Requests for Substitution.** The District, in its sole discretion and after consultation with the Architect, shall determine whether a proposed substitute item: (i) is equal or better in all material respects to the Specified Item; (ii) will adequately and fully accomplish the intended aesthetics, purposes and/or functions of the Specified Item; and (iii) otherwise satisfies all requirements of this Part 12. Upon determining that a proposed substitute item satisfies all of the foregoing conditions, the District shall approve the request for substitution. The District, in its sole discretion, may, but is not required to, approve a request for substitution of a Specified Item despite the proposed substitute item not fully satisfying all of the foregoing conditions. The District also may impose conditions on the approval of any request for substitution, including, without limitation, the Contractor's agreement to provide an extended warranty on the substitute item or some other assurance of the compatibility, fitness, quality, durability, or performance of the substitute item. If the District approves a request for substitution of a Specified Item, the approval and all terms and conditions thereof shall be set forth in a Change Order, and execution of such Change Order by the Contractor shall be a condition to it taking or having any effect.

**12.6 Disapproval of Requests for Substitution.** If the District disapproves a request for substitution of a Specified Item that is commercially available, the Contractor must provide the Specified Item without any extension of the Contract Time or increase in the GMP. If the District disapproves a request for substitution of a Specified Item that is no longer commercially available, then, within such time as will avoid or prevent any delay in the Work or any Work by Others, the Contractor must submit an alternate proposal for substitution of the Specified Item in accordance with this Part 12.

**PART 13**  
**HAZARDOUS EQUIPMENT, MATERIALS AND SUBSTANCES**

**13.1 Use of Hazardous Materials.** If the Contractor reasonably must use explosives, toxic solvents, or other hazardous equipment, materials or substances in order to adequately complete the Work, the Contractor must provide written notice to, and obtain the consent of, the District at least seven days prior to bringing such hazardous items onto the Project Site. The District may impose conditions on any such approval for use of any such hazardous items to ensure safety and protect the Work, Project and Project Site, and any such use must comply in all respects with applicable Legal Requirements. If any hazardous items must be stored at the Project Site, the Contractor must coordinate the location and means of storage with the District and local public officials having jurisdiction over such matters. The Contractor shall be solely responsible and liable in all respects for the safe, appropriate and lawful use, handling, and storage in connection with the Work of any hazardous equipment, materials and/or substances.

**13.2 Hazard Communication Program.** The Contractor must comply with all requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety Code Section 25249.5 *et seq.*, commonly referred to as “Proposition 65”) that are applicable to a “person in the course of doing business.” Prior to commencing any portion of the Work, and as required by and in accordance with Cal-OSHA regulations and other applicable Legal Requirements, the Contractor must develop a written hazard communication program (“HCP”) that specifies, among other required matters, criteria for: (i) labeling and/or other forms of warning in regard to hazardous substances to be used in connection with performance of the Work; (ii) making available all required material safety data sheets (“MSDS”) for such substances; and (iii) informing and training employees in regard to dangers and proper handling of such substances. The Contractor must implement, maintain, and enforce its HCP at all times prior to full completion of the Work. The Contractor also must: (i) develop and provide to the District a complete list of hazardous substances brought onto or kept at the Project Site; (ii) make required MSDS available in a readily-accessible place at the Project Site; (iii) comply with requirements for giving notice to all persons who may be exposed to any chemical known to the State to cause cancer, including, without limitation, ensuring that any such substances brought onto or kept on the Project Site properly labeled; and (iv) ensure that all persons working with or in the vicinity of any such substances are informed of applicable hazards and trained in proper use and handling of such substances.

**13.3 Asbestos and Asbestos-Containing Materials.**

**13.3.1 Contractor Awareness of Asbestos.** The Contractor acknowledges that, if the Work involves any repair, modification, rehabilitation, reconstruction, demolition, removal or other work on or involving any existing structures, utilities, or other improvements, then asbestos or asbestos-containing materials likely will be present on or at the Project Site. The Contractor shall be deemed and construed for all purposes of the Contract to have undertaken the Work with full knowledge of the currently-accepted standards, hazards, risks, and liabilities associated with asbestos and asbestos-containing materials. The Contractor shall be solely responsible and liable for safely and appropriately performing any Work that may require demolition or removal, may uncover, reveal or otherwise expose, or may otherwise involve or relate to, asbestos or asbestos-containing materials.

**13.3.2 Use of Asbestos Prohibited.** Notwithstanding anything to the contrary, in no circumstances may the Contractor use or incorporate into the Work any asbestos or asbestos-containing materials, or use or employ in connection with the Work any equipment, tools, clothing or other things that contain or incorporate asbestos or asbestos-containing materials. For purposes of the Contract: (i)



“asbestos” means any naturally occurring fibrous hydrated mineral silicate, including, without limitation, chrysotile, crocidolite, amosite, fibrous tremolite, fibrous anthophyllite, and fibrous actinolite; and (ii) “asbestos-containing materials” means materials or products formed by mixing asbestos fibers with other materials, such as cement, rock wool, plaster, cellulose, clay, vermiculite, perlite, adhesive, *et cetera*. Within seven days after receipt of the Notice of Award (if issued by the District) or prior to the Required Commencement Date, whichever is sooner, the Contractor must provide to the District an executed copy of the “Certification Regarding Asbestos” form, which is included in the Required Contract Forms.

**13.3.3 Liability for Asbestos.** If the Contractor violates the prohibition set forth in Subsection 13.3.2 of these General Provisions or otherwise is responsible for asbestos contamination on, at or in the vicinity of the Project Site, the Contractor shall be solely responsible and liable for any and all costs attributable to: (i) correction of the Work; (ii) any and all investigations, analyses, removals, abatements, decontaminations or other actions necessary to correct the violation (“Asbestos Remediation”), including, without limitation, costs incurred by the District for additional administrative and professional services and for laboratory services, consultants, and contractors; and (iii) any injury to any person and/or damage to any property arising or alleged to have arisen from the violation. The District shall arrange for performance of any necessary Asbestos Remediation in accordance with all applicable Legal Requirements.

**13.4 Discovery of Hazardous Materials.** If, during performance of the Work, the Contractor encounters any materials that the Contractor reasonably believes to be hazardous materials that have not been rendered harmless, the Contractor must continue the Work in unaffected areas reasonably believed to be safe, but must immediately cease all Work in the area of the suspected hazardous materials and report the condition, in writing, to the District. The District will as necessary obtain the services of an independent and qualified person or company to identify the suspected hazardous materials, and to determine whether removal or some other corrective measures are required to render the materials harmless. The Contractor may resume work on the affected area only upon a determination that: (i) the materials identified by the Contractor are not hazardous and removal or other measures are not necessary; or (ii) removal or other measures necessary to render the materials harmless have been completed in accordance with applicable Legal Requirements. Any required asbestos-related work (defined in Health and Safety Code Section 25914.1) and/or hazardous substance removal (defined in Business and Professions Code Section 7058.7) that is not disclosed in the Contract Documents shall be performed under a separate District contract.

**13.5 Discovery of Hazardous Waste in Excavations Deeper Than Four Feet.** Section 14.7 of these General Provisions shall apply in the case of any suspected hazardous waste discovered in any trench or other excavation that extends deeper than four feet below the surface.

**13.6 Contractor Responsibility for Releases of Hazardous Substances.** If any person on, at or in the vicinity of the Project Site on account of the Work dumps, pours, spills, buries, places, discharges or otherwise releases any hazardous materials, waste or substances into or onto the Project Site or property in the vicinity of the Project Site, whether intentionally or otherwise, the Contractor shall be solely responsible and liable for any and all costs attributable to such release, including, without limitation: (i) costs of any necessary correction of the Work; (ii) any and all investigations, analyses, removals, abatements, decontaminations or other actions necessary to correct such release, including, without limitation, costs incurred by the District for additional administrative and professional services and for laboratory services, consultants, and contractors; and (iii) any injury to any person and/or damage to any property arising or alleged to have arisen from the violation. The Contractor’s indemnification and other

obligations under Part 21 of these General Provisions shall apply with respect to any and all costs and other liabilities, excluding attorneys' fees, arising from any such release.

**PART 14**  
**EXCAVATIONS AND UTILITIES**

**14.1     *Underground Utilities and Installations.*** Except as the Contract Documents expressly indicate otherwise in any particular case, the existence, locations and, if available, depths of underground utilities, facilities and/or installations indicated in the Contract Documents as being on, at or in the vicinity of the Work and/or the Project Site are: (i) based on records available to the District, not on surveys or excavations prepared or performed by the District; and (ii) are to be considered approximate, not exact. The District may, but shall not be required to, indicate in the Contract Documents the location of service laterals and/or appurtenances within the vicinity of the Work if the presence of such utilities can be inferred from the presence of other visible facilities, such as buildings, meters, junction boxes, *et cetera*. Prior to commencing any excavation in connection with the Work or any other activity that reasonably might damage underground utilities, facilities or installations, the Contractor must: (i) thoroughly inspect the vicinity of the Work for above-ground facilities, such as buildings, meters, junction boxes, *et cetera*, that might indicate the presence of underground service mains, trunklines, laterals or appurtenances; (ii) determine the exact location of any underground utilities, facilities and installations within an indicated approximate location, using air-vacuum excavation (i.e., potholing) techniques (or an underground-utility locating service to perform such services); (iii) immediately report to the District any utilities, facilities or installations located in the vicinity of the Work that are not indicated in the Contract Documents or are in a location materially different from the location indicated in the Contract Documents; and (iv) provide a written report to the District describing the exact location of all underground utilities, facilities and installations within the vicinity of the Work, including a diagram thereof, if necessary to adequately describe such exact locations. The Contractor must coordinate with and obtain the consent of the District prior to any potholing on, at or in the vicinity of the Project Site. Upon consent of the District, the Contractor may use a potholing technique other than air-vacuum excavation if that reasonably is not appropriate for the applicable soil type or conditions.

**14.2     *Regional Notification Center.*** If the Work involves any trenching, boring, tunneling, digging or other excavation, the Contractor shall be solely responsible and liable for compliance with all applicable requirements of Government Code Sections 4216 through 4216.9, and with all requirements of the Contractors State License Board relating to such Government Code provisions. The Contractor must, as required, obtain from the Regional Notification Center an Underground Service Alert identification number and must provide such identification number to the District. Prior to it expiring, the Contractor must contact the Regional Notification Center for any necessary revalidation of the identification number.

**14.3     *Main or Trunkline Utilities Not Identified in Contract Documents.*** In accordance with Government Code Section 4215, if the Contractor, while performing the Work, discovers utility facilities not identified by the District in the Contract Documents, the Contractor shall immediately provide written notice to the District and the applicable utility company. The public utility, if it owns the utility facilities, shall have the sole discretion to perform any necessary repairs or relocation work or to permit the Contractor to do such repairs or relocation work at a reasonable price. The District shall not be required to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Project Site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Project Site. The District shall be responsible for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project Site, if such utilities are not identified by the District in the Contract Documents. The District shall compensate the Contractor for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such main or trunkline utility facilities not indicated

in the Drawings and Specifications with reasonable accuracy, and for equipment used in connection with the Work necessarily idled during such work. The Contractor shall not be assessed liquidated damages for delay in completion of the Work, when such delay was caused by the failure of the District or the owner of the utility to provide for removal or relocation of such main or trunkline utility facilities. The provisions of this Section shall not be deemed or construed to preclude the District from requiring changes in the Work that will eliminate the need to remove and/or relocate any utility facilities.

**14.4 Coordination with Utility Companies.** Sufficiently in advance in order to avoid and/or prevent any delay in the Work or any Work by Others, the Contractor must coordinate each portion of the Work involving or requiring construction of, or connection to, utility facilities (including, without limitation, any relocation of facilities) with the applicable utility company. In any case that the owner of a utility has the option of performing any required work, but such owner permits the Contractor to perform such work, the Contractor must perform such work in compliance with all requirements of such owner.

**14.5 Excavation Permits.** The Contractor must not commence any excavations required in connection with the Work until the Contractor or the appropriate Subcontractor has: (i) applied for and obtained all necessary permits for the excavations, including, without limitation, any OSHA and Cal-OSHA permits; (ii) provided a copy of each such permit to the District; and (iii) posted each such permit in a prominent location on the Project Site.

**14.6 Safety Plans for Trenches Deeper Than Five Feet.** If the GMP exceeds \$25,000, Section 9.3 of these General Provisions, which relates to Trench Safety Plans, shall apply in the case of any and all trenches that will or reasonably might be excavated to a depth of five feet or more.

**14.7 Differing Conditions in Excavations Deeper Than Four Feet.** If the Work involves digging any trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (i) material discovered during such excavation that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the Project Site differing from those for which the Contractor is responsible in accordance with Section 7.1 of these General Provisions; or (iii) unknown physical conditions at the Project Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. The District shall promptly investigate any such conditions identified by the Contractor. If the District determines that such conditions exist and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of the Contract, the District shall issue a Change Order or Construction Change Directive in accordance with the procedures set forth in these General Provisions. In the event a dispute arises between the District and the Contractor in regard to whether any such condition actually exists, or causes a decrease or increase in the Contractor's cost of, or time required for, performance of the Contract, the Contractor shall not be excused from completing all Work in accordance with the milestones set forth in the Master Construction Schedule, but shall proceed with all Work to be performed under the Contract Documents. However, the Contractor shall retain all rights in such regard as provided by law or the Contract, and the Contractor may file a Claim in accordance with the Contract Documents.

**PART 15**  
**CHANGES IN THE WORK**

**15.1 Authorization Required for Changes in the Work.**

**15.1.1 District Approval of Changes Required.** The Contractor must perform all Work in strict accordance with the Drawings and Specifications and other Contract Documents approved and adopted for the Project, as those may from time to time be amended, supplemented, or otherwise modified in accordance with the Contract Documents. Except for the District and except to the extent of the Architect's authority to issue Architect Field Directives, no person or entity (including, without limitation, the Architect and Inspector of Record) has the unilateral authority to order any changes in the Work or to make any changes in the Drawings, Specifications, or other Contract Documents. Absent a duly-authorized Change Order, Construction Change Directive or Architect Field Directive, the Contractor must not change the Work, or permit any changes in the Work to occur, including, without limitation, any substitution, addition, omission, deviation or other change. Notwithstanding anything to the contrary, in order to be valid and enforceable against the District, each Change Order and Construction Change Directive must have been approved by the District Board directly or, as described in Section 2.1 of these General Provisions, the District Board must have delegated to the Authorized District Representative, in writing, the authority to approve such Change Order or Construction Change Directive.

**15.1.2 DSA Approval of Certain Changes.** In circumstances in which the DSA must approve changes to the Work, the Architect will be responsible for obtaining such DSA approval. Although subject to change, the DSA presently may approve changes in the Work by means of a Construction Change Document ("CCD") process. The Architect may seek CCD approval of any Change Order, Construction Change Directive, Architect Field Directive, or other document describing the Work or changes in the Work. Because such documents may be grouped together for purposes of obtaining DSA approval, a CCD as approved by the DSA will not necessarily correspond in reference-number or content to Change Orders or other documents issued under the Contract Documents.

**15.1.3 Direction to Proceed With Changes.** An Authorized District Representative may determine that it is necessary, in order to prevent delays in the Work, to direct the Contractor to proceed with changes in the Work that are included in a proposed Change Order, but the Change Order has not yet been approved or ratified by the District Board. In such event, the Authorized District Representative, to the extent so authorized, may issue written instructions to the Contractor to implement and proceed with such changes (each a "Construction Change Directive"). However, in no event may the Contractor receive any payment on account of any Work performed under a Construction Change Directive until the District Board has approved or ratified the corresponding Change Order.

**15.1.4 Responsibility for Unauthorized Changes.** The Contractor shall be solely responsible for any and all costs attributable to any unauthorized change in the Work from what is required under the Contract Documents, including, without limitation, all costs of any replacement or other correction of the Work and all costs incurred by the District for additional administrative and professional services in connection with such correction. In addition, the Contractor shall be deemed and construed to have waived any and all rights to any compensation for any change in the Work that was not duly authorized prior to being commenced or otherwise implemented.

**15.2 Changes Required by Change Order.** Subject to the provisions of this Part 15 and other requirements of the Contract Documents, the District may at any time issue an amendment to the Contract for purposes of ordering change(s) in the Work to be performed under the Contract,

adjustment(s) in the GMP and/or Contract Time, or other change(s) in the requirements of the Contract (each a "Change Order"). As provided in this Part 15, a Change Order may be unilateral if issued without approval by the Contractor or mutual if the District and the Contractor have both approved the Change Order. The Architect shall prepare each final Change Order and, upon taking effect, a Change Order shall constitute one of the Contract Documents and shall be subject to all other applicable provisions of the Contract Documents as if originally included therein. In no event shall any Change Order be deemed or construed to invalidate the Contract. The Contractor must implement the changes specified in a Change Order promptly or by such time as specified in the Change Order. The Contractor must perform all work necessary to complete any change(s) specified in a Change Order in accordance with all provisions of the Contract, except as any such provisions are expressly modified by the Change Order.

**15.3 Changes Required by Architect Field Directive.** At any time and without invalidating the Contract, the Architect may issue a written directive requiring any minor changes in the Work that are consistent with the intent of the Contract Documents and that do not require an adjustment in the GMP or Contract Time (each an "Architect Field Directive"). An Architect Field Directive must be signed by the District and the Architect in order to be valid and binding on the Contractor. Upon taking effect, an Architect Field Directive shall constitute one of the Contract Documents and shall be subject to all other applicable provisions of the Contract Documents as if originally included therein. The Contractor's approval of an Architect Field Directive shall not be required, and the Contractor must implement each minor change specified in an Architect Field Directive promptly or by such time as specified in the Architect Field Directive. **IF THE CONTRACTOR BELIEVES THAT IT IS ENTITLED TO AN INCREASE IN CONTRACT TIME AND/OR GMP ON ACCOUNT OF AN ARCHITECTURAL FIELD DIRECTIVE, THE CONTRACTOR MUST PROVIDE NOTICE AS PROVIDED IN SECTION 15.5 OF THESE GENERAL PROVISIONS.**

**15.4 Changes Required by Unilateral Change Order.** At any time and without invalidating the Contract, the District may issue a Change Order to require any changes in the Work that are within or consistent with the general scope of the Contract and/or the Project. In order to be binding on the Contractor, each such unilateral Change Order must be signed by the District and the Architect. The Contractor's approval of a unilateral Change Order shall not be required, and the Contractor must implement all changes specified in a unilateral Change Order promptly or by such time as specified therein. The District may, but shall not be required to, issue a unilateral Change Order in any case that the District and the Contractor have been unable to agree on the terms of a requested mutual Change Order. A unilateral Change Order may direct that any Work under the Change Order or otherwise be performed on a time-and-materials, lump-sum, or unit-pricing basis. **IF THE CONTRACTOR DISAGREES WITH ANY OF THE TERMS OF A UNILATERAL CHANGE ORDER, THE CONTRACTOR MUST PROVIDE NOTICE AS PROVIDED IN SECTION 15.5 OF THESE GENERAL PROVISIONS.**

**15.5 Notice of Disagreement Regarding GMP or Time.** The Contractor must provide written notice to the District and the Architect if the Contractor: (i) reasonably believes that the implementation of any Bulletin, Interpretation or Clarification will require an adjustment to the GMP and/or Contract Time that is not set forth in a corresponding Change Order; (ii) reasonably believes that it is entitled to an increase in the GMP and/or Contract Time on account of a change required under an Architect Field Directive; or (iii) reasonably disagrees with the adjustment to the GMP and/or the Contract Time, if any, set forth in a unilateral Change Order. Any such notice must set forth in reasonable detail all bases asserted by the Contractor in support of its position that it is entitled to an adjustment of the GMP and/or Contract Time, or that any specified adjustment of the GMP and/or Contract Time is not adequate. **THE CONTRACTOR MUST PROVIDE SUCH NOTICE PRIOR TO COMMENCING ANY WORK OR OTHERWISE IMPLEMENTING THE APPLICABLE BULLETIN, INTERPRETATION, CLARIFICATION, ARCHITECT FIELD**

**DIRECTIVE OR UNILATERAL CHANGE ORDER, OR WITHIN THREE DAYS OF THE ISSUANCE OF SUCH DOCUMENT, WHICHEVER IS SOONER.**

**15.6 Consequences of Failure to Provide Notice.** If the Contractor fails to provide notice required under Section 15.5 of these General Provisions either prior to commencing any work or otherwise implementing any change required under a Bulletin, Interpretation, Clarification, Architect Field Directive or unilateral Change Order, or within three days of the issuance of such document, whichever is sooner, the Contractor shall be deemed and construed to have waived any and all rights to any adjustment in the GMP and/or Contract Time on account thereof. **THE GIVING OF AN APPLICABLE NOTICE UNDER SECTION 15.5 OF THESE GENERAL PROVISIONS SHALL BE A CONDITION PRECEDENT TO THE CONTRACTOR HAVING ANY RIGHT, WHETHER UNDER A CLAIM FILED IN ACCORDANCE WITH PART 22 OF THESE GENERAL PROVISIONS OR OTHERWISE, TO ANY ADJUSTMENT (OR FURTHER ADJUSTMENT) OF THE GMP AND/OR CONTRACT TIME ON ACCOUNT OF THE APPLICABLE BULLETIN, INTERPRETATION, CLARIFICATION, ARCHITECT FIELD DIRECTIVE OR UNILATERAL CHANGE ORDER.**

**15.7 Changes Requested by the District.** The District may at any time request that the Contractor propose any adjustments to the GMP and/or Contract Time attributable to any change in the Work or other requirements of the Contract desired by the District (each a “Request for Proposal” or “RFP”). The Architect shall prepare each RFP in writing and submit it to the Contractor with all information reasonably necessary to permit the Contractor to determine the nature and scope of the proposed change, including, if necessary or convenient, any Drawings and Specifications that illustrate or explain the changes. Within seven days of receipt of an RFP, and without additional compensation, the Contractor must provide to the District and the Architect a written proposal setting forth any proposed adjustments to the GMP and/or Contract Time that the Contractor reasonably believes are appropriate considering the nature and scope of the proposed change. Each proposal that includes a proposed adjustment to the GMP must be accompanied by an estimate of the effect (whether additive or deductive) of the change(s) on the amount of the GMP (“Change Order Cost”) detailed in accordance with any requirements imposed under Section 15.9 of these General Provisions. Each proposal that includes a proposed adjustment to the Contract Time must set forth the impact of the proposed change(s) on any milestones and on the critical path of the Work as set forth in the Master Construction Schedule, not just specify an increase in the number of days desired for completion of all Work. The District may accept the Contractor’s proposal for a Change Order, may attempt to negotiate terms for a Change Order that are different from those proposed by the Contractor, or may determine not to further pursue the change originally desired by the District.

**15.8 Changes Requested by the Contractor.** The Contractor may at any time request that the District issue a Change Order to provide for adjustments to the GMP and/or Contract Time attributable to any change in the Work or other requirements of the Contract desired by, or required of, the Contractor (each a “Change Order Request”). The Contractor may, among other reasons, base a Change Order Request on a Claim asserted by the Contractor. The Contractor must prepare each Change Order Request in writing and must submit it to the District and the Architect with: (i) all information reasonably necessary to permit the District and the Architect to determine the nature and scope of the proposed change; and (ii) the proposed adjustments to the GMP and/or Contract Time, if any, that the Contractor reasonably believes are appropriate considering the nature and scope of the proposed change. The Contractor must submit each Change Order Request a sufficient time in advance of when the change must be implemented in order to avoid and/or prevent any delay in the Work or the Project. Each such Change Order Request that includes a proposed adjustment to the GMP must be accompanied by an estimate of the Change

Order Cost detailed in accordance with any requirements imposed under Section 15.9 of these General Provisions. Each Change Order Request that includes a proposed adjustment to the Contract Time must set forth the impact of the proposed or other change(s) on any milestones and on the critical path of the Work as set forth in the Master Construction Schedule, not just specify an increase in the number of days desired for completion of all Work. The District may agree to the terms set forth in a Change Order Request, may attempt to negotiate terms for a Change Order that are different from those proposed by the Contractor, or may determine not to agree to the Change Order Request. If the District and the Contractor are able to agree on all terms of a Change Order Request, the Architect will prepare the Change Order to include all such terms.

**15.9 Determining Effect of Change on GMP.** In response to an RFP or in connection with a Change Order Request, the Contractor must, at no additional cost, prepare a written estimate of the Change Order Cost, which must include a complete itemization of all materials, labor and other costs, whether additive or deductive, that affect the GMP, including, without limitation, estimates of hours of labor required, wage rates, material quantities, unit prices, *et cetera*. The District and/or the Architect reasonably may require that, in addition to typical line-item costs, one or more specific cost components or information be included in any cost estimate prepared by the Contractor in connection with any response to an RFP or any Change Order Request, and the estimate prepared by the Contractor must include such cost components. The District in its sole discretion may require that the Contractor provide any estimate of the Change Order Cost, or some portion thereof, on: (i) a “time and materials” basis as described in Section 15.10 of these General Provisions; (ii) a lump-sum basis as described in Section 15.11 of these General Provisions; and/or (iii) a unit-price basis as described in Section 15.12 of these General Provisions. Upon request, the Contractor must furnish to the District and the Architect such information as reasonably substantiates wage rates, bond premiums, or other amounts included in an estimate.

**15.10 Determining Change Order Cost Based on Time and Materials.** In the event the District requests that an estimate of a Change Order Cost, or portion thereof, be prepared on a time-and-materials basis, the Contractor must provide an itemization of the estimated costs of all time, materials and equipment necessary to complete the required change(s). Each time and materials estimate must include the cost components and conform to all associated requirements specified in Section 15.13 of these General Provisions, except that the Contractor must make reasonable and good-faith efforts to estimate and include in the estimate the maximum number of hours of labor in the various job classifications, and the maximum number of units of materials, required to complete the required change(s). Upon request of the District, the Parties shall determine a not-to-exceed amount for the maximum number of hours, the maximum number of units of materials, or both.

**15.11 Determining Change Order Cost Based on Lump Sum Proposal.** In the event the District requests that an estimate of a Change Order Cost, or portion thereof, be prepared on a lump-sum basis, the Contractor must provide an itemization of the costs of all time, materials and equipment necessary to complete the proposed change(s). Each lump-sum estimate must include the cost components and conform to all associated requirements specified in Section 15.13 of these General Provisions. Upon being duly approved by the Parties, a lump-sum estimate shall in all circumstances be deemed and construed to be the agreed Change Order Cost regardless of the total time, number of hours of labor, quantities of materials, *et cetera*, actually required to complete or otherwise implement the proposed change(s).

**15.12 Determining Change Order Cost Based on Unit Pricing.** In the event the District requests that an estimate of a Change Order Cost, or portion thereof, be prepared on the basis of unit-prices, the Contractor must provide an itemization of the costs of all time, materials and equipment necessary to



complete each logical, defined, or specified unit of the proposed change(s). The Contractor must make reasonable and good-faith efforts to estimate the maximum number of each logical, defined or specified unit required to complete the proposed change(s) on a unit-price basis. Each unit-price estimate must include the cost components and conform to all associated requirements specified in Section 15.13 of these General Provisions. Upon being approved by the Parties, a unit-price estimate shall in all circumstances be deemed and construed to be the Change Order Cost for each unit, regardless of the number or cost of such units actually required to complete or otherwise implement the proposed change(s).

**15.13 Cost Components to be Included in All Estimates.** The District may require that reasonable additional or modified cost components or information be included in any necessary cost estimate, but, otherwise, each estimate prepared by the Contractor in response to an RFP or in connection with a Change Order Request must include the following cost components and conform to all associated requirements specified below:

- (i) Labor Costs: Itemize all job classifications for labor necessary to complete the proposed change(s), direct hourly wage rates, and the estimated total number of hours in each job classification required to complete the change(s). Separately itemize any employer-paid payroll taxes, insurance, benefits and other costs attributable to such labor. Do not include off-site management, supervision and/or administration in this cost component, as the compensation for such costs shall be deemed to be included within the Contractor's general markup.
- (ii) Materials Costs: Itemize (in sufficient detail to identify) all materials necessary to complete the proposed change(s), quantities required, taxes, and any delivery costs. The amounts itemized in this cost component must be reduced by the full amount of any credits and/or discounts given in connection with obtaining the materials, as described in Section 15.15 of these General Provisions.
- (iii) Equipment Costs: Itemize all equipment necessary to complete the proposed change(s), hourly costs of rental or operations, and total number of hours required. Separately itemize any rented or leased equipment from any owned equipment. Separately itemize any equipment cost that is based on a per-load amount. Do not include in this cost component any hand tools, equipment with a value of less than \$1,000, or equipment with a daily rental rate of less than \$500, as the compensation for such items shall be deemed to be included within the Contractor's general markup. Also do not include in this cost component the rental of any equipment if other suitable equipment already is available at the Project Site, unless the use of such equipment would unreasonably delay the Work or Work by Others.
- (iv) Subtotal: Calculate the sum total of the labor, materials, and equipment costs determined in accordance with the foregoing clauses (i), (ii) and (iii).
- (v) General Markup: Specify an amount, in no event in excess of ten percent of the subtotal amount calculated in accordance with the foregoing clause (iv), which shall be deemed and construed to fully compensate the Contractor for overhead, profit and all other direct and indirect costs (other than bond markup)

attributable to the proposed change(s), including, without limitation, any and all costs of research; negotiations; preparation of estimates and other documents; insurance; home-office overhead; on-site and off-site supervision; interference, delay, acceleration and other impacts on the Work; guarantees; protection facilities; materials handling; supplies; safety equipment; and hand tools, equipment with a value of less than \$1,000, and equipment with a daily rental rate of less than \$500. Notwithstanding the foregoing, any portion of the work necessary to complete the proposed change(s) that is to be performed by any Subcontractor must not include a markup by the Subcontractor in excess of ten percent, or a markup by the Contractor in excess of five percent, of the total labor, materials and equipment included within such subcontracted work.

- (vi) Bond Markup: Specify an amount, in no event in excess of one percent of the subtotal amount calculated in accordance with the foregoing clause (iv), to compensate the Contractor for any additional bonding costs incurred in connection with the work necessary to complete the proposed change(s). Do not include any such amount if no additional bonding costs will be incurred.
- (vii) Change Order Cost: Calculate the total Change Order Cost, which shall be the sum total of the subtotal amount calculated in accordance with the foregoing clause (iv), the general markup specified in accordance with the foregoing clause (v), and any bond markup specified in accordance with the foregoing clause (vi).

**15.14 Deductive or Reduced Change Order Costs.** Any RFP or Change Order Request may propose any reduction in the amount and/or scope of the Work, regardless of whether the RFP or Change Order Request also proposes any additional or increased amount and/or scope of the same or other portions of the Work. In such event, the estimate prepared by the Contractor in response to the RFP or in connection with the Change Order Request must include the same cost components and conform to all associated requirements specified in Section 15.13 of these General Provisions, except that the estimate must determine the deduction from the GMP attributable to the reduction in the amount and/or scope of the Work. If an RFP or Change Order Request specifies only deductive changes(s), the Change Order Cost in its entirety will represent a deduction from the GMP. When both deductive change(s) and additive change(s) are specified in an RFP or Change Order Request, the Change Order Cost shall be based on the net effect on itemized costs, including, without limitation, general markup and bond markup.

**15.15 Discounts and Refunds Deducted from Change Order Costs.** The Contractor must make reasonable efforts to obtain or otherwise secure any and all discounts, rebates, refunds and/or offsets that may be available with respect to materials, equipment and supplies necessary, or no longer necessary, in connection with any change(s) in the Work or other requirements of the Contract. The Contractor must include in each estimate prepared in accordance with Section 15.13 of these General Provisions any such discounts, rebates, refunds and/or offsets as reasonably may be available. In the case of any change(s) completed on a time-and-materials basis or a unit-price basis, the Contractor must document any and all discounts, rebates, refunds and/or offsets as provided in Subsections 15.17.2 and 15.17.3 of these General Provisions.

**15.16 Substantiation of Subcontractor Pricing Included in Estimates.** If an estimate includes any work by a Subcontractor of any tier or materials provided by any materialman, the Contractor must furnish to the District and the Architect: (i) a detailed estimate, prepared and signed, as applicable, by the

Subcontractor or materialman, of the cost for labor, material, equipment, markup, *et cetera*; and (ii) such information as reasonably substantiates wage rates, bond premiums or other amounts included in the estimate, including, without limitation, any markup by the Subcontractor.

**15.17 Substantiation of Time and Materials and Unit-Price Costs.**

**15.17.1 Requirement for Notice.** The Contractor must not commence performance of any portion of the Work authorized to be performed on a time-and-materials basis or a unit-price basis unless the Contractor gives notice at least twenty-four hours in advance to the District, Architect and Inspector of Record that such Work will be commencing, so that they may be present during performance of such Work.

**15.17.2 Requirements for Daily Time and Materials Reports.** The Contractor must obtain the Inspector of Record's signature on a copy of the "Daily Time and Materials Report" form included in the Required Project Forms for each day during the performance of the Work, specifying: (i) the identification number assigned to that portion of the Work; (ii) the location and description of such Work; (iii) the job classifications, names and social security numbers of the workers performing such Work; (iv) the materials used in performing such Work; and (v) the equipment used in performing such Work, other than tools and equipment included within the general markup. The Contractor must: (i) obtain the Inspector of Record's signature the day Work described on a Daily Time and Materials Report is performed, or, if agreed by the Inspector of Record, the following day; and (ii) provide a copy of each Daily Time and Materials Report to the Inspector of Record upon obtaining his or her signature, or allow the Inspector of Record to copy the Daily Time and Materials Report at such time. Upon request, the Contractor must also submit any other relevant information as the District may require, including, without limitation, copies of wage rates as included in certified payroll records, receipts, payment invoices, shipping invoices, bills of lading, *et cetera*. If the Contractor fails to provide documentary evidence or other information sufficient to substantiate the amount and/or costs of Work performed on a time-and-materials basis or unit-price basis, the District, in its reasonable discretion, may determine such amounts and/or costs.

**15.17.3 Requirements for Separate Accounting Records.** If the Contractor performs any Work (whether under the original Contract, any Change Order, or otherwise) on a time-and-materials basis or a unit-price basis, the Contractor must adequately document all labor, materials and equipment used and/or consumed in connection with such Work. The Contractor must prepare and maintain separate cost-accounting records, in accordance with generally-accepted accounting standards and principles, for each portion of the Work performed on a time-and-materials basis or unit-price basis, and shall make such accounting records available to the District, the State, and other parties to the same extent as required under the Contract Documents for other accounting records related to the Work.

**15.18 Change Orders Include Full and Final Compensation.** Except as expressly set forth in any particular Change Order, each Change Order shall be deemed and construed to include all adjustments to the GMP and/or Contract Time attributable to the work and/or other change(s) required under the Change Order, including, without limitation, any and all extensions of time and overhead, acceleration costs, profit, general conditions costs, expenses, and other direct and indirect costs and expenses of such work and/or changes. In addition, each Change Order shall be deemed and construed to include all necessary adjustments attributable to cumulative impacts of that and any and all preceding Change Orders, whether such impacts relate to scheduling, productivity or other matters. By signing a Change

Order, the Contractor shall be deemed and construed to have waived any and all Claims and rights to any adjustments to the GMP and/or Contract Time other than as are set forth in the Change Order, and the Contractor may not thereafter attempt to hold the District responsible for any interference, delay, acceleration, or other impact on the Work and/or additional costs attributable to the change(s) required under the Change Order.

**15.19 Correction of Non-Conforming Work.** The Contractor shall be responsible and liable, at its cost, for correction of Work necessary because of any portion of the Work was negligently performed, is defective, or otherwise does not conform with requirements of the Contract Documents, including, without limitation, because the Contractor failed to properly coordinate, schedule or supervise the incorrect portion of the Work.

**PART 16**  
**FINAL INSPECTION AND COMPLETION OF WORK**

**16.1 Contractor Must Determine When Work is Complete.** The Contractor shall be solely responsible for determining when the Work or any portion thereof is complete, and the Contractor must base any such determination on adequate reviews and inspections of the Work by the Contractor's own forces, rather than relying on representations by any Subcontractor or others. At such time as the Contractor reasonably believes that all of the Work is substantially complete, the Contractor may request an inspection of the Work in accordance with Section 16.2 of these General Provisions. For purposes of the Contract Documents, "substantially complete" and "substantial completion" shall mean that the Project has been completed to such extent and to such condition that: (i) the District may take beneficial occupancy and use of, and may have unrestricted access to, all of the Project, and the District may commence operations therein, including, without limitation, educational programs; (ii) only minor cleaning, adjustment or similar corrective items that will not significantly interfere with such occupancy and use by the District, commonly referred to as "punch list" items, remain to be completed in order for the Work to be deemed fully completed; (iii) not as a limitation on the foregoing, all mechanical, electrical, plumbing and other building and site systems must, as applicable, be fully operational, tested and balanced, and start-up completed; and (iv) any and all approvals for which the Contractor is responsible in connection with the construction of the Project have been received from each governmental authority having jurisdiction over the construction, other than DSA close-out approval and final acceptance by the District.

**16.2 Initial Request for Inspection.** At such time as the Contractor reasonably believes that the Work is substantially complete, the Contractor must provide to the District, Architect and Inspector of Record: (i) written notice that all Work has been substantially completed and is ready for inspection; and (ii) a completed and executed copy of the "Certification Regarding Readiness for Inspection" form, which is one of the Required Project Forms (with original provided to the Architect). The District, Architect and Inspector of Record will perform such inspection within ten days following receipt of notice from the Contractor, and the District will notify the Contractor regarding the date and approximate time such inspection is to commence. The Contractor must conduct the examinations of the Work in a logical and sequential manner in order to facilitate an efficient and thorough inspection.

**16.3 Re-Inspection of Work.** If it is determined after the inspection described in Section 16.2 of these General Provisions, or after any subsequent re-inspection of the Work under this Section 16.3, that the Work is not substantially complete, the District and/or the Architect will provide written notice to the Contractor describing the incomplete and/or unsatisfactory portions of the Work. The Contractor must complete and/or correct all such Work within a reasonable time, not to exceed any time limit specified in the notice to the Contractor. Upon completing and/or correcting all such Work, Contractor must submit a new notice and a new Certification Regarding Readiness for Inspection as described in Section 16.2 of these General Provisions, and the re-inspection of the Work shall occur in accordance with the procedures set forth in that Section. Nothing shall be deemed or construed to require that any re-inspection of the Work be limited to only any incomplete and/or unsatisfactory portions of the Work previously identified and/or other portions of the Work affected thereby. Nothing in this Section or other provisions of this Part 16 shall be deemed or construed to constitute or serve as the basis for an extension of the Contract Time.

**16.4 Determination that Work is Substantially Complete.** If it is determined after any inspection or re-inspection of the Work that it is substantially complete, the District and/or the Architect will provide

written notice of such determination to the Contractor. In such event, the District, Architect and/or Inspector of Record will also prepare and provide to the Contractor a punch-list of any minor items of the Work that must be completed and/or corrected in order for the Work to be fully completed and accepted by the District ("Remaining Work").

**16.5 Contractor Must Timely Complete Remaining Work.** The Contractor must complete any and all Remaining Work within fourteen days of receiving the punch-list described in Section 16.4 of these General Provisions. If the Contractor fails to complete and/or correct the Remaining Work within the permitted fourteen-day period, the District may: (i) withhold from the final payment to Contractor under Section 19.12 of these General Provisions an amount equal to 150% of the Architect's estimate of the total cost to correct and/or complete all Remaining Work; and (ii) cause such Remaining Work to be completed and/or corrected and, thereafter, deduct the costs thereof from the amount withheld.

**16.6 Contractor Request for Final Walk-Through.** At such time as the Contractor reasonably believes that all Remaining Work has been adequately completed, the Contractor must provide a written request to the District, Architect and Inspector of Record for a final walk-through inspection. The District will coordinate and schedule the final walk-through inspection. The purpose of the final walk-through inspection will be to confirm that all Remaining Work has been completed in accordance with the Contract Documents or as otherwise required. At such time as the District, Architect and Inspector of Record determine that all Remaining Work has been completed in accordance with the Contract Documents or as otherwise required, and any and all other requirements of the Contract Documents have been satisfied, the District will provide written notice thereof to the Contractor. The District will recommend that the District Board accept the Work as complete only as provided in Sections 16.8 of these General Provisions.

**16.7 Contractor Responsibility for Inspection Costs.** The Contractor shall be solely responsible and liable for any and all costs (including, without limitation, costs of Architect and/or Inspector of Record services, administrative costs, consultant fees, transportation costs, *et cetera*) if: (i) the Contractor at any time requests an inspection of the Work without having a good-faith belief, based on its own knowledge, that the Work has been fully and properly completed and is ready for inspection; and/or (ii) the Contractor at any time requests an inspection of the Work and it thereafter becomes apparent that the Contractor knew or reasonably should have known that the Work was not fully and properly completed and ready for inspection. Not as a limitation on the foregoing, the Contractor shall be responsible for such costs if Work noted as incomplete and/or unsatisfactory during a prior inspection is not reasonably complete and/or satisfactory upon re-inspection, or, in the reasonable opinion of the District, Architect or Inspector of Record, the Contractor is using the inspection as a means to define the scope of any uncompleted portions of the Work or accelerate the Work of any Subcontractor. Any such costs shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor under the Contract.

**16.8 Acceptance of the Completed Project.** After the entirety of the Project has received final walk-through inspection approval, the completed Project must be accepted by action of the District Board. The District will cause a "Notice of Completion" for the Project to be recorded within fifteen days after the date the District Board takes such action to accept the Project (herein, the "Project Acceptance Date").

**PART 17**  
**CLOSE-OUT OF THE WORK**

**17.1 Close-Out Submittals are Prerequisite to Final Payment.** Within ten days of receiving notice in accordance with Section 16.4 of these General Provisions that the Work is substantially complete ("Substantial Completion Date"), the Contractor must submit to the District all documents and other things required under this Part 17 that are within or associated with the scope of the Work, or are otherwise to be provided in connection with the Work. The requirements of this Part 17 shall be deemed and construed to be in addition to, and not in lieu of, any and all other close-out requirements set forth in the Contract Documents. However, if any matter addressed in this Part 17 is also addressed elsewhere in the Contract Documents, such provisions shall be construed to require compliance with all requirements of both such provisions or, if a conflict between such provisions exists, the provision located elsewhere in the Contract Documents shall govern. Notwithstanding anything to the contrary, the District shall not be required to make the final payment to the Contractor under Section 19.12 of these General Provisions unless and until the Contractor submits to the District all documents and other things required under this Part 17.

**17.2 As-Built Drawings and Specifications.** The Contractor must obtain final approval of the As-Built Drawings and Specifications from the District, Architect and Inspector of Record.

**17.3 Equipment Operations and Maintenance Manuals.**

**17.3.1 Required Contents.** The Contractor must provide to the District three complete sets, in three-ring binders, of: (i) manufacturer's manuals and/or instructions for operation, maintenance and repair of any and all systems, equipment, assemblies, and similar things incorporated into the Work, including, without limitation, any parts lists; (ii) any and all reports and other information resulting from any required commissioning, testing, balancing, *et cetera*, of such systems, equipment and other things; (iii) information (including, without limitation, contractor's license numbers, business license numbers, current addresses, telephone and facsimile numbers, and email addresses) identifying any and all Subcontractors and/or vendors associated with the purchase, installation, commissioning, testing and/or guarantee of such systems, equipment and other things; (iv) manufacturer guarantees and/or warranties for such systems, equipment, assemblies and other things; (v) special guarantees and warranties required by the Contract Documents; (vi) assignments of all guarantees and warranties from Subcontractors, materialmen and other persons and entities that furnished any labor, materials, services, goods or other things in connection with the Work; and (vii) any other associated information required by the Contract Documents. The Contractor must label, tab and otherwise organize such information so that the systems, equipment and/or other things to which they apply can easily and unambiguously be identified.

**17.3.2 Required Correction and Certification.** The Contractor must certify in writing that each set of binders is complete, accurate, and covers all of the Work, and such certification must be included immediately after the index page in each binder, and must be separately tabbed and indexed. Upon receipt, the District shall review the binders. If the District determines that the binders are not complete or otherwise must be corrected, the District will return all sets of the binders to the Contractor for correction. The Contractor must correct, re-certify, and return all sets of binders to the District within five days.

**17.4 Log of Identification Tags and Labels.** The Contractor must submit to the District a log or schedule of any and all equipment, valves, pipes, connections, meters and/or other things that, in accordance with the Contract Documents or applicable Legal Requirements, must be tagged or labeled.

The Contractor must label, tab and otherwise organize such information so that the systems, equipment and/or other things to which they apply can easily and unambiguously be identified.

**17.5 Keys for Doors, Panels, Cabinets, Et Cetera.** If not expressly set forth in the Contract Documents in any particular case, the Contractor must submit to the District two sets of keys for each door, access panel, cabinet, gate, equipment cover, and other thing having any locking mechanism and/or capable of being locked. Each key must be securely attached to a fob or have some other means of securely attaching a label, other than attaching a label directly to the key. The description on the fob or label of each key must adequately identify the key, and all keys must be logged on a keying schedule or index that will permit the District to easily and unambiguously identify the doors, equipment and/or other things that are opened or operated by the keys. If the Specifications provide for electronic “key card” or similar systems, the Contractor must comply with all requirements of the Contract Documents or the District relating to identifying, logging or scheduling, and providing key cards or similar items to the District.

**17.6 Tools, Spare Parts, Et Cetera.** The Contractor must submit to the District any and all tools, spare parts, “attic” stock, *et cetera*, required under the Contract Documents. The Contractor must label, tab and otherwise organize such items so that the systems, equipment and/or other things to which they apply can easily and unambiguously be identified. In the event any spare parts, attic stock, or other item(s) reasonably would be too large, too heavy or in too great a quantity, to physically submit to the District, the Contractor must, subject to approval by the District, specify, on a log or schedule, all such items and their respective storage locations on the Project Site, and provide four copies of such log or schedule to the District.

**17.7 Close-Out Materials.** The Contractor must promptly provide to the District and Architect any and all forms, records and/or other documents within the Contractor’s possession, control or scope of responsibility that the District and/or Architect reasonably request in connection with the close-out of the Work and/or the Project, including, without limitation, DSA close-out, if applicable.

**17.8 Other Contract Document Close-Out Requirements.** The Contractor, to the extent not already described in this Part 17, must as applicable obtain, complete and/or prepare, and must submit to the District, any and all close-out submittals and/or information required under any other requirement of the Contract Documents.

**17.9 Contractor Guarantee.** The Contractor must provide to the District an executed copy of the “Contractor Guarantee” form, which is one of the Required Project Forms.



**PART 18**  
**CONTRACTOR GUARANTEE OF WORK**

**18.1 No Waiver of District Rights.** In no event shall any payment to the Contractor, any provision of the Contract Documents, a Notice of Completion, or the use or occupancy of any portion of the Work or the Project, be deemed or construed: (i) to relieve the Contractor of any responsibility and/or liability for any defective or improper systems, equipment, materials or other things incorporated into the Work, faulty workmanship, or Work not performed in accordance with the Contract Documents and all applicable Legal Requirements (“Defective Work”); (ii) to constitute acceptance by the District, without recourse, of any Defective Work; or (iii) to constitute a waiver of any right the District has to hold the Contractor responsible and/or liable for any Defective Work.

**18.2 Contractor’s General Guarantee of Work.** In addition to any other guarantees or warranties of the Contractor under the Contract Documents, the Contractor hereby guarantees that, during all applicable Guarantee Periods: (i) all Work shall have been performed in accordance with all requirements of the Contract Documents and applicable Legal Requirements, and the Work and the Project are otherwise free of any Defective Work; and (ii) if any Defective Work is discovered during the applicable Guarantee Period, the Contractor shall at its cost repair, replace or otherwise correct the affected portion of the Work as provided in this Part 18 (“Contractor Guarantee”). Without limiting the foregoing, the Contractor Guarantee shall be deemed and construed to guarantee against any and all defects that may arise from any error or fault in any design(s) for which the Contractor was responsible in accordance with the Contract Documents, including, without limitation, any design provided by or through any Subcontractor or other person or entity in connection with the Work. No failure by the Inspector of Record or any other party to inspect or properly inspect any portion of the Work shall be deemed or construed to limit or otherwise condition the Contractor’s responsibilities and/or liabilities under the Contractor Guarantee.

**18.3 Limitations on Contractor Guarantee.** The Contractor Guarantee does not guarantee against damage to the Work: (i) caused by the District or any persons or entities other than the Contractor or other than any Subcontractor or other person or entity on, at, or in the vicinity of the Project Site on account of the Work; (ii) resulting from a lack of reasonable maintenance after the Substantial Completion Date; or (iii) resulting from changes to the Work performed by any persons or entities for whom the Contractor is not directly or indirectly responsible, unless the changes were performed in accordance with the Contract Documents and/or instructions or directions provided by the Contractor.

**18.4 Applicable Guarantee Periods.** Except as the Contract Documents otherwise provide, the Contractor Guarantee shall be and remain in effect at all times during the period (“Guarantee Period”) that commences on the Substantial Completion Date and ends on the sooner of: (i) the date that is one year after the Project Acceptance Date; or (ii) the date that is two years after the Substantial Completion Date. The foregoing definition of the Guarantee Period shall be deemed and construed to apply to the Work generally, and shall not be deemed or construed to supersede or limit any provision of the Contract Documents that specifically requires a longer Guarantee Period. In no event shall any applicable Guarantee Period serve as a limitation with respect to latent defects in the Work, which remain subject to applicable statute(s) of limitation.

**18.5 Specific Guarantee Periods for HVAC and Roofing.** The Guarantee Period for all heating, ventilation and air conditioning equipment, controls, *et cetera*, shall start when such portion of the Work first commences and shall end on the sooner of: (i) the date that is two years after the Project Acceptance

Date; or (ii) three years after the Substantial Completion Date. The Guarantee Period for all roofing materials, membranes, sheet-metal, *et cetera*, shall start when such portion of the Work first commences and shall end on the date that is five years after the Substantial Completion Date.

**18.6 Manufacturer and Other Third-Party Guarantees.** The Contractor Guarantee shall in no event be deemed or construed to limit, in any manner, any manufacturer or other third-party guarantee or warranty (including, without limitation, any that have a longer applicable Guarantee Period). No such manufacturer or other third-party guarantee or warranty shall be deemed or construed to relieve the Contractor from its responsibilities and/or liabilities under the Contractor Guarantee. At all times while the Contractor Guarantee is in effect during an applicable Guarantee Period, but not thereafter, the Contractor must assist the District in processing any manufacturer and other third-party guarantee or warranty claims with respect to systems, equipment, materials and/or other things incorporated into the Project as part of the Work.

**18.7 Guarantee Work by Contractor.** Within ten days after receipt of written notice from the District, the Contractor, at no cost to the District, must repair, replace or otherwise correct: (i) any Defective Work that is discovered or revealed during an applicable Guarantee Period; and (ii) any systems, equipment, materials and/or other things damaged, destroyed or otherwise disturbed as a consequence of the repair, replacement or other correction of the Defective Work ("Guarantee Work"). All such Guarantee Work must result in a repair, replacement or other correction that satisfies all requirements of the Contract Documents or otherwise must be completed in accordance with District requirements. The Contractor must coordinate all Guarantee Work with the District in order to avoid interfering with District operations and/or endangering anyone at the Project Site. If the Contractor timely commences any Guarantee Work, but the Guarantee Work reasonably cannot be completed within ten days of notice from the District, the District shall determine a reasonable time within which the Contractor must complete the Guarantee Work. The Contractor must provide written notice to the District upon completing any Guarantee Work.

**18.8 District Performance of Guarantee Work.** The District may at any time cause any required Guarantee Work to be performed, as reasonably determined by the District, if: (i) the Contractor fails to undertake and/or complete the Guarantee Work within the time permitted under Section 18.7 of these General Provisions; or (ii) as reasonably determined by the District, an Emergency situation exists and the delay that would result from providing notice to the Contractor and permitting the Contractor to perform the Guarantee Work would endanger or further endanger any person(s) or property. The costs incurred by the District in connection with such Guarantee Work shall be assessed against the Contractor, and shall accrue interest at the maximum legal rate permitted in the State. In no event shall the District causing any Guarantee Work to be performed in accordance with this Section be deemed or construed to limit or otherwise condition the responsibilities and/or liabilities of the Contractor under the Contractor Guarantee.

**18.9 Warranty of Title to Work.** The Contractor further warrants that title to all systems, equipment, materials and other things incorporated into Work will pass to the District upon receipt of payment by Contractor, free and clear of all claims, liens, stop notices, security interests, charges, *et cetera* (each, for purposes of this Section, a "lien"). The Contractor's indemnification and other obligations under Part 21 of these General Provisions shall apply with respect to any and all such liens. The foregoing shall not be deemed or construed to: (i) prohibit the Contractor from asserting any Claim in accordance with the Contract Documents; or (ii) require that the Contractor deliver to the District title to any utility metering devices or similar equipment owned by any public or private utility company or service and installed as part of the Work for purposes of providing permanent utilities or services to or for the Project.

**PART 19**  
**PROGRESS PAYMENTS AND FINAL PAYMENT**

**19.1 Schedule of Values.** Within ten days after receipt of the Notice of Award (if issued by the District) or prior to the Required Commencement Date, whichever is sooner, the Contractor must submit to the District, Architect and Inspector of Record a proposed schedule of the values allocated to the various portions of the Work ("Schedule of Values"), which must, among other things: (i) list the true actual cost (in dollars) of each separate activity and item included within the Work for which payment will be requested; (ii) specify the dollar amounts of overhead, profit, "general conditions" costs, and similar cost-items allocated to each activity and item included in the Work; (iii) separately itemize rough and finish work for the basic trades; (iv) specify individual dollar amounts for "large dollar" purchases, including, without limitation, systems, equipment, materials and/or other things to be incorporated into the Work; (v) allocate a value amount equal to not less than five percent of the total GMP to the close-out activities specified in Part 17 of these General Provisions; and (vi) consistent with the approved Master Construction Schedule, specify the projected total dollar amounts payable to the Contractor each month during the course of the Work. The Schedule of Values must also list as separate line items the costs for mobilization of the Project, bonds, insurance (if applicable), the Project Contingency, Contractor Contingency, allowances, and punch list items. The Schedule of Values need not specify the Leaseback Payments that will become due following District Board acceptance of the Project under Section 16.8 of these General Provisions, but must account for all of the Work. The Contractor shall not "front-load" the Schedule of Values by allocating increased or otherwise false dollar amounts to activities and/or items required to be performed in the early stages of the Work. The dollar amounts allocated for overhead, profit, general conditions costs, and similar cost-items must, as noted above, be allocated in the Schedule of Values to each particular activity; provided that the District, in its sole discretion, may consent to general conditions costs being allocated over the time for completion of the critical-path construction of the Project, as such critical path is set forth in the Master Construction Schedule. However, at any time the District reasonably determines that the progress of the critical-path portion of the Work is insufficient in comparison to what is specified in the Master Construction Schedule, as most recently updated, or in any approved recovery schedule, the District may adjust the payment of general conditions costs to match the percentage of the Project then complete, including, without limitation, retaining appropriate portion(s) of payments otherwise due to the Contractor. The District, in its sole discretion, may use the values allocated in the Schedule of Values as costs of activities and/or items that are eliminated from the scope of the Work. The Contractor must submit its proposed Schedule of Values with such documentary or other supporting evidence as reasonably supports and substantiates the allocations of values to the various portions of the Work. The Contractor must submit the Schedule of Values on such forms or software programs (e.g., Microsoft Project, Prolog, Expedition or Primavera) as approved by the Architect.

**19.2 Contractor Must Obtain Approval of Schedule of Values.** The primary purpose of the Schedule of Values is to serve as one basis for reviewing each Progress Payment Request submitted by the Contractor. Therefore, the Schedule of Values is subject to reasonable approval by the District, Architect and Inspector of Record, and the District shall not be required to make any payment to the Contractor unless and until the Contractor has obtained approval of an acceptable Schedule of Values. The District and/or Architect may require that the Contractor modify the Schedule of Values as they determine reasonably necessary. If the Schedule of Values is returned to the Contractor for any such modifications, the Contractor must modify and resubmit the Schedule of Values within two days. If the Contractor objects to any such required modification, the Contractor must, within such two-day period, provide any additional information to the District, Architect and Inspector of Record that the Contractor

believes supports and substantiates that the modification is not necessary. The Architect's decision regarding any such disputed modification shall be final and binding.

**19.3 Contractor Must Monitor and Update Schedule of Values.** The Contractor must update the Schedule of Values from time to time as reasonably necessary during the course of the Work, but in no event less than once per month or less than fourteen days prior to when amounts allocated in the Schedule of Values are to become due and payable. In each such update, the Contractor must identify and account for any changes in the Schedule of Values arising from delays, changes in the Work, changes in the Master Construction Schedule, *et cetera*. The Contractor must submit each update to the Schedule of Values for approval in accordance with the requirements set forth in Section 19.2 of these General Provisions that are applicable to the initial proposed Schedule of Values.

**19.4 Materials Not Incorporated into Work.** Notwithstanding anything to the contrary, the District shall not be required to pay the Contractor for any systems, equipment, materials or other things that have been purchased by the Contractor and stored on, at or in the vicinity of the Project Site, but not incorporated into the Work. The Contractor shall retain full responsibility and liability for any such things at all times, and for completing the Work in accordance with all applicable requirements of the Contract Documents.

**19.5 Contractor Must Arrange Progress Payment Review Meetings.** The Contractor must arrange to meet at the Project Site with the District, Architect and Inspector of Record in advance, but not more than five days in advance, of submitting each Progress Payment Request (other than the final Progress Payment Request), to review and discuss the Work for which the Contractor intends to seek payment in such Progress Payment Request (each a "Progress Payment Review Meeting"). The Contractor must provide to the meeting attendees, at the beginning of each Progress Payment Review Meeting, a comprehensive list of the Work that the Contractor intends to include within the scope of the Progress Payment Request. Upon request, the Contractor must show such Work to the meeting attendees and respond to relevant questions. If the District, Architect or Inspector of Record requests additional documentary or other support of the proposed Progress Payment Request, the Contractor must submit such documentary or other support with the Progress Payment Request submitted in accordance with Section 19.6 of these General Provisions. Such documentary or other support may include, without limitation, purchase invoices, rental receipts, delivery slips, certified payroll records, *et cetera*.

**19.6 Contractor Submittal of Progress Payment Requests.**

**19.6.1 Timing and Content of Progress Payment Request.** Not later than the seventh day of each month during the course of the Work, the Contractor must submit to the Architect a written request for payment on account of the Work completed during (or, if not previously compensated, prior to) the immediately preceding month (each a "Progress Payment Request"). Each Progress Payment Request must be submitted using a copy of the "Progress Payment Request" form, which is one of the Required Project Forms. In addition to any other information required by the Progress Payment Request form, the Contractor must itemize, in writing: (i) the total payment amount requested on account of the Work covered by the Progress Payment Request; (ii) the portions of such payment amount allocated to the various activities and items included in such Work; (iii) the portions of such payment amount attributable to each Subcontractor, materialman, and other person or entity that has furnished labor, material and/or equipment in connection with such Work; and (iv) the total balance due to each such Subcontractor, materialman and other person or entity after payment is made to them on account of the Progress Payment Request. With each Progress Payment Request, as additional information intended to assist in review of Progress Payment Requests, the Contractor must provide a reasonable, good-faith

written estimate of the percentage, in relation to all Work required under the Contract Documents, of each of: (i) the total Work (i.e., on a cumulative basis) completed as of the end of the payment period covered by the Progress Payment Request; and (ii) the portion of the GMP allocable to such total Work; and (iii) each of the overhead, profit, general conditions costs, and similar cost items allocable to such total Work. No Progress Payment Request shall be deemed or construed to constitute a complete and valid request for progress payment unless and until: (i) the Contractor submits it with all required materials specified in Subsection 19.6.2 (or, if applicable, Subsection 19.6.3) of these General Provisions; and (ii) the Contractor provides the copies of the Progress Payment Request and all such required materials as specified in Subsection 19.6.4 of these General Provisions.

**19.6.2 Materials to be Submitted with Progress Payment Request.** The Contractor must submit, with each Progress Payment Request, all of the following: (i) an updated Master Construction Schedule showing changes since the Contractor provided the immediately prior update to the District; (ii) the updated Schedule of Values covering the payment period, as adjusted on account of any updates to the Master Construction Schedule made during the payment period; (iii) copies of all permits or other governmental licenses and approvals relating to the Work that were obtained or issued during the payment period; (iv) all information required under Section 3.11 of these General Provisions relating to As-Built Drawings and Specifications; (v) copies of any certified payroll records requested by the District; and (vi) conditional and unconditional waivers and releases as required under Section 19.7 of these General Provisions.

**19.6.3 Final Progress Payment Request.** Notwithstanding the requirement set forth in Subsection 19.6.1 of these General Provisions for submitting Progress Payment Requests by the seventh day of each month, the Contractor may submit a final Progress Payment Request to the Architect only after the District Board has accepted all of the Work in accordance with Section 16.8 of these General Provisions. The Contractor must specify in the final Progress Payment Request that Contractor is seeking final payment in the form of a release by the District of all Retention. The Contractor must, as applicable, submit with the final Progress Payment Request all of the materials specified in clauses (iii) through (vii), inclusive, of Subsection 19.6.2 of these General Provisions.

**19.6.4 Copies of Progress Payment Requests and Supporting Materials.** Concurrently with submitting any Progress Payment Request and other information to the Architect as required by this Section 19.6, the Contractor must submit copies of all such information to the District and Inspector of Record.

## **19.7 Requirements for Progress Payment Waivers and Releases.**

**19.7.1 Conditional Waivers and Releases for Contractor.** With each Progress Payment Request that it submits in accordance with this Part 19 (other than the final Progress Payment Request), the Contractor must also submit an executed copy of the “Conditional Waiver and Release (Progress Payment)” form, which is one of the Required Project Forms. Such Conditional Waiver and Release (Progress Payment) must conditionally waive all lien and stop notice rights the Contractor may have against the District, the Project Site and the Project, with respect to all payments to be made to the Contractor on account of the Progress Payment Request. Each Conditional Waiver and Release (Progress Payment) must be duly executed and must contain an original signature of an Authorized Contractor Representative.

**19.7.2 Unconditional Waivers and Releases for Contractor.** With each Progress Payment Request that it submits in accordance with this Part 19, the Contractor must also submit an

executed copy of the “Unconditional Waiver and Release (Progress Payment)” form, which is one of the Required Project Forms. Such Unconditional Waiver and Release (Progress Payment) must unconditionally and irrevocably waive all lien and stop notice rights the Contractor may have against the District, the Project Site and the Project, with respect to all payments actually made to the Contractor on account of any prior Progress Payment Request. The Contractor must submit an Unconditional Waiver and Release (Progress Payment) in connection with a Progress Payment Request only if it was paid any funds on account of any prior Progress Payment Request for which it has not already submitted an Unconditional Waiver and Release (Progress Payment). Each Unconditional Waiver and Release (Progress Payment) must be duly executed and must contain an original signature of an Authorized Contractor Representative.

**19.7.3 Unconditional Waivers and Releases for Subcontractors and Others.** With each Progress Payment Request that it submits in accordance with this Part 19, the Contractor must deliver to the District an executed copy of the “Unconditional Waiver and Release (Progress Payment)” form, which is one of the Required Project Forms, for each Subcontractor, materialman and other person or entity that provided any labor, services, materials or equipment in connection with the Work. Any such person or entity must provide an Unconditional Waiver and Release (Progress Payment) in connection with a Progress Payment Request only if it was paid any funds on account of any prior Progress Payment Request for which it has not already submitted an Unconditional Waiver and Release (Progress Payment). Each Unconditional Waiver and Release (Progress Payment) must be duly executed and must contain an original signature of the person or entity’s authorized representative.

**19.7.4 Waiver and Release for Final Payment to Contractor.** As a condition precedent to the District’s obligation to make the final payment to the Contractor under Section 19.12 of these General Provisions, the Contractor must submit with its final Progress Payment Request an executed copy of the “Conditional Waiver and Release (Final Payment)” form, which is one of the Required Project Forms. The Conditional Waiver and Release (Final Payment) must be duly executed and must contain an original signature of an Authorized Contractor Representative.

**19.7.5 Waivers and Releases for Final Payment to Subcontractors and Others.** As a continuing obligation of the Contractor after final payment to the Contractor under Section 19.12 of these General Provisions, the Contractor must deliver to the District, within fourteen days following such final payment, an executed copy of the “Unconditional Waiver and Release (Final Payment)” form, which is one of the Required Project Forms, for each Subcontractor, materialman and other person or entity that provided any labor, services, materials or equipment in connection with the Work. Each such Unconditional Waiver and Release (Final Payment) must be duly executed and must contain an original signature of the person or entity’s authorized representative.

**19.8 Summary of Public Contract Code Section 20104.50.** The State Legislature enacted Public Contract Code Section 20104.50 to ensure that contractors on certain public works projects are timely paid for their services on such projects. If a local public agency fails to pay an undisputed and properly submitted payment request within thirty days, the agency must pay interest at the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. Each agency must review payment requests as soon as practicable to determine if they are proper and suitable for payment. If a payment request is not proper, the agency must return it to the contractor within seven days, specifying in writing the reasons why it is not proper. If the agency returns an improper payment request to the contractor more than seven days after receipt, the number of days available to the agency to make payments without incurring interest will be reduced by the number of days by which the agency exceeds the seven-day

return requirement. The provisions of this Part 19 encompass, among other things, the requirements of Public Contract Code Section 20104.50

**19.9 Architect Decisions Regarding Progress Payment Requests.**

**19.9.1 Notice of Approval or Disapproval.** Within seven days after receipt from the Contractor of a complete and valid Progress Payment Request, or as soon thereafter as reasonably practicable, and after having considered input from the District, and the Inspector of Record, the Architect will provide written notice to the District, Inspector of Record, and the Contractor regarding whether the Architect approves or disapproves the Progress Payment Request, in whole or in part. The Architect's decision regarding whether any justifiable reason exists to disapprove all or a portion of a Progress Payment Request shall be final and binding.

**19.9.2 Certification of Payment Upon Approval.** If the Architect approves any Progress Payment Request in whole or in part, the Architect will concurrently submit to the District and a written certification of the amount(s), based on the percentage of completion of the Work as of the date of the Progress Payment Request, that is payable to the Contractor on account of such Work ("Certification of Payment"). Each Certification of Payment will certify, to the best of the Architect's knowledge, information, and belief, and based on the Architect's observations and information in the Architect's possession, that all Work covered by the Progress Payment Request has been completed in accordance with the Contract Documents.

**19.9.3 Rejection and Resubmittal of Progress Payment Requests.** If the Architect disapproves all or any portion of any Progress Payment Request, then, with the notice required under Subsection 19.9.1 of these General Provisions, the Architect will return the Progress Payment Request to the Contractor with a written statement setting forth the reason(s) why it was rejected. The Contractor may correct the deficiencies in any disapproved Progress Payment Request and resubmit it without delay, but otherwise in accordance with Section 19.6 of these General Provisions. In applicable cases, the Architect will provide to the District with the Certification of Payment for a resubmitted Progress Payment Request, a written notice specifying the number of days by which the Architect exceeded the seven-day return requirement.

**19.10 Retention from Construction Progress Payments.** In addition to any amount(s) withheld from any Construction Progress Payment in accordance with the Contract or applicable Legal Requirement, the District shall withhold from each Construction Progress Payment (other than the final Construction Progress Payment) an amount equal to five percent of the total payment amount specified in the applicable Certification of Payment as security for adequate performance under the Contract ("Retention"). Notwithstanding the foregoing, after the Work is at least fifty percent complete, if the District Board determines that the Work is satisfactorily progressing, the District Board, in its sole discretion, may pay some or all of the remaining Construction Progress Payments (other than the final Construction Progress Payment) in full to the Contractor. Subject to the District's right to withhold some or all of the Retention as provided by the Contract or applicable Legal Requirement, the District will pay the Retention to the Contractor, as the final Construction Progress Payment, under Section 19.12 of these General Provisions. The District shall not be required to pay any interest on any Retention withheld under this Section 19.10. Upon request and at the sole cost and expense of the Contractor, the District will permit substitution of securities in lieu of the District withholding Retention, as provided in Public Contract Code Section 22300. Subject to any restrictions in Public Contract Code Section 22300, the District shall have the right to direct or approve any or all such securities.

**19.11 Payment of Construction Progress Payments.** After receipt from the Architect of a Certification of Payment for a Progress Payment Request submitted by the Contractor, the District shall pay to the Contractor an amount equal to the amount certified in the Certification of Payment less any duly withheld amounts (each a "Construction Progress Payment"). The District shall pay each such Construction Progress Payment (other than the final Construction Progress Payment) to the Contractor within thirty days after receipt from the Contractor of the complete Progress Payment Request; provided, however, that the District shall make the Construction Progress Payment to the Contractor an appropriate number of days less than thirty days if the Certification of Payment relates to a complete Progress Payment Request that was disapproved, but returned to the Contractor more than seven days after receipt. If the District fails to timely pay an undisputed Construction Progress Payment to the Contractor, the unpaid amount shall accrue interest, at the legal rate specified in Code of Civil Procedure Section 685.010, for each day the payment is late. The District will pay the final Construction Progress Payment to the Contractor as provided in Section 19.12 of these General Provisions.

**19.12 Final Payment to Contractor of Retention.** The District shall release to the Contractor, as the final Construction Progress Payment, any and all Retention, less any amount(s) the District deems necessary to withhold as provided by the Contract or applicable Legal Requirement, not sooner than 35 days after a Notice of Completion for the Work is recorded, but not later than 60 days after the first to occur of: (i) the District records a Notice of Completion for the Work; or (ii) "completion" of the Work is deemed to have occurred in accordance with Public Contract Code Section 7107. If some or all of any Retention is held in the form of securities, the District shall release such securities in accordance with the foregoing. In the event the District releases Retention to the Contractor because completion is deemed to have occurred in accordance with Public Contract Code Section 7107, the Contractor shall not thereby be deemed or construed to have been released from its obligations under the Contract, but the Contractor may terminate the Contract for cause at any time after the prerequisites set forth in Section 20.9 of these General Provisions have been satisfied.

**19.13 District Issuance of Joint Checks.** The District, in its sole discretion, may determine that it is necessary or advisable to issue any payment to the Contractor in the form of a joint check made payable to the Contractor and any of its Subcontractors, materialmen, or other persons or entities. The joint check payees shall be responsible for the allocation and disbursement of such funds between them. Except as may be required by applicable Legal Requirement, the District shall have no obligation to pay, or to ensure the payment of, any Subcontractor, materialman, or other person or entity that has furnished any labor, materials, services, goods or other things in connection with the Work. In no event shall the issuance by the District of any joint check be deemed or construed to: (i) constitute an understanding or agreement between the District and any such Subcontractor, materialman, or other person or entity, regardless of the number of joint checks issued; (ii) constitute an obligation of the District to any such Subcontractor, materialman, or other person or entity; or (iii) constitute or create any cause of action against the District by the Contractor or any such Subcontractor, materialman, or other person or entity.

**19.14 District Does Not Waive Rights by Inspecting, Approving or Paying.** In no circumstances shall any inspection and/or approval of any portion of the Work, any error or inaccuracy in any estimate or Schedule of Values, any processing of any Progress Payment Request, any issuance of a Certification of Payment, or any payment to the Contractor of any Construction Progress Payment (including, without limitation, the final Construction Progress Payment), be deemed or construed to constitute: (i) a release by the District of the Contractor from any of its obligations under the Contract; (ii) a representation by the District that any information submitted by the Contractor to substantiate any payment amount is accurate or was verified; (iii) a representation by the District that payments to Subcontractors, materialmen, and



others as required were verified or confirmed; (iv) a representation by the District that the Work complies in all respects with the requirements of the Contract Documents; (v) a representation by the District that the means, methods, techniques, sequences, or procedures used in performing the Work were reviewed and/or approved; (vi) an approval by the District of any means, methods, techniques, sequences or procedures used in the Work; (vii) an approval by the District of the use of any invention, appliance, process, article, device, or material, in violation of any royalty, patent or other rights of any person or entity; (viii) an acceptance by the District of any Work that does not conform to the requirements of the Contract Documents; (ix) a waiver by the District of any right(s) it has to enforce the Contractor's obligations under the Contract, whether or not prior to final payment under Section 19.12 of these General Provisions; or (x) a release by the District of the Contractor or its surety or sureties from responsibility for damages arising from the Work.

**19.15 Stop Notices and Liens.** The Contractor has sole responsibility and liability for ensuring that no person or entity files or otherwise imposes or causes to be imposed any stop notice or lien on or in relation to the Project Site or any portion of the Work or the Project on account of any labor, services, materials, equipment or other thing that the Contractor furnishes or causes to be furnished in connection with the Work. If any such stop notice or lien is filed or otherwise imposed, and if the stop notice or lien has merit or is valid, the Contractor shall be responsible and liable for all costs and expenses incurred by the District in connection with the stop notice or lien, excluding attorneys' fees. Any such costs and expenses shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor under the Contract.

**PART 20**  
**TERMINATION AND OTHER REMEDIES**

**20.1 Termination of Right to Perform Work for Cause.**

**20.1.1 Cause for Termination.** The Contractor shall be in default of its obligations under the Contract, and the District may terminate the Contractor's right to perform the Work for cause, if:

- (i) the Contractor or any Subcontractor refuses or fails to accomplish the Work or any portion thereof in accordance with the Contract Documents or with such diligence as will ensure substantial completion within the Contract Time;
- (ii) the Work, or any portion or phase of the Work, is not, or reasonably will not be, Substantially Completed within the Contract Time;
- (iii) the Contractor or any Subcontractor unreasonably, persistently or repeatedly refuses or fails to supply enough properly skilled workers and/or proper materials to the Project;
- (iv) the Contractor or any necessary Subcontractor is unreasonably, persistently or repeatedly absent from the Project Site;
- (v) the Contractor fails to timely and fully pay any Subcontractors, materialmen, or other individuals or entities the funds to which they are entitled in connection with the Work;
- (vi) the Contractor or any Subcontractor, materialman or other individual or entity that furnishes labor, materials, services or other things in connection with the Work disregards or otherwise fails to comply with any applicable Legal Requirement;
- (vii) the Contractor becomes the subject of voluntary or involuntary bankruptcy proceedings and/or a court determines that the Contractor is bankrupt or otherwise unable to timely pay its bills and/or comply with its contractual obligations;
- (viii) the Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of the Contractor's insolvency; or
- (ix) the Contractor or any Subcontractor fails to perform any of its obligations as and when required by the Contract, or otherwise violates any of the material provisions of the Contract.

**20.1.2 Notice of Intent to Terminate for Cause.** In any situation described in Subsection 20.1.1 of these General Provisions, the District may provide written notice to the Contractor and its surety of the District's intention to terminate the Contractor's right to perform the Work ("Notice of Intent to Terminate for Cause"), stating in reasonable detail the reasons for the termination. The Contractor's right to perform the Work shall terminate ten days after receipt of a Notice of Intent to Terminate for Cause unless the reasons for termination have been resolved, corrected or cured, or arrangements satisfactory to the District have been made for correction or cure. The Contractor and its surety shall remain liable in accordance with the Contract Documents for all Work performed prior to such termination.

**20.2 Surety and District Rights to Perform Work After Termination for Cause.** In the event the District issues a Notice of Intent to Terminate for Cause, the Contractor's surety shall have the right to

take over and perform the Contract. If the surety does not (i) give the District written notice of surety's intention to take over and commence performance of the Contract within ten days of receipt of the Notice of Intent to Terminate for Cause and (ii) commence performance of the Contract within twenty days after receipt of the Notice of Intent to Terminate for Cause, then the District may elect to take over and proceed to complete the Work, by separate contract or by any other means or method the District deems advisable, for the account of and at the expense of the Contractor and/or the surety.

**20.3 District Performance of Work After Termination for Cause.** In no event after receipt of a Notice of Intent to Terminate for Cause shall the Contractor remove from the Project Site, or suffer or permit the removal from the Project Site of, any tools, equipment, vehicles, materials, supplies, appliances, plants, or other items owned, leased or rented by the Contractor and used or employed in connection with the Work. In the event the District elects to take over the Work as specified in Section 20.2 of these General Provisions, then: (i) the District may, without liability for so doing, take possession of and use in completing the Work all such tools, equipment, vehicles, materials, supplies, appliances, plants, or other items on or at the Project Site used or employed in connection with the Work and owned, leased or rented by the Contractor; (ii) at the District's election, any or all of the Subcontracts shall be deemed to have been assigned to the District; and (iii) the Contractor and its surety shall be liable to the District for any costs or other damages incurred by the District attributable to or arising from the District taking over the Work as provided in this Section. **THE CONTRACTOR MUST ENSURE THAT EACH OF ITS CONTRACTS WITH ITS SUBCONTRACTORS AND SURETIES INCLUDES SUCH PROVISIONS AS ARE NECESSARY TO EFFECTUATE THE REQUIREMENTS OF THIS SECTION 20.3, HOWEVER, NO FAILURE TO DO SO WILL INVALIDATE SUCH REQUIREMENTS.**

**20.4 Contractor Compensation After Termination for Cause.** In the event the Contractor's right to perform the Work is terminated under Section 20.1 of these General Provisions, the Contract shall remain in effect. However, in such event, the Contractor shall not be entitled to receive any further payment under the Contract: (i) until the Project has been fully completed and accepted in accordance with Section 16.8 of these General Provisions; and (ii) only if the cost to the District to complete the Work is less than the unpaid portion of the GMP (including, among other costs, the Leaseback Payments, but not any interest thereon) as adjusted in accordance with the Contract. If the cost incurred by the District to complete the Work exceeds such unpaid portion of the GMP, the Contractor (or its surety) shall pay the difference to the District within thirty days of receiving an invoice for such amount from the District.

**20.5 Termination of Right to Perform Work for Convenience.** The District, for any reason and without need for cause, may terminate the Work in whole or, from time to time, in part, regardless of the circumstances resulting in termination. In any such event, the District shall provide written notice to the Contractor of the termination ("Notice of Termination for Convenience"). The Contractor shall remain liable in accordance with the Contract Documents for all Work performed prior to any such termination, and the Contractor's surety shall not be deemed or construed to have been relieved of its obligations in regard to any just claims arising out of or relating to such Work.

**20.6 Contractor Must Cease Work Upon Termination for Convenience.** Upon receipt of a Notice of Termination for Convenience, the Contractor shall immediately proceed to: (i) stop all Work to the extent specified in the Notice of Termination for Convenience; (ii) as specified in the Notice of Termination for Convenience, complete any Work that must be finished off prior to termination in a least-cost/shortest-time manner while still maintaining the quality required under the Contract Documents; (iii) leave the terminated portion of the Work (to the extent already completed) in a safe and clean condition so that it will not pose any threat to the health or safety of any persons; (iv) terminate all Subcontracts to

the extent those provide for the terminated portions of the Work, except such Subcontracts as specified in the Notice of Termination for Convenience that shall be deemed to be assigned to the District; and (v) place no further orders and make no further contracts with Subcontractors, except as necessary to complete portions of the Work not terminated.

**20.7 Documenting Costs After Termination for Convenience.** Within fourteen days after the effective date of a termination for convenience, the Contractor must submit to the District all documentation required under Section 19.6 of these General Provisions to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the termination. In addition, within twenty-one days after the effective date of any such termination, the Contractor must submit to the District such documentation as reasonably details and substantiates costs reasonably incurred by the Contractor solely as a result of the termination for convenience. All of the foregoing documentation must: (i) describe the costs incurred with particularity; and (ii) be conspicuously identified as "Termination Costs Resulting from Termination for District Convenience."

**20.8 Compensation After Termination for Convenience.** In the event of a termination for convenience, subject to receipt of reasonable substantiating documentation as described in Section 20.7 of these General Provisions, the District shall pay to the Contractor an amount equal to the total of: (i) the actual costs incurred by the Contractor in accordance with the provisions of the Contract Documents attributable to the terminated portion of the Work that was satisfactorily completed by the Contractor, but not previously paid by the District ("Actual Costs"); (ii) a reasonable allowance for profit on the Actual Costs, provided that the Contractor establishes to the satisfaction of the District that it is reasonably probable the Contractor would have made a profit on such portion of the Work, but in no event shall such allowance exceed ten percent of the Actual Costs; and (iii) a reasonable allowance for administrative and demobilization costs incurred by the Contractor, but in no event shall such allowance exceed five percent of the Actual Costs. Notwithstanding anything to the contrary, in no event shall the total amount payable to the Contractor under this Section exceed the portion of the GMP that is proportionate to the portion of the Work satisfactorily completed prior to termination, consistent with the then-most recent approved Schedule of Values.

**20.9 Termination by the Contractor for Cause.** The Contractor may terminate the Contract, by providing written notice to the District, in the event: (i) as a result of factors beyond the Contractor's control and not arising from any fault, omission, act or negligence of the Contractor or any Subcontractor, materialman or other person or entity that has furnished or is to furnish any labor, materials, services or other things in connection with the Work, there has been a cessation or suspension of all Work for a period of more than one-hundred and twenty consecutive days, and the District has not provided to the Contractor within such period a notice to resume the Work, a Notice of Intent to Terminate for Cause, or a Notice of Termination for Convenience; or (ii) after notice and reasonable opportunity to cure, the District fails to pay the Contractor any substantial undisputed sums due to the Contractor in accordance with the Contract Documents. In the event of a termination by the Contractor under this Section, and subject to Section 20.10 of these General Provisions, the Contractor shall be entitled to compensation as provided in Section 20.8 of these General Provisions for a termination for convenience, including, without limitation, compensation not in excess of the proportionate amount of the GMP plus any accrued interest on unpaid, but due and payable, Leaseback Payments. In the event of termination by the Contractor under this Section, the Contractor shall have no Claim(s) against the District except with respect to Work that the Contractor performed prior to termination. The Contractor and its surety shall remain liable in accordance with the Contract Documents for all Work performed prior to such termination.

**20.10 Documenting Costs After Contractor Termination for Cause.** Within fourteen days after the effective date of a termination by the Contractor for cause under Section 20.9 of these General Provisions, the Contractor must submit to the District all documentation required under Section 19.6 of these General Provisions to substantiate all costs incurred by the Contractor for labor, materials and equipment through the effective date of the termination. All of the foregoing documentation must: (i) describe the costs incurred with particularity; and (ii) be conspicuously identified as "Termination Costs Resulting from Contractor Termination for Cause."

**20.11 Remedies for Default Other Than Termination.** In the event the Contractor is in default of its obligations under the Contract in any one or more of the ways specified in Subsection 20.1.1 of these General Provisions, then, in its sole discretion and after notice as provided in this Section, the District shall have the right to cure or otherwise correct the default(s), by any reasonable means or method the District deems advisable, without terminating the Contract or the Contractor's right to perform the other portions of the Work. If the District so intends to cure or otherwise correct any default(s) by the Contractor, the District shall provide written notice to the Contractor and its surety. If, within five days of receiving such notice (or, in the event of an Emergency or situation involving an existing or potential safety hazard, within such shorter period of time, if any, as set forth in the notice), the Contractor fails to adequately cure or otherwise correct the default(s), or fails to make arrangements satisfactory to the District for such adequate cure or other correction, the District shall have the right to cure or otherwise correct the default(s), by separate contract or by any other reasonable means or method the District deems advisable (including, without limitation, supplementing the workforce of the Contractor or any Subcontractor with additional workers and/or equipment), for the account of and at the expense of the Contractor. If the District is required to expend funds in connection with any such cure or other correction, such amounts shall accrue interest at the maximum legal rate from the date(s) expended to the date(s) the District is reimbursed, whether reimbursed directly by the Contractor or its surety. Such amounts shall be charged to the Contractor and/or deducted from amounts payable to the Contractor under the Contract. The rights of the District under this Section are in addition to, not in lieu of, any other rights and remedies the District may have under law, equity or contract, and in no circumstances shall the rights of the District under this Section be deemed or construed to limit or constitute a waiver by the District of any such rights or remedies. Neither the Contractor nor its surety shall have any recourse against the District with respect to any cure(s) and/or other correction(s) undertaken by the District in good faith.

**20.12 Effect on other Projects with District.** Contractor may be under contract with the District with regard to other projects that are being constructed simultaneously, or in a series, with this Work. In such an event, and without limitation or penalty to the District, any exercise by the District of the termination rights, or other rights, under this Part 20, or any other clause or provision in the LLB Agreements, may, at the District's sole written discretion, apply to any or all of the other projects or portions thereof. For example, if the District awards two simultaneous/serial projects to the Contractor, but the District is dissatisfied with the performance on any project or portion thereof, the District shall be able to terminate any or all of the other projects, or portion thereof, in addition to the first project, without penalty or any additional compensation.

**PART 21**  
**INDEMNIFICATION OF DISTRICT AND OTHERS**

**21.1 Indemnification of District and its Representatives.** Subject to the provisions of Section 21.4 of these General Provisions, the Contractor shall indemnify, defend, and hold-harmless the District, the District's project manager for the Project, if any, and the Inspector of Record (each, including the District, a "District Indemnitee"), and each of them, from and against any and all claims, demands, causes of action, actions, other proceedings, liens, judgments, damages, losses, costs, expenses (including attorneys' fees), and other liabilities of any nature arising from, or directly or indirectly related to, the performance of the Work or Project and/or the Contractor's or any Subcontractor's acts and/or omissions directly or indirectly relating to the Contract Documents, including, without limitation, liabilities arising from: (i) personal injury (including death) or property damage; (ii) any act or omission by the Contractor, any Subcontractor, or any other person or entity that furnishes any labor, materials, services, goods or other things in connection with the Work; and (iii) infringement or alleged infringement of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the District, unless specifically stated otherwise in the Contract Documents. The obligations of the Contractor under this Section are in addition to, and not in lieu of, any other obligations the Contractor has under the Contract Documents and/or applicable Legal Requirements.

**21.2 Contractor Defense of District and its Representatives.** Without prior demand from the District, the Contractor, at its sole cost and expense, shall defend each and every claim, demand, action, and other proceeding within the scope of Section 21.1 of these General Provisions as to which any District Indemnitee is a party, regardless of whether the District Indemnitee may be the sole party named in the claim, demand, action or other proceeding. Any such defense must be conducted by knowledgeable and experienced legal counsel selected and retained by the Contractor at its cost, but reasonably acceptable to the District. Without limiting anything else in any indemnity provisions of the Contract, the Contractor shall also pay the reasonable costs incurred by the District in connection with the monitoring of, and, if necessary, the participation in, the defense of any District Indemnitee by the District's legal counsel. Without jeopardizing or compromising any of its other rights, the District may settle any claim, demand, action or other legal proceeding on terms determined by the District Board to be reasonable and in the best interests of the District and/or any other District Indemnitee. As part of its obligations under this Section and Section 21.1 of these General Provisions, and with respect to any claim, demand, action or other proceeding within the scope of such Sections, within thirty days of receiving an invoice from the District, the Contractor shall reimburse the District for any and all: (i) judgments paid by the District; (ii) amounts paid by the District in settling such claim, demand, action or other proceeding; and (iii) any other legal or other costs and expenses reasonably incurred by the District in connection with such claim, demand, action or other proceeding. If the Contractor fails to pay any such amount(s) within the required time, the unpaid amount(s) shall accrue interest at the legal rate.

**21.3 Indemnification of District Officers, Employees, and Agents.** For purposes of each and every obligation of the Contractor set forth in these General Provisions and other Contract Documents to indemnify, defend and/or hold-harmless the District or the District Indemnitees, the reference to the District or District Indemnitees shall be deemed and construed to be a reference also to the District Board and each member thereof, the District's other officers, employees, and agents, and each of them.

**21.4 Limitation on Contractor Indemnification Obligations.** Notwithstanding anything to the contrary, the Contractor shall not be responsible or liable under Sections 21.1, 21.2 or 21.3 of these General Provisions, or any other indemnification provisions set forth in the Contract Documents, to the

extent that a claim, demand, action, other proceeding, lien, judgment, damage, loss, cost, expense, or other liability is attributable to the active negligence, sole negligence, or willful misconduct of the District or any other District Indemnatee. Nothing in these General Provisions or the other Contract Documents shall be deemed or construed to require that the Contractor indemnify, defend or hold-harmless the Architect.

**21.5 Contractor Must Ensure Subcontractors Indemnify District Indemnitees.** The Contractor must include provisions in each Subcontract requiring that the Subcontractor also indemnify, defend, and hold-harmless the District and the other District Indemnitees to the same extent required of the Contractor under this Part 21 of these General Provisions.

**21.6 Insurance Not a Limitation.** The Contractor's obligations under this Part 21 shall not be deemed to be: (i) conditioned upon, or in any manner limited by, the any insurance coverage required by the LLB Agreements; or (ii) conditioned upon the receipt by any person or entity of, or limited to the amount of, any insurance proceeds.

**21.7 Attorney's Fees.** Notwithstanding anything to the contrary, except the right to be indemnified regarding attorney's fees, no person, entity, or party, including but not limited to the District and the Contractor, shall be allowed to recover attorney's fees that are incurred in an action to either enforce or defend the LLB Agreements.

**PART 22**  
**CLAIMS AND LEGAL PROCEEDINGS**

**22.1 Requirements and Procedures for Filing Claims Are Mandatory.** This Part 22 establishes mandatory requirements and procedures applicable to the filing by the Contractor of any and each demand for: (i) extension of time; (ii) payment of money or damages arising from Work done by or on behalf of the Contractor under the Contract and payment of which is not otherwise expressly provided for or to which the claimant is not otherwise entitled; or (iii) an amount the payment of which is disputed by the District (each of the foregoing a "Claim"). **IF THE CONTRACTOR FAILS TO FILE ANY CLAIM IN STRICT ACCORDANCE WITH CERTAIN REQUIREMENTS AND PROCEDURES DESCRIBED IN THIS PART 22, THE CONTRACTOR SHALL BE DEEMED AND CONSTRUED TO HAVE FORFEITED AND WAIVED ANY AND ALL RIGHTS TO ASSERT THE CLAIM ON ANY BASIS OR TO INITIATE AND PURSUE ANY LEGAL ACTION OR OTHER PROCEEDING BASED ON ANY FACTS AND/OR CIRCUMSTANCES FORMING A BASIS FOR THE CLAIM.**

**22.2 Mandatory Time Limits for Filing of Claims.** The Contractor must file each Claim within fourteen days of the date the Contractor first becomes aware or reasonably should have first become aware of any basis for the Claim. Additionally, the Contractor must file any and all Claims prior to when the District issues final payment to the Contractor under Section 19.12 of these General Provisions, and the District shall reject any Claim filed thereafter as null and void. **IF THE CONTRACTOR FAILS TO FILE A CLAIM WITHIN THE PERMITTED FOURTEEN-DAY PERIOD AND PRIOR TO FINAL PAYMENT, THE CONTRACTOR SHALL BE DEEMED AND CONSTRUED TO HAVE FORFEITED AND WAIVED ANY AND ALL RIGHTS TO ASSERT THE CLAIM ON ANY BASIS OR TO INITIATE AND PURSUE ANY LEGAL ACTION OR OTHER PROCEEDING BASED ON ANY FACTS AND/OR CIRCUMSTANCES FORMING A BASIS FOR THE CLAIM.**

**22.3 Content of Claims and Substantiating Materials.** Each Claim must consist of: (i) a cover letter that sets forth a summary of the basis or bases for the Claim (including, without limitation, dates of relevant occurrences, the particular persons involved or that have relevant knowledge, the specific remedy and/or compensation the Contractor is seeking, and, if applicable, the total amount of the Claim and a breakdown of the total amount into general categories of costs incurred by the Contractor); (ii) a reasonably detailed analysis of the contractual bases for the Claim (including, without limitation, identifying all provisions of the Contract Documents relevant to the Claim), the legal bases for the Claim, and any other bases or justifications for the Claim asserted by the Contractor, with cross-references to documents submitted in support of the Claim; and (iii) all documents that support the Contractor's position(s) as described in the Claim, including, by way of example and not as a limitation, any Specifications, Drawings, cost analyses, daily reports, *et cetera*. A Claim must include all information that the Contractor desires be considered in connection with the review, analysis, and rejection or approval of the Claim.

**22.4 Mandatory Certification of Claims Subject to Penalty of Perjury.** The Contractor must submit each Claim with a written certification by the Contractor stating that: (i) the Contractor has reviewed the Claim and is filing it in a good-faith belief that the Contractor is entitled to the remedy and/or compensation described in the Claim; (ii) each document and item of other supporting information (whether an original or copy) submitted with the Claim is authentic (i.e., not altered or modified in any manner), accurate and complete; (iii) the Claim accurately sets forth, the total amount of the District's monetary and/or other liability for the Claim; and (iv) the Contractor acknowledges that the filing of false and/or fraudulent claims may result in fines and/or imprisonment under Government Code Sections



12650 *et seq.* and Penal Code Section 72. The duly-authorized representative of the Contractor must sign each such certification under penalty of perjury and the signature must be notarized. **IF THE CONTRACTOR FAILS TO SUBMIT THE REQUIRED CERTIFICATION WITH ANY CLAIM, THE CONTRACTOR SHALL BE DEEMED AND CONSTRUED TO HAVE FORFEITED AND WAIVED ANY AND ALL RIGHTS TO ASSERT THE CLAIM ON ANY BASIS OR TO INITIATE AND PURSUE ANY LEGAL ACTION OR OTHER PROCEEDING BASED ON ANY FACTS AND/OR CIRCUMSTANCES FORMING A BASIS FOR THE CLAIM.**

**22.5 Prerequisites for Filing Delay Claims.** NO CLAIM FILED BY THE CONTRACTOR THAT DEMANDS AN EXTENSION OF THE CONTRACT TIME AND/OR AN INCREASE IN THE GMP BASED ON A DELAY IN THE WORK SHALL BE VALID, AND THE DISTRICT SHALL NOT BE REQUIRED TO CONSIDER ANY SUCH CLAIM, UNLESS THE CONTRACTOR DEMONSTRATES PRIOR COMPLIANCE WITH ALL APPLICABLE REQUIREMENTS OF SECTIONS 11.9 AND 11.10 OF THESE GENERAL PROVISIONS. If the District disapproves a Change Order Request submitted in accordance with Section 11.10 of these General Provisions, the period in which the Contractor may file a related Claim shall commence upon receipt by the Contractor of notice of such disapproval.

**22.6 Method of Filing Claims.** The Contractor must file each complete Claim (i.e., each Claim that satisfies the requirements of Sections 22.1 through 22.5, inclusive, of these General Provisions) by delivering it to the District, with copies to the Architect and Inspector of Record, via personal delivery (signature of receiving person requested) or certified or registered U.S. Mail (postage pre-paid and signature of receiving person requested).

**22.7 PCC Claims Procedures.** The provisions of Public Contract Code Section 9204, and, to the extent applicable, Public Contract Code Section 20104 *et seq.* ("PCC Claims Procedures"), as those may be amended from time to time, shall apply to any and each Claim. The PCC Claims Procedures are incorporated herein by this reference. In summary, the PCC Claims Procedures specify requirements and procedures for filing a claim, for responding to a claim, and for disputing the response to a claim. The PCC Claims Procedures require that the claimant provide such documentation as reasonably supports the claim and that, the public agency provide to the claimant a written statement identifying the disputed and undisputed portions of the claim. The public agency must provide such response to the claimant within forty-five days after receiving the claim or, if approval of the response by the governing body of the public agency is required, then not later than three days following the next duly publicly noticed meeting of the governing body after such forty-five-day period. The PCC Claims Procedures specify additional requirements if the public agency does not timely respond, or if the claimant disputes the response. In addition, the PCC Claims Procedures specify requirements for civil actions filed to resolve claims. The PCC Claims Procedures do not apply to tort claims or alter time periods for filing of tort claims in accordance with the Government Code. For additional information, the Contractor should refer to Public Contract Code Section 9204 and 20104 *et seq.* **NOTHING IN THIS SECTION 22.7 OR IN THE PCC CLAIMS PROCEDURES SHALL BE DEEMED OR CONSTRUED TO SUPERSEDE THE REQUIREMENTS OF SECTIONS 22.1 THROUGH 22.6, INCLUSIVE, OF THESE GENERAL PROVISIONS, WHICH ARE APPLICABLE TO EACH AND EVERY CLAIM ARISING FROM THE WORK OR THE CONTRACT.**

**22.8 District Requests for Additional Information.** Within 20 days of receipt of a Claim, the District and/or Architect may request (including for purposes of the PCC Claims Procedures when those are applicable) that the Contractor provide additional information relevant to the Claim that is believed reasonably necessary or convenient for analysis or evaluation of the Claim. The Contractor shall provide such additional information as soon as reasonably possible, but in no event later than five business days after receiving the District's request.

**22.9 Procedures for Initial Review of Claim by Architect.** The Architect, in consultation with the District and the Inspector of Record, will review each Claim and, within twenty days after receipt of the Claim, shall take one or more of the following preliminary actions: (i) request that the Contractor provide additional information pursuant to Section 22.8 of these General Provisions; (ii) if necessary due to the complexity and/or number of issues described in the Claim, provide information to the Contractor as to when the Architect anticipates being able to complete its review pursuant to this Section 22.9; (iii) recommend that the District disapprove the Claim in whole or in part, stating reasons for rejection; (iv) recommend that the District approve the Claim; or (v) suggest a compromise of the Claim. If the Architect anticipates that the complete review of the Claim cannot be completed within forty-five days following receipt by the District of the Claim, the District shall attempt to reach an agreement with the Contractor for an extension of the time to review the Claim. If the Contractor refuses to agree to such an extension, and the District does not otherwise respond to the Claim within forty-five days following receipt of the Claim, the Claim shall be deemed rejected. Regardless of whether a Claim is processed pursuant to the PCC Claims Procedures, the District may, but is not obligated to, notify the Contractor's surety of the nature and amount of the Claim and request the surety's assistance in resolving the Claim.

**22.10 District Response to Claim Following Initial Architect Review.** The District's response to each Claim shall be subject to approval by the District Board. In each case, following the initial review of a Claim by the Architect, the District will provide to the Contractor within the time required by the PCC Claims Procedures, a written statement identifying the portions of the Claim that are undisputed and that are disputed. If the District determines that some or all of a Claim is undisputed, the District will prepare or obtain and process a Change Order that appropriately documents the resolution of the Claim to the extent that the Claim is undisputed. Payment of any undisputed portion of the Claim shall be made in accordance with the PCC Claims Procedures.

**22.11 Initiation of Informal Claim-Resolution Efforts.** If the Contractor disputes the District's written statement or if the District fails to respond to a Claim within the time required by the PCC Claims Procedures, the Contractor may demand that the District meet and informally confer with the Contractor in an attempt to settle the issues remaining in dispute. Each such demand must be in writing and sent to the District by registered mail or certified mail, return receipt requested. In such event, the District shall schedule a mandatory meeting of the Contractor and the District, Architect, and Inspector of Record, to occur within thirty days following receipt by the District of the Contractor's written demand. The District and the Contractor may bring to such meeting any documents or other materials related to the basis or bases for the Claim and any individual(s) they believe necessary or convenient for purposes of such informal efforts. The individuals present at the meeting shall make good-faith efforts to resolve the Claim. If the District and Prime Contractor are unable to resolve the Claim during the meeting, but agree that further informal efforts would be productive, they may schedule additional meetings or discussions for purposes of continuing the efforts to resolve the Claim.

**22.12 Documentation of Compromise.** If, following the meet and confer conference, the District and the Contractor agree to a compromise or other resolution of some or all of the disputed portion of a Claim, the Architect will prepare or obtain and process a Change Order, or the District and Contractor shall enter into another appropriate written agreement, that appropriately documents such agreement. The District, if applicable, shall pay any undisputed portion of a Claim in accordance with the PCC Claims Procedures.

**22.13 Architect Ruling if Claim Remains Unresolved.** If, following the meet and confer

conference, the District and the Contractor do not agree to a compromise or other resolution of the disputed portion of a Claim, the District will issue a written statement to the Contractor identifying the portions of the Claim that remain in dispute and that are undisputed. The District will issue its ruling within ten business days of the conclusion of the informal meet and confer conference. Subject to the provisions of Section 22.14 of these General Provisions, if the Contractor disagrees with the District's statement, as described in writing to the District, the portion of the Claim that remains in dispute shall be submitted to nonbinding mediation in accordance with the PCC Claims Procedures.

**22.14 Conditions Precedent to Initiating Subsequent Actions.** With respect to each Claim, the compliance by the Contractor with the requirements of Sections 24.1 to 24.11 of these General Provisions shall be a condition precedent to initiation by the Contractor of any legal or equitable action, arbitration or other proceeding relating to or arising from the matters addressed in the Claim.

**22.15 Contractor Must Continue Work While Claims Pending.** Neither the existence of any dispute, nor the filing or other initiation of any Claim or related action, arbitration or other legal proceeding, shall be deemed or construed to constitute a valid basis for the Contractor to stop, delay or change the Work. The Contractor must diligently continue with all Work as required by the Contract Documents (including, without limitation, as set forth in any Architect Field Directives) and in accordance with all milestones set forth in the Master Construction Schedule, regardless of whether: (i) any dispute exists or any Claim, action, arbitration or other legal proceeding has been filed or otherwise initiated; or (ii) the District disapproves any Claim. In the event a Claim is not resolved to the Contractor's satisfaction, the Contractor's sole remedy shall be to initiate an action or other legal proceedings as permitted pursuant to the Contract, but only, as described in Section 22.17 of these General Provisions, after the Project has been completed or the Contract has been terminated.

**22.16 Resolving Disputes through Binding Arbitration.** In the event a dispute remains following compliance with PCC Claims Procedures, the District and the Contractor may agree in writing to resolve any Claim through binding arbitration. In such event, the District and Contractor shall attempt within thirty days thereafter to agree on the arbitrator who will conduct the arbitration. If the parties cannot so agree, they shall request that a judge of the Superior Court for the County designate an arbitrator with experience in public works construction. The District and the Contractor each shall pay one-half of the cost of the arbitration. The arbitrator shall establish procedures and rules to be followed in conducting the arbitration, which, at a minimum, shall specify that the arbitrator must adhere to and apply all substantive statutory, regulatory, administrative and decisional law that is applicable to the dispute. If a party petitions to confirm, correct, or vacate the award as provided by Chapter 4 of Title 9 of the Code of Civil Procedure (commencing with Section 1285), the prevailing party shall not be entitled to reasonable attorneys' fees and expenses incurred in connection with such proceedings. The surety that issued the Performance Bond and/or Payment Bond shall be made a party to any such arbitration and shall be fully bound by any decision of the arbitrator.

**22.17 Resolving Disputes in Court of Competent Jurisdiction.** If any Claim is not resolved in accordance with the procedures set forth in this Part 22 after compliance by the Contractor with all such procedures as required, then, except if and as limited by Public Contract Code Section 20104.4 when it applies the Contractor may file an action in a court of competent jurisdiction in the County seeking resolution of the Claim through bench trial. No such action may be initiated until after: (i) the entirety of the Work has been fully completed and accepted by the District in accordance with Section 18.9 of these General Provisions; (ii) completion of the Project has occurred as defined in Subsection (c) of Public Contract Code Section 7107; or (iii) the Contract in its entirety has been terminated prior to completion

of the Project. AS A CONDITION PRECEDENT TO THE CONTRACTOR'S RIGHT TO FILE ANY SUCH ACTION, WITHIN FIFTEEN DAYS AFTER COMPLETION OF THE PROCEDURES REQUIRED PURSUANT TO THIS PART 22 WITHOUT RESOLUTION OF THE APPLICABLE CLAIM, THE CONTRACTOR MUST PROVIDE WRITTEN NOTICE TO THE DISTRICT THAT THE CONTRACTOR THEREBY RESERVES ITS RIGHTS TO FILE SUCH ACTION. Any statutory limitation on the period for filing of such an action shall be tolled, from the date the procedures required pursuant to this Part 22 are duly completed without resolution of the applicable Claim, until the date an action may be filed in accordance with the foregoing provisions of this Section. If a Claim for \$375,000 or less remains in dispute following the procedures set forth in this Part 22, the applicable provisions of Public Contract Code Section 20104.4 shall apply.

**22.18 Neither Party's Remedies are Limited.** Except as expressly stated in these General Provisions or the other Contract Documents, the rights and remedies available in accordance with the Contract are in addition to any rights and remedies available pursuant to applicable law; provided that the exercise of any and all such rights and remedies are subject to procedural requirements made applicable by this Part 22.

**22.19 Applicable Law and Venue.** The Contract shall be construed in accordance with the laws of the State. Any provision of law purported to be described or specified herein that is incorrectly described or specified shall, nonetheless, be applicable as if correctly described or specified herein. If any action, arbitration, mediation or other proceeding is initiated to enforce or interpret any term of the Contract, such proceeding shall be initiated and conducted only in the County.

**PART 23**  
**MISCELLANEOUS PROVISIONS**

**23.1 Entire Understanding and Agreement.** The Contract, as defined in these General Provisions (including without limitation, the Contract Documents LLB Agreements) and as amended in accordance with the Contract Documents, constitutes the final, complete and exclusive statement of the terms of the agreement between the District and the Contractor pertaining to performance of the Work. The Contract supersedes all prior and contemporaneous understandings or agreements of the Parties, oral or written, except as those are included in the Contract. Each of the District and the Contractor acknowledges and agrees that neither the other Party, nor its agents or attorneys, has induced the execution of the Contract by making any promise, representation, or warranty whatsoever, express or implied, not set forth in the Contract.

**23.2 All Legal Requirements Deemed Included.** Each and every provision required by any applicable Legal Requirement to be included in the Contract is hereby deemed to be so included, and the Contract shall be construed and enforced as if all such provisions are so included. If, for any reason, any provision required by any Legal Requirement is not expressly included or incorporated into the Contract Documents, or is not correctly included or incorporated into the Contract Documents, then, upon request of either the District or the Contractor, they shall amend the Contract Documents to include or incorporate, or to correctly include or incorporate, such provision.

**23.3 Execution of Documents in Counterparts.** The District and Contractor may sign the Construction Services Agreement and other Contract Documents in one or more counterparts, which, taken together, shall be deemed and construed to constitute one and the same original instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more copies of the Construction Services Agreement having original signatures of both Parties.

**23.4 Captions and Headings.** Any and all captions or headings for the Parts, Sections, Subsections and other provisions of these General Provisions and the other Contract Documents are provided solely for convenience of the reader and shall not be deemed or construed to establish, define, or limit the content or meaning of such provisions.

**23.5 No Third-Party Beneficiaries of Contract.** Except to the extent provided by any applicable Legal Requirement (e.g., requirements for payment of prevailing wages to workers on the Project), no party other than the District or the Contractor may claim or assert any right or benefit arising from the Contract. Each provision of the Contract Documents shall be deemed and construed to benefit only the District and/or the Contractor unless and only to the extent the provision is included in the Contract specifically as a result of any Legal Requirement intended to benefit any third party. Provisions of the Contract Documents that relate to or permissibly expand on any Legal Requirement intended to benefit any third party, but that are not necessary for compliance with that Legal Requirement, shall be deemed and construed as being included in the Contract for the convenience of the Parties and shall not be deemed or construed to benefit any third party or as providing a basis for any claim, demand, action or other proceeding by a third party relating to the Contract.

**23.6 Circumscribed Right to Assign Contract.** The Contractor may not, without the prior written consent of the District: (i) assign, transfer, pledge, or hypothecate the Contract or any interest therein; or (ii) sublet or lend the use of the Project Site or any portion thereof. Any consent by the District to any of the foregoing prohibited acts shall be deemed and construed to apply only in the particular circumstances

for which consent is given and shall not be deemed or construed as consent for any subsequent similar or other circumstances. Except as expressly permitted by the Contract Documents, the Contractor shall not assign the Contract or any obligations under the Contract without the prior written consent of the District, which consent the District may grant or deny in its sole discretion. Any attempted or purported assignment by the Contractor of the Contract or any obligations under the Contract, without such prior written consent, shall be null and void, and the Contractor shall remain responsible for all of its obligations under the Contract. Subject to the foregoing, the Contract shall inure to the benefit of, and be binding on, the authorized successors and assigns of the Contractor.

**23.7 Waiver of Contract Requirements.** The failure by either the District or the Contractor at any time(s) to require performance of any requirement of the Contract shall in no manner affect the right at a later time to enforce the same or any other provision of the Contract. Except as expressly provided in the Contract Documents, the forbearance or indulgence by either the District or the Contractor in any regard whatsoever shall not constitute a waiver of the requirement at issue. Until complete performance by a Party of the requirement at issue, the District or Contractor, as applicable, shall be entitled to invoke any remedy available to it in accordance with the Contract Documents, regardless of any such forbearance or indulgence. No requirement of the Contract to be performed by or on behalf of either the District or the Contractor can be waived except by the written consent of the other. Unless expressly provided in any such written waiver, no waiver by either the District or the Contractor of a breach or the performance of any requirement of the Contract shall be deemed to be construed as a continuing waiver of future breaches or future performance of the same or any other requirement.

**23.8 Requirements of Contract are Severable.** If a court of competent jurisdiction determines, for any reason, that any provision or requirement of the Contract (including, without limitation, any provision of any of the LLB Agreements) is invalid or unenforceable, such determination shall not invalidate or render unenforceable any other provision or requirement of the Contract. In such event, the remaining provisions and requirements shall be interpreted, to the extent permitted by law, in a manner that is consistent with the intent and purpose of the invalid or unenforceable provision or requirement.

**23.9 Assignment of Anti-Trust Claims.** The Contractor hereby assigns to the District all rights, title and interest in and to all causes of action the Contractor may have under Section 4 of the Clayton Act (15 USC Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, services, or materials under the Contract. This assignment shall become effective at the time the District tenders the final Construction Progress Payment to the Contractor under Section 19.12 of these General Provisions, without further acknowledgment by either the District or the Contractor.

**23.10 Service of Demands and Other Notices.**

**23.10.1 General Requirements.** Unless the Contract Documents expressly provide otherwise with respect to any particular circumstance, demands and other notices required or permitted to be given under the Contract Documents (each a "Notice") must be in writing and must be given or served in accordance with this Section 23.10.

**23.10.2 Methods of Delivery.** Each Notice must be sent via: (i) personal delivery (with signature of recipient and recipient's name legibly written on delivery receipt); (ii) facsimile transmission (with confirmation of transmission printed from the sender's machine and retained in the sender's records, a copy of such confirmation provided to recipient upon request, and the original of the Notice deposited into the United States mail, first-class postage prepaid, within twelve hours after transmission);

(iii) registered or certified United States mail (postage pre-paid and return receipt requested); (iv) FedEx, U.P.S. or other reliable, private delivery service (with signature of recipient obtained on electronic or other delivery receipt); or (v) electronic mail (email) transmission (with confirmation of transmission printed from the sender's machine and retained in sender's records, and a copy of such confirmation provided to recipient upon request).

**23.10.3 Persons to Whom Notices Must be Sent.** Notices sent to the District must be addressed and delivered to each of the Authorized District Representatives identified in Exhibit G to the Construction Services Agreement, at the District's main administrative offices, and copies of each such Notice must be sent to the Architect. Notices sent to the Contractor must be addressed and delivered to either the Job Superintendent or any of the Authorized Contractor Representatives. A Party may change its address, facsimile transmission number, or person to whom attention should be directed, by giving Notice in accordance with this Section 23.10.

**23.10.4 Giving or Service of Notice.** A Notice shall be deemed given or served only upon actual receipt by the addressee. In the case of email, "actual receipt" shall mean delivery to the recipient's email in-box. If a Notice, including, without limitation, any Notice sent by email, is delivered after 4:00 p.m. on any day (whether or not it is a business day), the Notice shall be deemed to have been given or served as of 9:00 a.m. on the next subsequent business day. For purposes of the LLB Agreements, a "business day" is any day that is not any of the following: (i) a Saturday or Sunday; (ii) a federal or State holiday; or (iii) a State- or District-mandated furlough day with respect to the District's administrative personnel. As an additional condition to sending a Notice by email, the reference line must indicate that it is a "Notice Under Project LLB Agreements." Because email addresses are subject to change more frequently than physical addresses, if a Notice is to be sent by email, unless the sender has personal knowledge of the correct, then-current email address of each intended recipient, the sender must call and verify the then-current email address of each intended recipient prior to sending the Notice.

**23.10.5 Applicability of Section.** The requirements of this Section 23.10 shall not be deemed or construed to apply to: (i) communications of the District and/or the Contractor necessary for day-to-day administration of the Contract or the Work; or (ii) service of process in accordance with any applicable law or rule of court.

**23.11 Public Inquiries and Complaints.** If the Contractor or any Subcontractor or other person or entity on, at or in the vicinity of the Project Site on account of the Work receives any inquiry, complaint, or other communication regarding the nature, status, *et cetera*, of the Work or the Project, from any homeowner, business owner, member of the press, or other member of the public, the inquiry, complaint or other communication must be referred to the District for response. The Contractor shall as necessary provide to the District any information in the Contractor's possession or control that is reasonably required for the District to respond to any such inquiry, complaint, or other communication.

**23.12 District Notice of Third-Party Claims.** In accordance with Public Contract Code Section 9201, the District shall timely notify the Contractor if the District receives any third-party claim relating to the Work or the Contract. The District shall be entitled to recover from the Contractor the District's reasonable costs incurred in providing such notification.

**(End of General Provisions.)**

***EXHIBIT E***  
***ITEMIZATION OF GMP***

***(Exhibit to begin on the next page.)***



**EXHIBIT F**  
**REQUIREMENTS FOR CONTRACTOR INSURANCE**

- 1. Insurance Requirements.** Before the commencement of the Work, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least an A status as rated in the most recent edition of Best's Insurance Reports or as otherwise amended in these Contract Documents, such insurance as will protect the District from claims set forth below, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

  - a. Claims for damages because of bodily injury, sickness, disease, or death of any person District would require indemnification and coverage for employee claim;
  - b. Claims for damages insured by usual personal injury liability coverage, which are sustained by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or by another person;
  - c. Claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents;
  - d. Claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work;
  - e. Claims involving contractual liability applicable to the Contractor's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Contractor and the Subcontractors; and
  - f. Claims involving completed operations, independent contractors' coverage, and broad form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating ("XCU").
  - g. Claims involving sudden or accidental discharge of contaminants or pollutants.
- 2. Subcontractor Insurance Requirements.** The Contractor shall require its Subcontractors to take out and maintain similar public liability insurance and property damage insurance required hereunder in like amounts. A "claims made" or modified "occurrence" policy shall not satisfy the requirements of this Article without prior written approval of the District.

3. **Additional Insured Endorsement Requirements.** The Contractor shall name, on any policy of insurance required hereunder, the District and its officers, employees, agents and independent contractors as additional insureds. Subcontractors shall name the Contractor, the District, and their officers, employees, agents and independent contractors as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 33 (04/813), or an ISO CG 20 38 (04/13) and ISO CG 20 37 (04/13) or their equivalent as determined by the District in its sole discretion, and must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by the Contractor hereunder must be designated in the policy as primary to any insurance obtained by the District. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.
4. **Specific Insurance Requirements.** Contractor shall take out and maintain and shall require all Subcontractors, if any, whether primary or secondary, to take out and maintain:
- a. Comprehensive General Liability Insurance with a combined single limit per occurrence of not less than \$2,000,000.00 or Commercial General Liability Insurance (including automobile insurance) which provides limits of not less than:
    - i. Per occurrence (combined single limit) \$1,000,000.00
    - ii. Project Specific Aggregate (for this Project only) \$2,000,000.00
    - iii. Products and Completed Operations \$1,000,000.00
    - iv. Personal and Advertising Injury Limit \$1,000,000.00
  - b. Insurance Covering Special Hazards. The following special hazards shall be covered by riders or riders to above mentioned public liability insurance or property damage insurance policy or policies of insurance, in amounts as follows:
    - i. Automotive and truck where operated in amounts \$1,000,000.00
    - ii. Material Hoist where used in amounts \$1,000,000.00
    - iii. Explosion, Collapse and Underground (XCU coverage) \$1,000,000.00
    - iv. In addition, provide Excess Liability Insurance coverage in the amount of Two Million Dollars (\$2,000,000.00).
5. **Workers' Compensation Insurance.** At all times during the Work, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the Project Site and, in case any of the Contractor's

Work is subcontracted, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Such workers' compensation insurance shall be in an amount of at least \$3,000,000. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in Work under this Contract on or at the Project Site is not protected under the Workers' Compensation laws, the Contractor shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Contractor shall file with the District certificates of insurance and in compliance with Labor Code section 3700.

**6. *Builder's Risk/All Risk***

- a. Course-of-Construction Insurance Requirements. The Contractor, during the progress of the Work and until final acceptance of the Work by District upon completion of the entire Contract, shall maintain Builder's Risk, Course of Construction, or similar first party property coverage issued on a replacement value basis consistent with the total replacement cost of the structures where work is being performed inclusive of all Work for the Project included within the Contract Documents. Coverage is to insure against all risks of accidental direct physical loss, and must include, by the basic grant of coverage or by endorsement, the perils of vandalism, malicious mischief (both without any limitation regarding vacancy or occupancy), fire, sprinkler leakage, civil authority, sonic boom, flood, collapse, wind, lightning, smoke, and riot. The coverage must include debris removal, demolition, increased costs due to enforcement of building ordinance and law in the repair and replacement of damage and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project which is the subject of the Contract Documents, including the underlying structure where Work is being performed, completed Work and Work in progress, to the full insurable value thereof. Such insurance shall include the District as additional named insureds, and any other person with an insurable interest as designated by the District.

The Contractor shall submit to the District for its approval all items deemed to be uninsurable. The risk of the damage to the Work due to the perils covered by the "Builder's Risk/All Risk" Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the surety, and no claims for such loss or damage shall be recognized by the District nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

- 7. *Fire Insurance.*** Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all

Work subject to loss or damage by fire. The amount of fire insurance shall be sufficient to protect the Project against loss or damage in full until the Work is accepted by the District.

**8. Other Insurance.** The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

**9. Proof of Insurance.** The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under the LLB Agreements until all required insurance and certificates have been obtained and delivered in duplicate to the District for approval subject to the following requirements:

a. Certificates and insurance policies shall include the following clause:

- i. "This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the District. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice."
- ii. Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
- iii. Certificates of insurance shall clearly state that the District is named as an additional insured under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by District.
- iv. The Contractor and its Subcontractors shall produce a certified copy of any insurance policy required under this Article upon written request of the District.

**10. Compliance.** In the event of the failure of Contractor to furnish and maintain any insurance required hereunder, the Contractor shall be in default under the LLB Agreements. Compliance by Contractor with the requirement to carry insurance and furnish certificates or policies evidencing the same shall not relieve the Contractor from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the District and District Indemnitees.

**11. No Waiver Created through Payments.** The making of any payments under the LLB Agreements shall not be construed as creating an insurable risk interest by or for the District or be construed as relieving the Contractor or any Subcontractors of responsibility for loss from any direct physical loss, damage, or destruction occurring prior to completion of the Work.

- 12. Waiver of Subrogation.** Contractor waives (to the extent permitted by law) any right to recover against the District for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by property insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by the District.

The provisions of this section are intended to restrict each party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. The District and the Contractor shall each obtain in all policies of insurance carried by either of them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

**EXHIBIT G**  
**REPRESENTATIVES AND CONTACT INFORMATION**

**1. Authorized District Representatives.** The Authorized District Representatives are: (i) \_\_\_\_\_; (ii) \_\_\_\_\_; and (iii) \_\_\_\_\_. \_\_\_\_\_ is the primary contact for the District with respect to administration of the LLB Agreements and the performance of the Work. The Authorized Contractor Representatives must contact \_\_\_\_\_ to obtain his appropriate personal telephone number. \_\_\_\_\_ facsimile number is \_\_\_\_\_. Notices and other communications to any of the Authorized District Representatives should, as applicable, be addressed as follows:

**Del Mar Union School District**

Attention: \_\_\_\_\_

11232 El Camino Real, Ste. 100,  
San Diego, California 92130

**With copies (same address) to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2. [IF APPLICABLE] Project Consultant.** The District's for the Project Consultant is \_\_\_\_\_. \_\_\_\_\_ will be the \_\_\_\_\_ representative who will be the primary contact person with respect to the Project. The Authorized District Representatives and Authorized Contractor Representative must contact \_\_\_\_\_ to obtain his appropriate personal telephone number. \_\_\_\_\_ email address is \_\_\_\_\_. Notices and other communications to \_\_\_\_\_ should be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3. Authorized Contractor Representatives.** The Authorized Contractor Representatives are: (i) \_\_\_\_\_; and (ii) whoever may, from time to time, serve as the Job Superintendent. \_\_\_\_\_ is the Authorized Contractor Representative who will be the primary contact for the Contractor with respect to the administration of the LLB Agreements and the performance of the Work. The Authorized District Representatives must contact \_\_\_\_\_ to obtain [insert his or her] appropriate personal telephone number. The facsimile number for \_\_\_\_\_ is [insert facsimile number], and, if the facsimile number for the Job Superintendent is different, the Job Superintendent shall provide his/her facsimile number to the Authorized District Representatives upon establishing a job trailer at the Project Site. Notices and other communications to any of the Authorized Contractor Representatives should be addressed as follows:

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Attn: *[Insert name from clause (i) above]*  
*[Insert Street Address]*  
*[Insert City, State, Zip]*

**3. Architect Representative.** The Architect for the Project is *[insert name of architect firm]*. *[Insert name of AOR]* is the Architect of Record for the Project and is the Architect representative who will be the primary Architect contact person with respect to the Project. The Authorized District Representatives and Authorized Contractor Representative must contact *[insert Mr. or Ms. and name of AOR]* to obtain *[insert his or her]* appropriate personal telephone number. The facsimile number for *[insert Mr. or Ms. and name of AOR]* is *[insert facsimile number]*. Notices and other communications to the Architect should be addressed as follows:

*[Insert Architect Firm Name]*  
Attn: *[Insert AOR Name]*  
*[Insert Street Address]*  
*[Insert City, State, Zip]*

## **ATTACHMENT 4 – NON-COLLUSION/CONFLICT OF INTEREST FORM**

(Attachment to begin on the next page)



## NON-COLLUSION DECLARATION

State of California                    )  
  )  
County of \_\_\_\_\_)

I, \_\_\_\_\_ declare as follows:

That I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

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

\_\_\_\_\_  
Proper Name of Bidder / Company Name

\_\_\_\_\_  
*Signature of Authorized Agent/Officer*

\_\_\_\_\_  
Date



• UNION SCHOOL DISTRICT •

**CERTIFICATION REGARDING EXECUTIVE ORDER N-6-22 BY GOVERNOR OF THE STATE OF CALIFORNIA  
REGARDING CONTRACTS AND SANCTIONS ON THE RUSSIAN FEDERATION**

**Project:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 ("EO") regarding sanctions in response to the military conflict between the Russian Federation and the Ukraine. The EO is located at:

<https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf>.

The EO requires certain State agencies to notify contractors and grantees of their obligations to comply with existing economic sanctions imposed by the United States government in response to Russia's actions in Ukraine, as well as any sanctions imposed by the State of California.

It is presently unclear which contracts or projects may be subject to the EO. Nevertheless, out of an abundance of caution, the District is respectfully requesting written confirmation that you, or the entity you represent, are in compliance with the EO and sanctions.

Further information may be found at: <https://ofac.treasury.gov/sanctions-programs-and-country-information/ukraine-russia-related-sanctions>.

The undersigned hereby certifies to the District, under penalty of perjury under the laws of the State of California, that the following is true and correct:

- (i) I am a duly authorized representative of the Contractor and, in that capacity, I have executed this certification on behalf of the Contractor.
- (ii) The appropriate box is checked immediately below (check only one box), and the statement relating to the Contractor's status regarding the EO following such box is true and correct.

☐ The Contractor is in compliance with the EO and any sanctions discussed therein.

☐ The Contractor is not in compliance with the EO and any sanctions discussed therein

Representative Name: \_\_\_\_\_

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

Representative Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_



**CALIFORNIA AIR RESOURCES BOARD COMPLIANCE FORM**

Project: \_\_\_\_\_

Bid No. \_\_\_\_\_

**This form must be submitted with the bid proposal at due date and time established in bidding documents or the bid may be rejected as nonresponsive.**

The California Air Resources Board ("CARB") has implemented regulations for the use of certain vehicles on public works projects. For any project awarded after January 1, 2024, and under the regulations (see Cal. Code Regs., tit. 13, § 2449), the Anaheim Elementary School District ("District") must obtain valid **Certificates of Reported Compliance ("CRC")** from all contractors and listed subcontractors before awarding a project. The District will be required to retain CRCs for three years after the project is complete, and the CRCs are subject to review by the CARB upon five calendar days' notice.

**In addition to this Form, the foregoing CRCs are also required at time of bid submittal and must be included with bid proposal by the stated bid due date & time. Proof of bidder and subcontractor certification must be attached to this page at the time of bid submittal.**

The ARB Diesel Off-road Online Reporting System (DOORS) reporting system is where bidders may obtain Certificates of Reported Compliance: [DOORS \(ca.gov\)](https://ww2.arb.ca.gov/our-work/programs/truckstop-resources/road-zone). There is also an additional website that provides bidders with more information on the regulation along with FAQs and user guides. The website is the Off-Road Zone: <https://ww2.arb.ca.gov/our-work/programs/truckstop-resources/road-zone>.

Please also see the following:

[Fact Sheet: Contracting Requirements | California Air Resources Board](https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-contracting-requirements)

<https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-contracting-requirements>

[Fact Sheet: Renewable Diesel Fuel Requirements | California Air Resources Board](https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-renewable-diesel-fuel-requirements)

<https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-renewable-diesel-fuel-requirements>

[Fact Sheet: Added Vehicle Restrictions and Tier Phase-Out Requirements | California Air Resources Board](https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-added-vehicle-restrictions-and-tier-phase-out-requirements)

<https://ww2.arb.ca.gov/resources/fact-sheets/fact-sheet-added-vehicle-restrictions-and-tier-phase-out-requirements>

Project Name \_\_\_\_\_

Bidder Acknowledges CARB Compliance requirements (sign) \_\_\_\_\_

Name & Title of Bidder: \_\_\_\_\_

Date: \_\_\_\_\_