



Westlands Water District

Request for Proposal

Los Gatos Recharge Basin – Phase 1 – Design-Build

BACKGROUND AND DESCRIPTION:

Westlands Water District (District) is issuing a Request for Proposal (RFP) to select a qualified design consultant / general contractor team for the Design-Build of Phase 1 of the Los Gatos Recharge Basin.

District Description and Groundwater Sustainability Plan Implementation

Westlands Water District, the largest agricultural water district in the United States, serves over 600,000 acres in western Fresno and Kings Counties. The District also serves as the Groundwater Sustainability Agency (GSA) for the San Joaquin Valley Basin Westside Subbasin, Department of Water Resources Bulletin 118 Basin No. 5-022.09 (Basin) and adopted the Basin Groundwater Sustainability Plan (GSP) on January 23, 2020, further amended on December 17, 2024. The formation of the GSA and the development and implementation of the GSP are requirements of the Sustainable Groundwater Management Act (SGMA).

To achieve the Subbasin sustainability goal by 2040 and avoid undesirable results through 2070 as required by SGMA, various projects and management actions are being implemented by the District. Project and Management Action No. 3, District Groundwater Recharge Enhancement, focuses on District-operated recharge enhancement projects as a conjunctive use strategy to promote groundwater sustainability in the Subbasin. District recharge projects are intended to store surplus surface water in the aquifer system to increase groundwater storage in the Subbasin. These strategies are intended to mitigate impacts of groundwater extraction during droughts, improve water supply resiliency, and avoid undesirable results.

Project Description

The Los Gatos Recharge Basin (Project) is a multi-basin groundwater recharge facility planned to expand the District's capacity to replenish local aquifers. The District acquired the 30-acre property in April 2024 following the removal of almond trees in 2022. The site is located in western Fresno County at the southwest corner of Phelps and El Dorado Avenues (approximately 1 mile west of I-5), adjacent to the District's Coalinga Canal (Figure 1). The site was minimally improved by District staff through the construction of berms to allow some recharge. The existing capacity of the basin and height of the berms will need to be increased to create multiple basins at different elevations. The anticipated recharge potential of the Project is approximately 0.5 ft/day, or 12.5 acre-ft per day assuming 25 acres are developed for recharge. The Project will be operated during periods when surplus surface water (including Kings River and Cantua Creek flood water) is available or when District agricultural growers have excess water suitable for in-lieu recharge, typically occurring approximately every three years.

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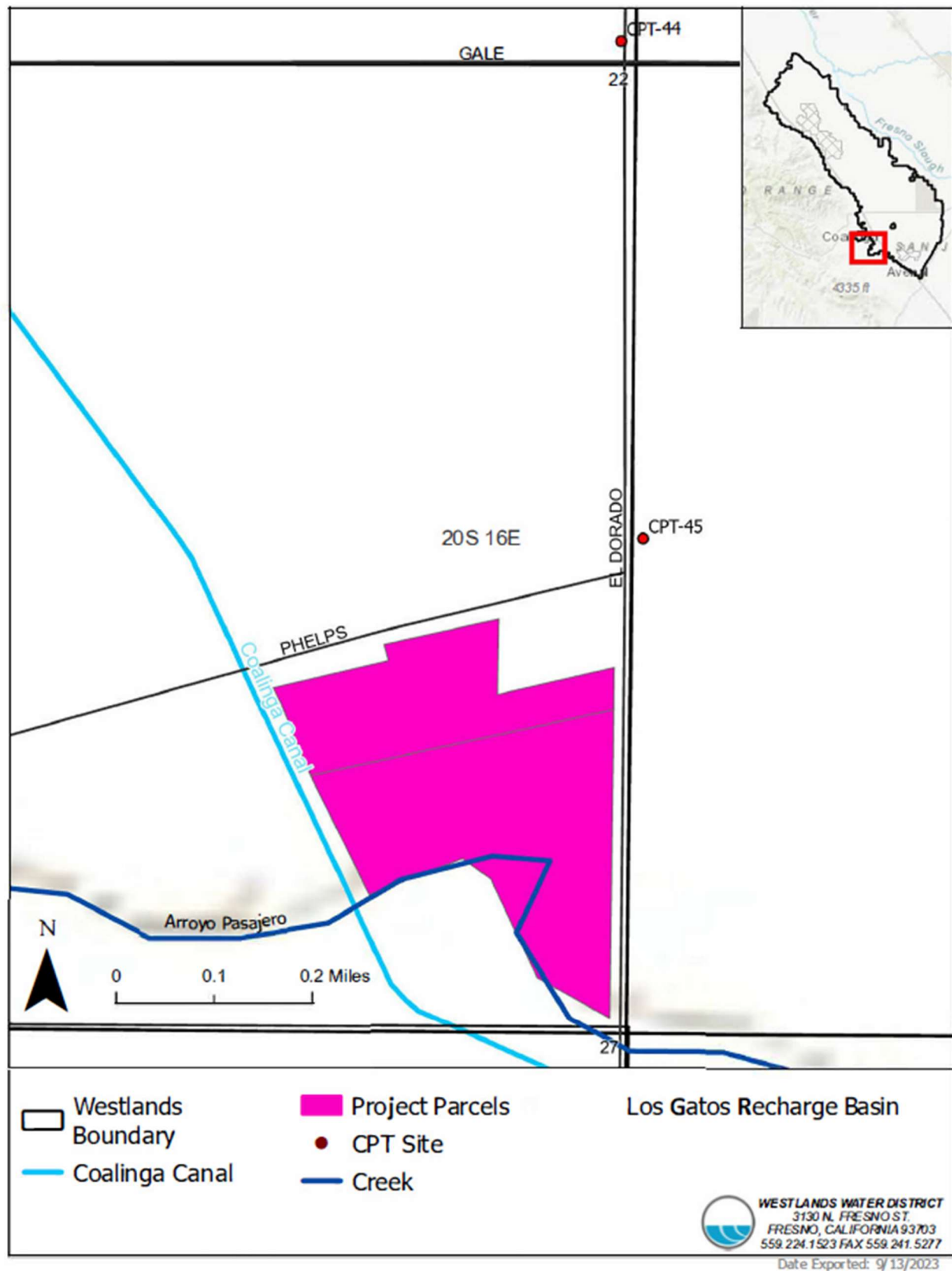


Figure 1 – Vicinity Map

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The Project will be constructed in two phases:

Phase 1 – All major earthwork should be completed in Phase 1, including the design and construction of multiple basins to allow water to flow from the highest to the lowest elevations utilizing either concrete crest, syphon, or culvert spillways. The Project must be engineered to utilize cut materials onsite for all required fill. Phase 1 will also include the installation of water level measurement instrumentation.

Phase 2 – Includes installation of a temporary diversion structure to pump water out of the Coalinga Canal and into the improved basins, along with all necessary electrical and mechanical improvements.

This **RFP will focus on Phase 1 work only**, which will allow the District to utilize the basins with rented pumping equipment to pump water out of the Coalinga Canal and into the basins. The Phase 1 design will consider and reserve space for future improvements in Phase 2 and may include the installation of some capped underground piping so as to avoid digging into the constructed berms in Phase 2.

PROJECT DELIVERY APPROACH AND SCHEDULE:

The overall approach for project delivery is to retain a Design-Builder for design, permitting, and construction of the Project using Design-Build delivery. The District will review and evaluate the Proposals to determine the most qualified Respondent for contract negotiations. If contract negotiations fail, the District will terminate negotiations with the first Respondent and negotiate with the next qualified Respondent.

The anticipated overall schedule for project delivery is as follows:

September 23, 2026	Advertise RFP
October 15, 2026 at 10 AM	Mandatory Pre-Proposal Meeting and Site Walk
October 30, 2026 at 5 PM	Deadline for Questions
November 6, 2026	District Deadline to Post Responses to Planet Bids
November 10, 2026 at 5 PM	Due date for Receipt of Proposals, and start of Evaluation Period and Contract Negotiations
December 15, 2026	Approval of Project, Award of Contract, & Contract Execution
January 2027	Notice to Proceed
*April 2027	Design Complete
*May 2027	Construction Start
*August 2027	Substantial Completion
*September 2027	Final Completion

*Note – Future schedule to be negotiated with selected Respondent

SCOPE OF WORK:

The selected Respondent shall provide all services for successful design, permitting, and construction of the Project.

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At a minimum, the project management services and work product shall include:

- Progress review meetings
 - Schedule and conduct progress review meetings with District staff at the District office or via Microsoft Teams. Meeting frequency will be determined based on the work status and level of activity.
 - Distribute meeting agendas at least one business day prior to each meeting date.
 - Generate and distribute meeting minutes within one business day of each meeting for review by attendees and incorporate any additional comments.
- Schedule updates
 - Update the schedule, comparing actual progress to the originally proposed schedule.
 - Perform critical path analysis and identify any necessary corrective measures.
- Monthly payment requests and progress reports
 - Prepare monthly invoices in accordance with actual progress and drawdown schedule.
 - Prepare a monthly progress report to accompany each invoice for the previous month's work. Progress reports shall review major work activities, as well as budget and schedule status by task, document progress made during the past month, and provide a look-ahead to the next month's progress goals.

At a minimum, the design and permitting services and work products shall include:

- Topographic survey
- Preparation of preliminary plans, specifications, and other supporting documents
- Preliminary identification and preparation of all necessary permit applications and facilitation of regulatory agency approval of all permits
- Preparation of 100% plans and specifications
- Design support services during construction
- Preparation of record drawings

At a minimum, the construction services and work products shall include:

- Construction management
- Cost control and change order documentation
- Equipment and materials procurement
- Surveying
- Utility location
- Compliance with all required permits
- Staging
- Clearing and grubbing
- Excavation, grading, and site earthwork
- Concrete crest, syphon, or culvert spillway installation
- Structural work, as needed
- Piping installation, as needed
- Access road construction and landscaping
- Fence installation
- Informational Project signage

At this time, no further environmental compliance is envisioned. A Notice of Exemption (NOE) was adopted and filed with the State Clearinghouse (SCH 2026080610). However, the selected

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Respondent should be able to provide any additional environmental compliance services if necessary for completion of the Project.

PROPOSAL CONTENTS:

The proposal should provide adequate detail to indicate how the proposed tasks fulfill the Scope of Work. The proposal should include the sections detailed below and contain the following format:

Section	Contents
Cover Letter	Transmittal and basis for selection (2 page maximum)
1	Respondent Qualifications, Project Team, and References
2	Scope of Work
3	Project Schedule
4	Fee Proposal
5	Resumes (2 page maximum per person)
6	Licensures/Certifications
7	Acknowledgement of Addenda (if applicable)

Section 1: Respondent Qualifications, Project Team, and References

Respondent Qualifications: Provide the history, qualifications, examples, and experience of the Respondent, comparable in scope to this Project. Include resources available to support the Respondent's project team. Identify all staff and any sub-contractors working on this Project and their past roles in the example projects and how they will be utilized on this Project. For each example, indicate whether you were the lead or a subcontractor, members of the team that worked on the project, and the year completed.

Project Team: Include an organization chart for the project team showing the proposed principal in charge, project manager, key project staff, and subcontractors along with their proposed responsibilities. Provide the following information for each project team member: (1) role in Project (2) qualification and experience specific to this Project (3) statement of availability to fulfill their role in the Project. Resumes may be included for the staff shown on the organization chart in Section 5.

References: Provide a minimum of 5 references and contact information (address, phone number and email address) for each of the projects listed. For each project listed, provide a project description (type of work), contract amount, and the year the work was completed.

Section 2: Scope of Work

Provide a detailed scope of work to complete the Project that demonstrates the following:

- Understanding of the project objectives and desired outcomes.
- Intended approach toward providing the Scope of Services.
- Detailed design and construction services, including approach to developing the design, cost model, preconstruction services, construction, and project closeout.
- Understanding of site conditions.
- Approach to selecting and managing subconsultants and subcontractors.
- Approach to Quality Control and Quality Assurance.
- Risk identification and mitigation.
- Approach to cost control and change management.

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- Communications methods and tools to facilitate District review of work products at key milestones.

Section 3: Project Schedule

Include a preliminary schedule for the completion of the Project. The Respondent shall provide a timeline outlining time required to complete each task. Show critical path elements of the Project and discuss any constraints that would affect the timeline. Include the submission of deliverables, meetings, and additional milestones needed for completion.

Section 4: Fee Proposal

Include a fee proposal with a detailed breakdown of the proposed services by subtask in accordance with the proposed Scope of Services, including additional recommended subtasks at Respondent's discretion. The fee proposal shall identify the proposed labor hours for each subtask by job classification and the corresponding cost, labor hours and cost subtotals by subtask and task, and overall totals for all proposed services.

A fee schedule shall define the names, job classifications, and billable hourly rates of all proposed team members including subcontractors that will perform services. The hourly rates shall incorporate costs of accounting, taxes, overhead, profit, subcontractor markups, and other administrative costs.

Section 5: Resumes

For those key team members involved, please include resumes of no more than two (2) pages per person related to their capabilities, experience, and qualifications. Resumes should include team members' name, title, education, licenses or professional affiliations, and a brief overview of their professional experience.

Section 6: Licensures/Certifications

Provide a list of applicable Contractors State License Board (CSLB), Department of Industrial Relations (DIR) registration, and other licenses and certifications held by the project team. No proposal will be accepted from a consultant and contractor team who is not registered with the DIR as required by Labor Code section 1725.5.

Section 7: Acknowledgement of Addenda

It is the responsibility of the Respondent to ensure receipt of any addendum if issued. The Respondent shall submit the Acknowledgement of Addenda form, provided in **Appendix A**.

PROPOSAL SUBMISSION AND EVALUATIONS

Submission Deadlines

Submissions to respond to this request must be submitted online through PlanetBids (<https://vendors.planetbids.com/portal/74254/bo/bo-detail/146467>) **no later than 5:00 PM on November 10, 2026.**

Number of Copies

Submit one (1) pdf electronic file.

Submission Questions and Clarifications

The District will hold a mandatory pre-proposal meeting for this project on **October 15th, 2026 at 10:00 am at the District's Huron Field Office located at 32450 Lassen Ave., Huron, CA**

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93234. Immediately following the meeting, a site visit will be conducted with interested parties to review the site and to address any questions.

All questions must be submitted on the bid page

(<https://vendors.planetbids.com/portal/74254/bo/bo-detail/146467>) on PlanetBids by October 30, 2026 at 5:00 pm. No additional questions will be accepted past the deadline. Questions will be answered in an addendum and posted on the bid page.

Note to proposers that the discussion in the RFP is preliminary, and the District assumes no contractual obligation with the proposer until a contract is executed.

Proposal Evaluations

Proposal received after the deadline, at 5:00 pm on November 10, 2026, will not be accepted.

Successful proposals will be well organized adhering to the primary tasks, providing sufficient and concise detail. The proposal shall be clearly marked with the Respondent's name and project description "Los Gatos Recharge Basin Phase 1 Proposal" in the subject line.

The proposal shall be signed by an official authorized to bind the Respondent (including proof of signing authority) and shall contain a statement to the effect that the proposal is valid for 90 days. Westlands reserves the right to reject any or all proposals at its sole discretion. The final award will not necessarily be made to the lowest Respondent. Other factors will be considered in awarding this Project.

Following the initial review and screening of all proposals submitted by the deadline, two or more respondents may be invited to participate in the final selection; however, the District reserves the right to select from the proposals. The final selection may include an interview. The District asks that the respondents make themselves available the week of November 16th if asked to participate in an interview. Following the interview process, the District's staff will negotiate fees with the highest ranked respondent. Upon successful negotiation, the District will award the Los Gatos Recharge Basin design-build contract to one respondent.

Selection will depend on the degree to which of the proposals provides the required information, including the Respondent's team experience and success in implementing projects similar in nature and scope to this Project.

Submittals will be evaluated using the following criteria:

- Qualifications and experience with similar projects
- Project Conceptualization and Rationalization
- Technical Merit
- Conveyance of understanding of the Project
- Price
- Schedule and adherence to project objectives in a timely matter
- Qualified project staff

Commitment to Insurance and Bonding Obligations

The District's standard Design-Build Agreement is provided as **Appendix B**.

By submitting a proposal, the Respondent is verifying they have obtained the insurance coverage as detailed in Exhibit E – Insurance Requirements of the Design-Build Agreement, which includes:

- Workers' Compensation and Employer's Liability Insurance

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- Commercial General Liability and Property Insurance
- Builder's Risk "All-Risk" Insurance
- Professional Liability Insurance

Furthermore, the selected Respondent shall be required to furnish performance and payment bonds as set forth in the General Conditions of the Design-Build Agreement, on the District's forms or that are substantially the same as the District's forms, for one hundred percent (100%) of the amount of the construction services.

Final Selection

Following the initial review and evaluation of all proposals submitted by the deadline, District staff may conduct interviews with a subset of the Respondents and negotiate scope and fees with the highest ranked Respondent.

Cost Incurred

This RFP does not commit the District to pay for costs incurred by the Respondent or its staff in the submission of a proposal.

APPENDIX A

WESTLANDS WATER DISTRICT ADDENDUM ACKNOWLEDGEMENT

Appendix A

Addendum Acknowledgement Form

I hereby certify that I have received, read, and understand the following Addenda issued for the Los Gatos Recharge Basin - Phase 1 - Design-Build Project

Addendum Number	Addendum Date	Signature of Repondent

Repondent's Name: _____

Title of Signator: _____

Firm Name: _____

Date: _____

APPENDIX B

WESTLANDS WATER DISTRICT DESIGN BUILD AGREEMENT

DESIGN BUILD AGREEMENT

Between

Westlands Water District

and

[Design Builder]

for

Design Build Services

DOCUMENTS ATTACHED HERETO AND INCORPORATED HEREIN

Exhibit A:	Criteria Documents
Exhibit B:	District Design Requirements
Exhibit C:	Price Proposal
Exhibit D:	General Conditions for Design Build Agreement
Exhibit E:	Insurance Requirements
Exhibit F:	DVBE Good Faith Efforts Outreach Requirements
Exhibit G:	Certification Regarding Russian Sanctions
Exhibit H:	Payment and Performance Bond Forms
Exhibit I:	Guarantee Form

PROGRESSIVE DESIGN-BUILD AGREEMENT

THIS DESIGN-BUILD AGREEMENT ("Agreement") is made effective this ____ day of _____, 20____, by and between WESTLANDS WATER DISTRICT ("District"), and _____ [Name, form and state of business], Contractors State License Board License No. _____ ("Design-Builder"), for design, management and construction of the **Project Name** ("Project").

The parties hereto mutually agree to the terms and conditions set forth herein.

ARTICLE 1 – GENERAL PROVISIONS AND SCOPE OF WORK.

1.1 The District and Design-Builder agree to proceed on the basis of trust and good faith to permit each party to realize the benefits afforded under this Agreement.

1.2 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

ARTICLE 2 – CONTRACT DOCUMENTS; INTERPRETATION AND INTENT

2.1 The Contract Documents shall include permits required by law; the Request for Design-Build Proposals; Design-Builder's Proposal; this Agreement (including all exhibits and attachments); the Proposal Bond; the Performance Bond; the Payment Bond; the District's Performance Criteria; the General Conditions; Construction Documents prepared by Design-Builder and approved by the District in accordance with this Agreement, including, without limitation, the Drawings and Specifications; any project-specific specifications or documents; the list of subcontractors subject to protections under the Subletting and Subcontracting Fair Practices Act; all duly issued Addenda; Interpretations; Field Instructions; Written Directives; Supplemental Drawings; Design-Builder's Guarantee; the Project Schedule; the Construction Schedule; Storm Water Pollution Prevention Plan; and any and all supplemental agreements amending or extending the Work contemplated and which may be required to complete the Work in an acceptable manner. Supplemental agreements are written agreements covering alterations, amendments, or extensions to the Contract Documents and include Change Orders.

2.2 The Contract Documents contain the entire and integrated agreement between the District and Design-Builder and supersede all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only in writing by Change Order or Construction Change Directive.

2.3 Design-Builder and the District, prior to execution of the Agreement, shall carefully review all the existing Contract Documents, including the various documents comprising the District's Performance Criteria, for any conflicts or ambiguities. Design-Builder and the District will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

2.4 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time for the Contract Sum.

2.5 The table of contents, titles, and headings contained in the Contract Documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect or limit the interpretations of the provisions to which they refer.

2.6 In the event of conflict between any of the Contract Documents, the provision placing a more stringent requirement on Design-Builder shall prevail. Design-Builder shall provide the better quality or greater quantity of Work and/or materials unless directed otherwise by the District in writing. If none of the Contract Documents place a more stringent requirement or greater burden on Design-Builder, then the following order of precedence will govern:

- 2.6.1 Permits from the District or other agencies required by law.
- 2.6.2 Written modifications, amendments, minor changes, and Change Orders to the Contract
- 2.6.3 This Agreement
- 2.6.4 The District's Performance Criteria
- 2.6.5 The General Conditions
- 2.6.6 Construction Documents prepared by Design-Builder and approved by the District in accordance with this Agreement.

ARTICLE 3 – DESIGN-BUILDER'S REPRESENTATIONS, SERVICES, AND RESPONSIBILITIES

3.1 General

3.1.1 Design-Builder accepts the relationship of trust and confidence established between the District and Design-Builder by this Agreement.

3.1.2 By executing the Agreement, Design-Builder represents and warrants that:

(i) it has visited the Project Site, familiarized itself with the local conditions under which the Work is to be performed including, without limitation, the conditions contained in any test results and/or reports provided to or obtained by Design-Builder, and the conditions reflected on any Site surveys provided to or obtained by Design-Builder;

(ii) it is fully experienced, qualified, and competent to perform the services set forth in the Contract Documents;

- (iii) it is properly equipped, organized, and financed to perform the Work for the expected construction cost;
- (iv) Design-Builder and its contracted Design Consultants are properly permitted and licensed by the State of California and all other applicable governmental entities to perform the Work required by the Contract;
- (v) it will retain only properly licensed Design Consultants and Subcontractors to perform the Work of the Contract;
- (vi) it has familiarized itself with all conditions bearing upon transportation, disposal, handling, and storage of materials;
- (vii) it has familiarized itself with the availability of labor, water, electric power, and roads;
- (viii) it has familiarized itself with uncertainties of weather or similar reasonably observable physical conditions at the Project Site;
- (ix) it is satisfied as to the character, quality, quantity, and scope of work to be performed and materials and equipment to be furnished;
- (x) as of the Effective Date of the Agreement, it has no knowledge of any conflicts, errors, or discrepancies in the Contract Documents other than those which Design-Builder has notified District of in writing prior to executing the Agreement;
- (xi) it is experienced and competent in the interpretation and use of Specifications and Drawings, and in the use of materials, equipment, and construction techniques as are required to successfully complete the Project. Design-Builder shall, at its own expense, employ any and all experts necessary to successfully complete the construction Work required by the Contract Documents; and
- (xii) it understands that, except as expressly set forth herein, the District assumes no responsibility for any conclusions or interpretations made by Design-Builder based on the information made available by the District.

3.1.3 Subcontractors and Subconsultants

3.1.3.1 Design-Builder shall be responsible to the District for the acts and omissions of its employees, Design Consultants, subconsultants, Subcontractors, and their agents and employees, and other persons performing any of the work under this Agreement. The District does not assume any liability, duty or obligation to Design-Builder's Design Consultants, subconsultants, Subcontractors, or their agents and employees by execution of this Agreement or performance of the

Contract Agreement, and nothing in the Contract shall create any contractual relation between the District and any Design Consultants, subconsultants, Subcontractors, their agents and employees, or any other person or entity employed or retained by or under Design-Builder.

3.1.3.2 Not used.

3.1.3.3 No later than the time that Design-Builder submits the Construction Cost estimate based on the 50% Construction Documents, Design-Builder shall submit to the District for review and comment a Subcontracting Plan, including without limitation a schedule and approach to obtain competitive bids/proposals from potential subcontractors and suppliers for all scopes of work for which a subcontractor was not listed in Design-Builder's Proposal to the District, which plan shall include at least the following elements:

- (i) Developing subcontractor interest in the Project, including collaborating with District and its Construction Manager to develop a list of possible subcontractors and suppliers from whom bids will be requested for each principal portion of the work;
- (ii) Preparation of bid packages for the complete scope of work for all trades that will be subcontracted, other than those for which a subcontractor or supplier was listed in Design-Builder's Proposal;
- (iii) Providing public notice (under the District's public works notice procedures) of availability of work to be subcontracted, including an anticipated date and time on which bids or proposals will be due;
- (iv) Establishing reasonable qualification and selection criteria and standards;
- (v) Requiring all potential subcontractors, truckers, and suppliers and/or vendors subject to California's prevailing wage laws to be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 at the time of bidding;
- (vi) If Design-Builder plans to self-perform any work, the process for Design-Builder to submit a sealed bid directly to the District a minimum of 48 hours before the bid due date for subcontractors;

- (vii) Plan to achieve the District's DVBE participation goal of 3% of the direct cost of construction and to promote participation by small businesses and local businesses;
- (viii) How Design-Builder will determine whether the subcontractor or supplier has the financial resources, qualifications, and experience to complete the work for which it is proposed; and
- (ix) How Design-Builder will establish a fair and reasonable price for work to be performed by any subcontractor included in Design-Builder's Proposal.

3.1.3.4 All Subcontractors that are listed in the Proposal or subsequently awarded subcontracts in excess of one-half of one percent of the Contract Sum shall only be substituted in strict accordance with the "Subletting and Subcontracting Fair Practices Act" and upon the written consent of the District.

3.1.3.5 Within the District's sole discretion, any Subcontractor may be deemed not qualified to perform work on the Project if the District determines the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason. Any increase in the cost of the work on the Project resulting from the replacement or substitution of a Subcontractor for any reason shall be borne solely by Design-Builder, unless the District agrees in writing to a written request by Design-Builder to use any available Construction Contingency for such added costs.

3.1.4 Design-Builder shall review all laws, codes, and regulations applicable to Design-Builder's Services. At its sole cost and expense, Design-Builder shall give all notices and comply with all applicable laws, codes, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of its work and those relating to safety of its employees and subconsultants, hazardous materials, and equal employment opportunities; pay all local, state, and federal taxes associated with its work; and pay all benefits, insurance, taxes, and contributions for Social Security and Unemployment which are measured by wages, salaries, or other remuneration paid to Design-Builder's employees. Upon the District's request, Design-Builder shall furnish evidence satisfactory to the District that any or all of the foregoing obligations have been fulfilled.

3.1.5 Labor Code Compliance

3.1.5.1 The Project is a "public work" as that term is defined by California Labor Code section 1720, and the Project is, therefore, subject to prevailing wages under California Labor Code section 1771.

3.1.5.2 Design-Builder and its Design Consultants and Subcontractors shall fully comply with all provisions of the California Labor Code concerning the performance of public works contracts including, but not limited to, payment of prevailing wages, limitations on time worked, compliance with apprenticeship requirements, maintenance of payroll records, posting of wages at job site, and prohibitions against discrimination.

3.1.5.3 Design-Builder shall be registered pursuant to Labor Code section 1725.5 prior to executing this Agreement and shall maintain current registration throughout the term of this Agreement. Similarly, all subcontractors of all tiers shall be registered pursuant to Labor Code section 1725.5 prior to executing any subcontract with Design-Builder or engaging in any Project work, whichever is earlier, and shall maintain current registration throughout the term of this Agreement.

3.1.6 Except with the District's knowledge and written consent, Design-Builder shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise Design-Builder's professional judgment, impartiality, or professionalism with respect to this Project.

3.1.7 Design-Builder shall cooperate with and coordinate its activities with any contractors separately retained by the District to provide services at the Project so as not to hinder, delay, disrupt, or interfere with the work of such separately retained contractors.

3.1.8 Design-Builder's Representative shall be reasonably available to the District and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with the District and shall be vested with the authority to act on behalf of Design-Builder. **Design-Builder's Representative may be replaced only with the mutual agreement of the District and Design-Builder.**

3.1.9 Design-Builder shall provide the District with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; and (iv) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Sum and within the Contract Time(s). This monthly status report must be submitted with Design-Builder's progress payment application, and the failure to submit it will be grounds to withhold payment until it is submitted.

3.1.10 Project Schedule

3.1.10.1 Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 3.1.11 hereof, a

proposed schedule for the execution of the Work for the District's review and response. The proposed schedule shall indicate the dates for completion of all design phases required herein, agency approvals, submittals, procurement, the start and completion of the various stages of Work, and Project close-out. When approved by the District, the proposed schedule shall become the initial Project Schedule. Design-Builder shall update the initial Project Schedule if and as necessary during the design phase, following consultation with the District, to ensure that the Project Schedule remains accurate. If Design-Builder proposes to submit Plans for approval in increments, the Project Schedule shall include all dates listed herein for each increment.

3.1.10.2 No later than the time that Design-Builder provides the complete design documents to the District for final review, Design-Builder shall update the initial Project Schedule. The updated Project Schedule shall include all updated information required in the initial Project Schedule and shall include critical path items, a stated number of days for a weather allowance, and the dates when District information and approvals are required to enable Design-Builder to complete the Work within the Contract Time. The dates indicated for District review and response shall not be less than the time allowed for District review of submissions under the General Conditions. The Construction Schedule shall be developed as set forth in Article 13 of the General Conditions, based on the updated Project Schedule, and the accepted Construction Schedule shall be incorporated into and made a part of the Project Schedule. The Project Schedule shall be updated and revised in accordance with the General Conditions. The District's review of, and response to, the proposed and Project Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.

3.1.11 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

3.2 Design Professional Services.

3.2.1 Standard of Care

3.2.1.1 Design-Builder represents that all of its Design Consultants are familiar with the statutes, regulations, and design requirements applicable to public works projects of the type of the Project in the locality of the Project; that all of its Design Consultants' work will conform to current professional practices and standards regarding such

requirements; and that Design-Builder and its Design Consultants will exercise due professional care and will cooperate with the District and any consultant or Construction Manager also employed by the District in connection with the Project. Design-Builder agrees that its Design Consultants will perform their work with the skill and judgment of prudent public works school district designers practicing in California in the locale of the Project and in the most expeditious and economical manner consistent with the interests of the District.

3.2.1.2 Any review, approval, or acceptance of any of Design-Builder's work under this Agreement shall not relieve Design-Builder from responsibility for failure to meet the standard of care as defined herein in its work or the work of its any of its Design Consultants or subconsultants.

3.2.2 Consistent with applicable state licensing laws, Design-Builder shall provide the necessary design services, including architectural, engineering, and other design professional services, for the preparation of the required Drawings, Specifications, and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Design-Builder shall provide the required design services through its employees that are qualified, licensed design professionals or by contracting with qualified, independently licensed Design Consultants.

3.3 Suitability of the District's Performance Criteria

3.3.1 Except as provided in Section 3.3.2, Design-Builder acknowledges that the District's Performance Criteria are conceptual in nature and that Design-Builder is responsible for correcting any errors, omissions, or defects in the District's Performance Criteria that reasonably can be corrected through the design and/or construction process, subject to Change Orders only for scope changes, and that it has satisfied itself regarding the adequacy and accuracy of design information contained in the District's Performance Criteria and agrees to assume all risk and sole responsibility for all conditions in or among the various parts of the District's Performance Criteria that (i) constitute errors, omissions, conflicts, ambiguities, or violation of applicable laws, or (ii) are unsuitable for construction.

3.3.2 If the District's Performance Criteria contain specific design specifications: (i) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in the Performance Criteria, including any performance specifications; and (ii) Design-Builder shall be entitled to an adjustment in the Contract Sum and/or Contract Time to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.4 Royalties, Patents, and Copyrights

3.4.1 Design-Builder shall secure in writing from all patentees, copyright holders, and assignees of all Project-related documents, all copyrights, assignments, and licenses related to such expression (e.g., designs, drawings, Contract Documents, Specifications, etc., whether in hard copy or electronic form) as necessary to allow the District the full, unlimited, and unencumbered use of that expression for the execution, operation, maintenance, modernization, or expansion of the Project. Design-Builder shall immediately convey all such copyrights, assignments, and licenses to the District without reservation except that which is expressly allowed in Article 5. In the case of products, materials, systems, etc. that are protected by patent, Design-Builder and its Design Consultants shall not specify or cause to be specified any infringing use of a patent. Design-Builder shall pay all royalties and license fees.

3.4.2 Design-Builder shall indemnify, defend, and hold the District harmless against any claim, suit, or action, or any alleged violation or infringement of patent rights, copyrights, or other intellectual property rights which may be made against the District by reason of the use in connection with or as a part of the Project anything which is now or may hereafter be covered by patent, copyright, trademark, or other intellectual property rights, and also against all expenses, including attorneys' fees and expert witness' fees, which the District may incur in defending or adjusting any such claim, suit, or action.

3.4.3 Should Design-Builder become aware of or receive notice of potential infringement of any intellectual property right related to the Project, regardless of the source of that awareness or notice, in addition to its indemnity obligation, Design-Builder shall immediately cease the copying and any other activity which is the potential source of infringement; and, within seven (7) days: (a) investigate the potential infringement; (b) submit to the District copies of all documents relating to that awareness, the notice, or the object thereof; and (c) issue to the District a complete written response and analysis of the potential infringement and the course of action recommended by Design-Builder. Design-Builder shall submit to the District a supplement to the initial report within seven (7) days of Design-Builder's receipt of, or awareness of, additional related information. Nothing in the Contract Document shall be deemed to relieve Design-Builder of its obligations under this Section, nor shall the District's receipt of the information indicated in this Section give rise to any duty or obligation on the part of District.

3.5 Design Development Services

3.5.1 Budgets

3.5.1.1 The budgeted construction cost of the Project is \$ [REDACTED]. Estimates shall not exceed this budgeted cost without prior written approval of the District.

3.5.1.2 Design-Builder shall prepare estimates of Project Construction Costs and submit them to the District for review at the following phases:

- A conceptual estimate at the end of the schematic design phase.
- A design development estimate .
- A 50% Construction Document estimate .
- A 100% Construction Document estimate.

3.5.2 General

3.5.2.1 Design-Builder shall provide full design and engineering services (including, without limitation, geotechnical and survey services) necessary to complete the design and secure approval of all agencies for the Project and in accordance with the District's design/performance criteria.

3.5.2.2 Design services generally required are evaluation of the site and of the design criteria documents and other Project-related information; preparation of a preliminary schedule and preliminary estimate; coordinating and obtaining all planning permits; preparing design development documents, including supporting the District's design review process, attending design review meetings, and resolving review comments to the satisfaction of the District; preparing construction documents; securing any other design approval required; and performing work necessary to prepare and submit an acceptable Guaranteed Maximum Price ("GMP") proposal.

3.5.3 Schematic Design Phase

3.5.3.1 Design-Builder shall prepare schematic design documents based on the District's Performance Criteria and other information provided by the District for the Project, including without limitation the anticipated completion date and anticipated Project cost. The schematic design documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The schematic design documents shall include a conceptual site plan and preliminary building plans, sections, and elevations. At the request of the District, the schematic design documents may include study models, perspective sketches, electronic modeling, or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

3.5.3.2 The District shall approve the schematic design documents in writing prior to Design-Builder beginning the design development document phase. Design-Builder may be required to present schematic design documents to District's facility representatives prior to approval.

3.5.4 Design Development Document Phase

3.5.4.1 Design-Builder shall prepare design development documents based on the approved schematic design documents and approved conceptual estimate of Construction Costs. The design development documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, form, size, and appearance of the Project by means of plans, sections, elevations, typical construction details, and equipment layouts. The design development documents shall include specifications that identify major materials and systems and establish in general their quality levels.

3.5.4.2 Design-Builder shall perform all necessary geotechnical investigations and engineering, perform all necessary surveys, and investigate and take measurements of observable existing conditions and facilities. Where existing conditions are concealed, Design-Builder shall make reasonable recommendations to the District as to whether such conditions should be exposed and, if so, the specific extent of such exposure. The District may, but need not, follow Design-Builder's recommendations. If the District takes action to expose concealed conditions, Design-Builder shall proceed with investigating and taking measurements.

3.5.4.3 Design-Builder shall advise and assist the District in applying for and obtaining required approvals from all applicable governmental agencies having jurisdiction in a timely manner so as not to delay the Project.

3.5.4.4 The District shall approve the design development documents and the design development estimate of Construction Costs in writing prior to Design-Builder beginning the Construction Documents phase. Design-Builder may be required to present schematic design documents to District's facilities representatives prior to approval.

3.5.5 Construction Document Phase

3.5.5.1 Based on the approved design development documents, the Contract documents, any other information provided by the District or made available to Design-Builder, site surveys, and observations, Design-Builder shall prepare Drawings and Specifications setting forth in detail and prescribing the work to be done for the Project, including, without limitation, the materials, workmanship, finishes, and equipment

required for the architectural, structural, mechanical, and electrical service connected equipment. At the end of the Project, Design-Builder shall provide the District through the District PMIS the electronic files and the Record Drawings as required in the General Conditions attached hereto.

3.5.5.2 Design-Builder shall advise and assist the District in applying for and obtaining required approvals from all applicable governmental agencies having jurisdiction in a timely manner so as not to delay the Project.

3.5.5.3 The Construction Documents shall be consistent with a design that can be constructed within the Construction Budget. If the proposed Guaranteed Maximum Price following approval of the Construction Documents and subcontractor bidding exceeds the 100% Construction Document Construction Cost estimate by ten percent (10%) or more, then the District may require Design-Builder to perform value engineering at Design-Builder's cost or to take other action to bring the Project construction cost to within ten percent (10%) of the Construction Cost estimate and to take such actions as may be necessary and appropriate to mitigate any schedule impact of the required changes.

3.5.5.4 Without limiting the District's rights and remedies included herein or available as a matter of law, the District expressly retains the discretion to do any or all of the following: (a) terminate this Design-Build Agreement prior to construction, (b) direct Design-Builder to modify the project design or a feature as necessary to comply with the California Environmental Quality Act including, but not limited to, incorporation of mitigation measures identified in an environmental review document for the Project to mitigate environmental impacts that the Project may cause, (c) balance the benefits of any proposed Project feature against the Project's or feature's significant environmental effects if the effects cannot be otherwise avoided or mitigated to a less than significant level, and/or (d) disapprove of the Project design, or any feature thereof, and not proceed to completion of the Project design or any feature thereof.

3.5.5.5 Three sets of the Construction Documents shall be provided to the District prior to commencement of construction.

3.5.6 Constructability and Coordination Reviews

During all phases of the development of the design and Construction Documents, Design-Builder shall meet with the District and its separate contractors and/or consultants on at least a monthly basis to coordinate the Construction Documents for the purpose of continuing construction feasibility, identifying conflicts, missing information or gaps in the planned scope of construction, ensuring compliance with

District standards for construction, and to take appropriate action to ensure the full scope of intended construction is performed efficiently and economically. Design-Builder shall prepare and use BIM modeling in connection with the constructability review to resolve all potential conflicts that reasonably could be identified in a thorough review prior to Notice to Proceed with construction.

3.5.7 The District's review and approval of schematic designs, design development documents, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither the District's review nor approval of any design submissions and Construction Documents, nor any constructability and/or coordination input from the District or its separate contractors or consultants, shall be deemed to transfer any design liability from Design-Builder to the District.

3.6 Government Approvals and Permits.

3.6.1 Except as otherwise set forth in the General Conditions, Design-Builder shall obtain, and the District shall pay for, all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project. Design-Builder shall provide the District at least two weeks' notice for any payments to be made by the District under these provisions, and shall comply with General Conditions section 4.02 to obtain the check for payment directly by the District.

3.6.2 Design-Builder shall provide reasonable assistance to the District in obtaining those permits, approvals, and licenses that are the District's responsibility.

3.7 Establishment of the Guaranteed Maximum Price

3.7.1 Design-Builder shall propose award of subcontracts in accordance with the following competitive selection processes and the approved plan:

3.7.1.1 For work that has a value of \$15,000 or more but less than one-half of one percent of the GMP, a minimum of three bids is expected for each trade. Such bids may be solicited through informal bidding and contracts awarded based on low bid or best value.

3.7.1.2 For work that has a value equal to or greater than one-half of one percent of the GMP, the competitive sub-bid selection process (a) will require advertisement in accordance with that required of the District, fixing a date on which qualifications, bids, or proposals are due; (b) will permit selection and award of subcontracts on either a best value basis or to the lowest responsible bidder, as specified in the solicitation document; and (c), if a best value basis is used, the solicitation document must specify reasonable qualification criteria and standards and Design-Builder must apply those standards to select

subcontractors. Subcontractors awarded construction subcontracts under this process shall be afforded all protections of the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 *et seq.* ("Act").

3.7.1.3 Design-Builder shall provide the District with a copy of all bid advertisements and subsequent addenda.

3.7.2 For any work not required to be bid, Design-Builder shall provide a detailed estimate of the cost of the work, including documentation sufficient to support that the price is reasonable;

3.7.3 Design-Builder shall develop a final construction GMP proposal, including all proposed Allowances and Contingencies, to include the written rationale for the construction GMP and objectively-verifiable documentation of its costs to perform the construction work. The documentation shall include:

3.7.3.1 A written evaluation for each of the portions of work, including a summary of the bids received, the actual bid proposals, and identify the subcontract bidder(s) that Design-Builder recommends;

3.7.3.2 Identification of known DVBES, small businesses, and local businesses, including any whose scope was not bid (e.g., material suppliers or lower tier subcontractors);

3.7.3.3 A list of the drawings and specifications, including version dates, that were used in preparation of the GMP proposal;

3.7.3.4 A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal to supplement the information contained in the drawings and specifications;

3.7.3.5 A statement identifying all patented or copyrighted materials, methods, or systems selected by Design-Builder that are likely to require the payment of royalties or license fees;

3.7.3.6 Explanation of "Good Faith Efforts" of DVBE outreach if the 3% DVBE participation goal is not met;

3.7.3.7 The proposed GMP broken down by element comprising the GMP, including a statement of the estimated cost and a schedule of values organized by trade categories;

3.7.3.8 A schedule of applicable alternate prices, if any;

3.7.3.9 A schedule of applicable unit prices, if any;

3.7.3.10 The date of commencement, date of substantial completion, and date of final completion on which the proposed GMP is based;

3.7.3.11 Any proposed Allowance(s) and a statement of the rationale for each proposed Allowance;

3.7.3.12 A District Contingency of ■% of the proposed cost of construction and a Construction Contingency of ■% of the proposed cost of construction; and

3.7.3.13 A detailed cost breakdown of all general conditions and jobsite management expenses included in the GMP.

3.7.4 Design-Builder shall meet with the District and Construction Manager to review the final construction GMP proposal and the written statement of its basis. The District shall have the right to review the proposed subcontractors and suppliers and to object to or reject any proposed subcontractor or supplier or to request reprourement of any scope of work. If the District or Construction Manager discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify Design-Builder, who shall make appropriate adjustments to the documentation.

3.7.5 Design-Builder shall be present at the Board meeting at which the GMP is proposed for approval and be available to answer any Board questions regarding the GMP.

3.7.6 If Design-Builder has submitted its Plans in increments, Design-Builder shall repeat the above process for each increment of work to be performed.

3.8 Construction Phase Services

3.8.1 No construction shall commence prior to receipt of the written approval of the Plans, or any increment of the Project Plans.

3.8.2 No construction shall commence without compliance with all applicable laws, including without limitation the California Environmental Quality Act.

3.8.3 Construction will commence only upon approval of a GMP Amendment and issuance by the District of a written Notice to Proceed with construction, or any increment thereof.

3.8.4 Design-Builder shall provide all necessary construction administration services, including, without limitation, providing general direction to the Project Inspector employed by and responsible to the District; complying with all requirements of agencies with authority over the Project; making necessary visits to the site to render architectural observations; keeping the District informed about the progress and quality of the work completed; and guarding the District against defects and deficiencies in the Work.

3.8.5 Design-BUILDER shall provide, through itself or Subcontractors, all necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, other temporary facilities, and all other services necessary to permit Design-BUILDER to complete construction of the Project consistent with the Contract Documents.

3.8.6 Design-BUILDER shall perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents. Design-BUILDER shall at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction.

3.8.7 If the District permits construction to proceed in increments, the parties shall continue with the development and completion of further Construction Documents as provided herein.

ARTICLE 4 – THE DISTRICT’S RESPONSIBILITIES

4.1 Duty to Cooperate

4.1.1 The District shall, throughout the performance of the Work, cooperate with Design-BUILDER and perform its responsibilities, obligations and services in a timely manner to facilitate Design-BUILDER’s timely and efficient performance of the Work and so as not to delay or interfere with Design-BUILDER’s performance of its obligations under the Contract Documents.

4.1.2 The District shall provide timely reviews and approvals of design submissions and Construction Documents consistent with the turnaround times set forth in Design-BUILDER’s schedule.

4.1.3 The District shall give Design-BUILDER timely notice of any Work that District notices to be defective or not in compliance with the Contract Documents.

4.2 Furnishing of Services and Information

4.2.1 Unless expressly stated to the contrary in the Contract Documents, the District shall provide, at its own cost and expense, for Design-BUILDER’s information and use the following:

4.2.1.1 All inspection and testing services in conjunction with the Project;

4.2.1.2 Temporary and permanent easements, zoning, and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-BUILDER to perform the Work;

4.2.1.3 A legal description of the Site;

4.2.1.4 To the extent available, record drawings of any existing structures at the Site; and

4.2.1.5 To the extent available, environmental studies, reports, and impact statements describing the environmental conditions, including hazardous conditions, in existence at the Site;

4.2.2 Except to the extent stated otherwise in the Contract Documents, the District is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work.

4.3 The District's Separate Contractors

The District is responsible for all work performed on the Project or at the Site by separate contractors under District's control. District shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

4.4 Pre-existing Hazardous Materials

4.4.1 Design-Builder shall have no responsibility or liability for Hazardous Materials that are pre-existing on the site or that are brought to the site by others for whom Design-Builder is not liable. The District shall provide hazardous materials consultant services for the Project, if necessary.

4.4.2 To the fullest extent permitted by law, the District shall defend, indemnify and hold harmless Design-Builder, its Subcontractors, subconsultants, and their respective agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence of pre-existing hazardous materials or substances at the site, except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

4.4.3 If the presence of pre-existing Hazardous Materials on the Project site or Hazardous Materials brought to the site by others for whom Design-Builder is not liable cause Design-Builder's performance to be delayed and/or cause Design-Builder to incur extra costs, Design-Builder shall be entitled to an adjustment in the Contract Sum and/or Contract Time provided Design-Builder meets the requirements of Articles 14 and 15 of the General Conditions.

ARTICLE 5 – OWNERSHIP OF WORK PRODUCT

5.1 The District acknowledges that the documents prepared by Design-Builder, including design development documents, Construction Documents, Drawings, Specifications, sketches, structural and other engineering calculations, estimates, data, charges, models and other documents prepared by Design-Builder, in both hard copy and

in electronic files, are instruments of professional service ("Instruments of Service"). Although the official copyright of all Instruments of Service shall remain with Design-Builder and applicable Design Consultants, the Instruments of Service shall be and remain the property of the District, only for use on this Project, whether this Project is completed or not. The Instruments of Service shall be delivered to the District whenever requested, but in no event later than the earlier of (1) sixty (60) days after the District's Notice of Completion of the Project, or (2) the date of termination of this Agreement for any reason prior to final completion of the Project. Design-Builder may keep duplicate copies of the Instruments of Service, at its own expense, for its own files.

5.2 Design-Builder grants the District an irrevocable license and right to use all or any part of the Instruments of Service, at the District's sole discretion and with no additional compensation to Design-Builder, for all purposes the District may deem advisable in connection with completion and maintenance of, and additions to, modifications to, or modernizations of the Project; provided, however, that, if the Instruments of Service are altered without the involvement of Design-Builder or this Agreement is terminated for any reason prior to completion of the Project and if, under either such circumstance, District uses, or engages the services of and directs, another design professional or Design-Builder to use the Instruments of Service to complete the Project, then the District agrees to release Design-Builder from any responsibility for the alterations or conformance of the incomplete portions of the Project to the Instruments of Service and to hold Design-Builder harmless from any and all liability, costs, and expenses (including reasonable legal fees and disbursements) relative to claims arising out of alterations to the Instruments of Service or use of incomplete Instruments of Service and as a result of causes other than the fault or negligence of Design-Builder or anyone for whose acts it is responsible. In no event is the District's right to recover for latent defects or for errors or omissions of Design-Builder waived or limited.

5.3 This Agreement creates a non-exclusive and perpetual license for the District to copy, use, or modify any and all Instruments of Service and any intellectual property rights therein for this Project only. Design-Builder shall require any and all of its Design Consultants, subconsultants, and Subcontractors who perform design services to agree in writing that the District is granted a non-exclusive and perpetual license for Instruments of Service they prepare pursuant to this Agreement.

5.4 Design-Builder represents and warrants that it has the legal right to license any and all copyrights, designs, and other intellectual property embodied in the Instruments of Service that Design-Builder prepares or causes to be prepared pursuant to this Agreement.

5.5 In the event the District ever desires to construct all or part of another wholly unrelated project which would be essentially identical in design to the Project that is the subject of this Agreement, Design-Builder agrees to permit re-use of its Instruments of Service, subject to payment to Design-Builder of a fair and reasonable re-use fee.

5.6 Any unauthorized re-use of the Instruments of Service shall be at the District's sole risk and without liability to Design-Builder. The District agrees to indemnify and hold

harmless Design-Builder and its Design Consultants against any damages, liabilities, or costs, including reasonable legal fees and disbursements, arising from the unauthorized re-use or modification of the Instruments of Service. Submission or distribution of the Instruments of Service to meet official regulatory requirements or for similar purposes does not constitute an unauthorized re-use of the Instruments of Service.

5.7 Design-Builder shall not re-use the Instruments of Service without the prior written consent of the District. Any unauthorized re-use of the Instruments of Service by Design-Builder shall be at Design-Builder's sole risk and without liability to the District. Design-Builder agrees to indemnify and hold the District harmless against any damages, liabilities, or costs, including reasonable legal fees and disbursements, arising from the unauthorized re-use of the Instruments of Service.

ARTICLE 6 – TIME OF PERFORMANCE

6.1 Contract Time

6.1.1 Time is of the essence in the Contract Documents.

6.1.2 The Work shall commence on the date stated in the Notice to Proceed. Notwithstanding any provision to the contrary in the Contract Documents, Design-Builder shall not commence work prior to the date stated in the Notice to Proceed. As set forth above, no construction work shall commence prior to receipt of any required written approval of the Plans.

6.1.3 Design-Builder shall bring the entire Work to completion in the manner provided in the Contract Documents no later than [Date], or any later date reflected in any Change Order. "Completion" means completion of all construction work, including punch list items and final cleaning completed, so that the entire Project can be occupied for its intended purpose.

6.1.4 Any adjustments to the Contract Time shall be in accordance with the General Conditions.

6.2 Liquidated Damages

The Project is a critical component of ongoing services being provided by the District, which can be impacted if the Project is not timely completed. If the Project is not substantially completed within the time period set forth at Section 6.1.3 above, as such completion date may be revised from time to time by mutual agreement or may be extended in accordance with the terms and conditions set forth in the General Conditions attached hereto, it is understood that the District will suffer damage, and that it is impractical and infeasible to determine the amount of actual damages. However, Design-Builder acknowledges the damages which District would suffer in the event of delay include loss of the use of the Project, and, in addition, expenses of prolonged employment of the District's separate consultants and contractors; prolonged employment of District staff on the Project; costs of administration, inspection, and supervision; and the loss suffered by the

public by reasons of the delay in the completion of the Project to serve the public at the earliest possible time. Therefore, it is agreed that Design-Builder shall pay to the District, as the sole and exclusive remedy for delay, as fixed and liquidated damages and not as a penalty, the sum of **\$1,000.00 (Five Thousand Dollars and No Cents)** for each calendar day of delay until the date by which the Project is Substantially Complete (as defined in the General Conditions) and the District can take occupancy of the Project for its intended use, and that both Design-Builder and its surety shall be liable for the total amount thereof. The District shall have the right to deduct the amount of liquidated damages, or to withhold reasonably anticipated liquidated damages, from any money due or to become due to Design-Builder.

ARTICLE 7 – COMPENSATION

7.1 Guaranteed Maximum Price (GMP)

7.1.1 Following submittal of the Plans for review and approval and prior to commencing construction, the Design-Builder shall submit a GMP Proposal to the District in accordance with Section 3.7 above. The GMP, including compensation for design services, construction costs, Allowances, and Contingencies, is expected to be within the cost range of the Project of \$ [REDACTED].

7.1.2 If the District or its Board fails to accept the GMP Proposal, or rejects the GMP Proposal, then the District shall have the right to either (a) suggest modifications to the GMP Proposal, in which case the revised GMP Proposal shall be presented to the Board for action or (b) terminate this Agreement for convenience

7.1.3 In consideration of Design-Builder's performance of the Work, the District agrees to pay Design-Builder the amount of [REDACTED] (\$ [REDACTED]) for design services to final approval. This compensation is to be included in the GMP, and payment for these design services shall be in accordance with the General Conditions, including Article 12 of the General Conditions.

7.1.4 The District reserves the right to authorize Design-Builder to commence construction phase services in increments based on approvals prior to completion of the final design. Any such authorization shall be in writing following adoption of any associated GMP Amendment hereto.

7.1.5 Payment of the Contract Sum, subject to additions and deductions as allowed in the General Conditions, shall be made in accordance with the General Conditions. Except as otherwise provided in the Contract Documents, the Contract Sum will fully compensate Design-Builder for all labor, services, material, equipment, transportation, supervision, taxes, permits, licenses, insurance, bonds, overhead, and profit for the duration of the Work.

7.2 Contingencies

The GMP shall include the following Contingencies.

7.2.1 The Construction Contingency in the amount of **[to be added by GMP Amendment] Dollars and no cents (\$ TBD .00)** shall be monitored by Design-Builder and the District for use to cover costs which are properly reimbursable as a cost of the Work but would not entitle Design-Builder to a Change Order. By way of example, and not as a limitation, such costs include trade buy-out differentials; overtime or acceleration; costs in correcting defective, damaged, or nonconforming Work; design errors or omissions not covered by professional liability insurance; and costs associated with Subcontractor defaults or substitution. The Construction Contingency is not available to the District for any reason, including changes in scope or time which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall give the District reasonable notice of any intent to draw upon the Construction Contingency funds, specifying the purpose for the use and the estimated amount. The District shall have the right to object to any proposed use of the Construction Contingency, stating the basis for its objection, and provided that notice of objection is given to Design-Builder within five (5) business days of Design-Builder's notice of intent to use the Contingency, or within such shorter time as reasonably stated in that notice. In the event of disagreement about the use of the Construction Contingency which is not resolved, Design-Builder may submit a claim for use of such Construction Contingency funds in accordance with Article 23 of the General Conditions.

7.2.2 The District Contingency in the amount of **[to be added by GMP Amendment] Dollars and no cents (\$ TBD .00)** shall be for the sole and exclusive use of the District, including without limitation for additional or extra costs to the Project that entitle Design-Builder to a change order in accordance with Article 15 of the General Conditions. Design-Builder shall have no right to draw against this contingency without written approval of the District prior to its use. Design-Builder shall request any use of the District Contingency in writing, specifying the purpose of the use, why the District Contingency is appropriate, and the estimated amount, prior to performing the work asserted to be subject to use of the District Contingency. The District shall have the right to object to any proposed use of the District Contingency, provided notice of objection is given to Design-Builder within five (5) business days of Design-Builder's request. In the event of disagreement about the use of the District Contingency, the District may direct Design-Builder to proceed. Design-Builder shall promptly comply with such directive and may submit a claim in accordance with Article 23 of the General Conditions.

7.3 Allowances

7.3.1 Design-Builder and the District have worked together to review the Allowances based on available design information to determine that the Allowance values constitute reasonable estimates for the following Allowance items:

Allowance	Scope	Amount

7.3.2 No work shall be performed on any Allowance without Design-Builder first obtaining in writing advanced authorization to proceed from the District.

7.3.3 Whenever the actual costs for an Allowance item are more than the stated Allowance value, at the District's discretion, the District Contingency may be used to supplement the Allowance or the Allowance may be supplemented by transfer of funds from another stated Allowance item. Whenever the actual costs for an Allowance are less than the stated Allowance, the Contract Sum shall be reduced accordingly by Change Order to eliminate the Allowance that was not required to complete the Project.

ARTICLE 8 – PAYMENT

8.1 Progress and final Payments shall be made in accordance with the General Conditions.

8.2 The District shall reserve from each progress payment a sum equal to five percent (5%) of the amount earned.

8.3 Design-Builder may request substitution of securities in lieu of retention, in accordance with the General Conditions. A fee set by the District will be charged for such substitution.

ARTICLE 9 – CHANGES

9.1 All changes to the Work, the Contract Sum, and/or the Contract Time shall be governed by the General Conditions.

ARTICLE 10 – TERMINATION

10.1 The Contract, Design-Builder's Work and/or Design-Builder's right to proceed may be terminated pursuant to Article 18 of the General Conditions.

10.2 Design-Builder shall, within ten (10) days of notice of termination, turn over to the District all Instruments of Service, whether or not completed.

10.3 In addition to any other rights it may have, the District may terminate for default this Agreement or Design-Builder's control over the Work at any time after the completion

date specified in Section 6.1.3 above, as adjusted by any extensions of time to which Design-Builder may be entitled.

ARTICLE 11 – BONDS AND INSURANCE

11.1 Insurance

11.1.1 Design-Builder shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with the General Conditions.

11.2 Performance and Payment Bonds

11.2.1 Design-Builder shall, before beginning any construction work, provide performance and payment bonds as set forth in the General Conditions, on the District's forms or that are substantially the same as the District's forms, for one hundred percent (100%) of the amount of the construction services.

11.2.2 All costs for the Performance and Payment Bonds and any other bonds required by the Contract Documents are included in the Contract Sum.

11.2.3 Design-Builder represents that, prior to issuance of the Payment and Performance Bonds, it will provide this Design-Build Agreement, with all attachments, to its surety companies and ensure that the surety companies waive any notice of change, extension of time, alteration, or addition to the terms of the Contract Documents or to the work to be performed thereunder, or any other act or acts by the District or the District's authorized agents authorized under the Contract Documents. Any failure to notify the surety companies of changes shall in no way relieve the surety or sureties of their obligations. Any alteration or alterations made in any provision of the Contract Documents shall not operate to release any surety from liability on any bond required hereunder and the consent to make such alterations is hereby given, and any surety on said bonds shall waive the provisions of Section 2819 of the Civil Code.

11.2.4 Bonds shall only be accepted from an "Admitted surety insurer," as provided in the General Conditions. Design-Builder must submit with the bonds the original, or a certified copy, of the unrevoked appointment, power of attorney, bylaws or other instrument entitling or authorizing the person who executed the bond to do so.

ARTICLE 12 – INDEMNITY

12.1 Defense and Indemnity for Design Services

12.1.1 To the fullest extent permitted by law, Design-Builder shall, with respect to all design services covered by or incidental to this Agreement, indemnify, defend, and hold harmless the District, its officers, officials, employees, agents, and volunteers from and against any and all liens and claims asserted by firms or individuals claiming through Design-Builder and claims, losses, liability, damages,

costs, or expenses, including reasonable attorneys' fees and expert fees, or liability of every nature that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Design-Builder, its Design Consultants, Subcontractors, and their consultants, subcontractors, agents, and employees ("Design Services Claim"). Design-Builder assumes no responsibility to indemnify District for the negligent acts or omissions or willful misconduct of the District, its officers, officials, employees, agents, consultants, and volunteers. Design-Builder's duty shall include the duty to defend the indemnitees as required by Civil Code section 2778.

12.1.2 Design-Builder shall indemnify, defend, and hold the District harmless against any claim, suit, or action, or any alleged violation or infringement of patent rights, copyrights, or other intellectual property rights which may be made against the District by reason of the use in connection with, or as a part of, the Project anything which is now or may hereafter be covered by patent, copyright, trademark, or other intellectual property rights, and also against all expenses, including attorneys' fees and expert witness' fees, which the District may incur in defending or adjusting any such claim, suit, or action.

12.1.3 The duty to defend is a separate and distinct obligation from Design-Builder's duty to indemnify. To the fullest extent permitted by law, Design-Builder's duty to defend shall extend, without limitation, to any suit or action founded upon a Design Services Claim. An allegation or determination that persons other than Design-Builder are responsible for the Design Services Claim does not relieve Design-Builder from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. Design-Builder's cost to defend against a Design Services Claim shall not exceed Design-Builder's proportionate percentage of fault. However, notwithstanding the foregoing sentence, if one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Design-Builder shall meet and confer with the other parties regarding the unpaid defense costs.

12.2 Defense and Indemnity for Construction Services

12.2.1 To the fullest extent permitted by law, Design-Builder shall, with respect to all construction services covered by or incidental to this Agreement, immediately indemnify, defend, and hold harmless the District, its officers, officials, employees, agents, and volunteers from and against any and all liens and claims asserted by firms or individuals claiming through Design-Builder and claims, losses, liability, damages, costs, or expenses, including reasonable attorneys' fees and expert fees, or liability of every nature arising out of or in any way connected with this Agreement or the Project, including but not limited to, equitable relief, stop payment notice actions, or any acts or omissions, any wrongful act, or any negligent act or omission to act, whether active or passive, on the part of Design-Builder or any of its agents, employees, independent contractors, Subcontractors at any level, or suppliers ("Construction Services Claim"); provided, further, without

limiting the foregoing, that the defense and indemnity is intended to apply to any wrongful acts, or any actively or passively negligent acts or omissions to act, committed jointly or concurrently by Design-Builder and its agents, employees, independent contractors, subcontractors at any level, or suppliers, and the District, its agents, employees, or independent contractors. Nothing contained in the foregoing indemnity provisions shall be construed to require Design-Builder to indemnify the District in contravention of Section 2782 of the Civil Code for the active or sole negligence or willful misconduct of the District.

12.2.2 The duty to defend is a separate and distinct obligation from Design-Builder's duty to indemnify. To the fullest extent permitted by law, Design-Builder's duty to defend shall extend, without limitation, to any suit or action founded upon any Construction Services Claim. Design-Builder shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the District immediately upon tender to Design-Builder of the Construction Services Claim, whether or not liability is established. An allegation or determination that persons other than Design-Builder are responsible for the Construction Services Claim does not relieve Design-Builder from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals.

12.3 Defense and Indemnification Provisions Applicable to Both Design and Construction Services

12.3.1 The defense and indemnity obligations extend to and include Design Services Claims and Construction Services Claims based on damages to adjacent property caused by the conduct of the Work.

12.3.2 The defense and indemnity obligations extend to and include Design Services Claims and Construction Services Claims caused by a violation by Design-Builder, its agents, employees, or independent contractors, subcontractors at any level, or suppliers of any provisions of federal, state or local law, including applicable administrative regulations.

12.3.3 The defense and indemnity obligations extend to and include any Design Services Claims or Construction Services Claims arising from injury to or death of any person, or any property damage as a result of or in connection with the Work, whether such persons are on or about the Site by right or not, whenever the Work is alleged to have been a contributing cause in any degree whatsoever.

12.3.4 The defense and indemnity obligations are not limited by any limitation on amount or type of damages, compensation, or benefits payable under workers' compensation acts, disability acts, or other employee benefit acts.

12.3.5 The defense and indemnity obligations are not limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

12.3.6 The defense and indemnity obligations are not limited by the insurance requirements set forth in the Contract Documents.

12.3.7 Nothing in the foregoing indemnity provisions shall be construed to require Design-Builder to indemnify the District in contravention of Civil Code section 2782 for the active negligence or willful misconduct of the District, its agents, employees, or independent contractors

12.3.8 The defense and indemnification requirements herein set forth shall extend to claims occurring after this Agreement is terminated as well as while it is in force.

ARTICLE 13 – OTHER PROVISIONS

13.1 Access to Records; Audit

In addition to the access to records set forth in the General Conditions, the District or its authorized representative shall have access upon reasonable notice, during normal business hours, to any plans, specifications, books, documents, accounting records, papers, project correspondence, project files, and other records of Design-Builder, its Design Consultants, and/or its Subcontractors directly or indirectly related to the Project. Such access shall include the right to examine and audit such records and make excerpts, transcriptions, and photocopies at the District's expense.

13.2 No Waiver of Remedies

13.2.1 No action by the District or its representatives in performing this Agreement, including without limitation review or input on the Project design, inspection by the District or its agents, payment, extensions of time, or acceptance of the whole or any part of the Project by the District, shall operate as a waiver of any provision of this Agreement or the Contract Documents or of any legal right of District unless such waiver is expressly stated in writing. No waiver of any breach of this Agreement or of the Contract Documents shall waive any other or subsequent breach.

13.2.2 In addition to each and every remedy provided in this Agreement and/or the Contract Documents, the District shall have any and all equitable and legal remedies otherwise available to it.

13.3 Unfair Competition

Pursuant to California Public Contract Code section 7103.5, Design-Builder offers and agrees to assign to the District all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the California Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the performance of the

Work. This assignment will be made and before effective at the time the District tenders the final payment to Design-Builder, without further acknowledgment by the parties.

13.4 Employment Practices

Design-Builder, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability, marital status, or other status reflected in Government Code section 12940 in its employment practices.

13.5 Independent Contractor

Design-Builder shall be an independent contractor, and neither Design-Builder, its Design Consultants or subconsultants, its Subcontractors, nor any employee of any of them shall be deemed to be an employee of the District or shall have any authority to act on behalf of or otherwise bind the District. The District does not assume any liability, duty, or obligation to Design-Builder's Design Consultants, subconsultants, Subcontractors at any level, or material suppliers or their employees by execution or performance of this Agreement, and nothing in this Agreement shall create any contractual relation between the District and any entity other than Design-Builder.

13.6 Conflict of Interest

By executing this Agreement, Design-Builder agrees to comply with the District's organizational conflict of interest policy. Design-Builder certifies that it has disclosed to the District any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Design-Builder agrees to advise the District of any actual, apparent, or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. Design-Builder further agrees to complete any statements of economic interest required by either District ordinance or State law.

13.7 Confidentiality

Design-Builder shall not, either during or after the term of this Agreement, voluntarily make public or provide to any third party any reports, articles, information, or other documents, whether electronic or in hard copy, which Design-Builder prepares or receives under this Agreement. This section shall not prevent Design-Builder from sharing such information with its employees, officers, subcontractors, consultants, or other personnel as necessary to perform the services hereunder, and shall not prevent Design-Builder from providing such information in response to an administrative or judicial proceeding, including arbitration, under which it is required to provide such documents or information. For any such information marked as confidential by the District, Design-Builder shall provide the District with prior written notice of any request for such information in an administrative or judicial proceeding, unless Design-Builder is prohibited by

law from doing so, with sufficient advanced notice for the District to seek a protective order preventing or limiting disclosure of the documents or information. Design-Builder shall require of its Design Consultants, subconsultants, and Subcontractors at every level to similarly agree not to disclose such confidential information.

13.8 No Third Party Beneficiaries

This Agreement is entered into solely between Design-Builder and the District. There are no third-party beneficiaries, intended, unintended, or otherwise, to this Agreement.

13.9 Notices

Any notice to either party shall be in writing and given by delivering the same to such party in person; or by sending the same by registered or certified mail, return receipt requested, with postage prepaid; or by delivering any notice by nationally recognized overnight delivery service (such as FedEx) for next business day delivery, to the following addresses:

To the District: Westlands Water District

[Address]

[Address]

Attention: [Redacted]

[Position]

To Design-Builder: [Name]

[Address]

[Address]

Attention: [Person, Position]

Any party may change its mailing address at any time by giving written notice of such change to the other party in the manner provided herein. All notices under this Agreement shall be deemed given on the date personal delivery is effected, or, if mailed or sent by overnight delivery service, on the delivery date or attempted delivery date shown in the return receipt. No party shall refuse or evade delivery of any notice.

13.10 Binding Effect

This Agreement shall inure to the benefit of and shall be binding upon Design-Builder and the District and their respective successors, transferees, and assigns.

13.11 Severability

If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render

unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Agreement.

13.12 Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

13.13 Assignment

Except as expressly authorized herein, Design-Builder shall neither assign its rights nor delegate its duties under the Contract Documents without prior written consent of the District. This prohibition of assignment and delegation extends to all assignments and delegations that lawfully may be prohibited by agreement.

13.14 Interpretation

It is agreed and acknowledged by District and Design-Builder that the provisions of this Agreement and its Exhibits have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise portions of this Agreement and its Exhibits and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement and its Exhibits.

13.15 California State Licensing Board

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, CA 95826.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

Westlands Water District,
A water district organized and existing under
the laws of the State of California

By: _____
[Name]

Title: _____

Design-Builder

By: _____

Title: _____

Business Address: _____

License Number: _____ Expiration Date: _____

Entity (DIR) Registration #: _____ Expiration Date: _____

Federal Tax Identification Number – _____

NOTICE: SIGNATURE(S) ON BEHALF OF DESIGN-BUILDER MUST BE NOTARIZED. A certificate of acknowledgment in accordance with the provisions of California Civil Code section 1189 must be attached for each person executing this agreement on behalf of Design-Builder.

EXHIBIT A
CRITERIA DOCUMENTS

EXHIBIT B
DESIGN REQUIREMENTS

EXHIBIT C

Design-Builder Price Proposal

EXHIBIT D

GENERAL CONDITIONS FOR PROGRESSIVE DESIGN-BUILD AGREEMENT

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ARTICLE 1. DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Section 1.01. Definitions and Principles of Interpretation.

Whenever the following terms, titles, or phrases are used in the Contract Documents, the intent and meaning thereof shall be as defined in this article.

Section 1.02. Agreement or Design-Build Agreement

“Agreement” or “Design-Build Agreement” shall mean the executed Progressive Design-Build Agreement between the District and Design-Builder.

Section 1.03. Board

“Board” shall mean the duly elected officials constituting the Board of the Westlands Water District.

Section 1.04. Change Order.

“Change Order” shall mean a written order to Design-Builder signed by the District and Design-Builder or signed unilaterally by the District, issued after execution of the Design-Build Agreement, authorizing a change in the Work and/or an adjustment in the Contract Sum and/or the Contract Time.

Section 1.05. Closeout Documents.

Documents as required to meet the requirements of Final Completion.

Section 1.06. Construction.

“Construction” means all labor and services necessary for the construction and delivery of the Project, and all materials, equipment, tools, supplies, and incidentals incorporated or to be incorporated in such construction as described in the Design-Build Agreement and the Construction Documents. Unless otherwise expressly stipulated, Design-Builder shall perform all Work and provide and pay for all materials, labor, tools, equipment, and utilities, including, but not limited to, light, water, and power, necessary for the proper execution and completion of the Project pursuant to the Design-Build Agreement and the Construction Documents.

Section 1.07. Construction Change Directive (“Directive”).

“Construction Change Directive” or “Directive” shall mean a written order to Design-Builder, issued after execution of the Design-Build Agreement, signed by the District or the District Representative directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both, and which shall be used in the absence of total agreement with Design-Builder on the terms of a Change Order or when time does not permit processing of a Change Order prior to implementation of the change.

Section 1.08. Construction Documents

“Construction Documents” shall mean all technical drawings, Shop Drawings, working drawings, Drawings, Specifications, schedules, diagrams, and samples to be prepared or assembled by Design-Builder and setting forth in detail the requirements necessary for construction of the Project in accordance with the Contract Documents, approved by the District and incorporated into the Contract after such approval. All amendments to the Construction Documents must be approved

by the District prior to incorporation into the Contract and prior to commencement of the Work affected by the change.

Section 1.09. Construction Schedule.

The “Construction Schedule” is the schedule produced by Design-Builder for the construction of the Project. See Article 13 for specific requirements.

Section 1.10. Contract Documents.

“Contract Documents” shall have the meaning set forth in Article 2 of the Design-Build Agreement.

Section 1.11. Contract Sum

“Contract Sum” shall mean the total amount payable by the District to Design-Builder for performance of all Work under the Contract Documents, including, without limitation, all design and construction services. The Contract Sum is the amount stated in the Design-Build Agreement, including authorized adjustments thereto.

Section 1.12. Contract Time.

“Contract Time” shall mean the period specified for Final Completion of all of the Work, as set forth in the Design-Build Agreement and adjusted by any Change Order issued pursuant to the Contract Documents. The Contract Time may be a single allotment of time, a group of times specific to portions of the Work, or a combination of the two.

Section 1.13. Date of Completion.

The “Date of Completion” is the date certified by the District Representative when construction of the Work is 100% complete, including acceptance by the District of all punch list corrections.

Section 1.14. Day.

Unless otherwise expressly defined, a “day” shall mean a calendar day of 24 hours.

Section 1.15. Design-Builder.

“Design-Builder” shall mean the entity (whether natural person, partnership, joint venture, corporation, business association, or other legal entity) that enters into the Agreement with the District. Design-Builder shall be solely responsible for all design, construction means and methods, cost overruns, defects, errors, omissions, and delays arising from its performance of the Agreement. “Design-Builder” means Design-Builder or its authorized representative. Design-Builder and all Design Consultants and Subcontractors shall be properly licensed to perform all Work they are contracted to perform.

Section 1.16. Design-Builder’s Representative.

“Design-Builder’s Representative” shall mean the individual identified by Design-Builder in its Design-Build Proposal as having overall responsibility for supervision of the Work and shall have authority to bind Design-Builder to all agreements, written or oral, made regarding the Work.

Section 1.17. Design Consultant.

“Design Consultant” shall mean a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder to furnish design services required under the Contract Documents.

Section 1.18. Disabled Veteran Business Enterprise.

“Disabled Veteran Business Enterprise” or “DVBE” shall mean a business concern that is certified as a DVBE by the Department of General Services, Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS).

Section 1.19. Not Used.

Section 1.20. District Representative.

“District Representative” shall mean the District’s designated agent engaged to perform all functions delegated to the District Representative by the Contract Documents, which may be the District’s Construction Manager. The District Representative will be Design-Builder’s primary contact during Construction of the Project. An employee of the District Representative’s firm shall have sufficient design experience and expertise to advise the District with respect to design issues that may arise during the construction of the Project.

Section 1.21. Not Used.

Section 1.22. Drawings.

The “Drawings” are sometimes referred to as “Plans” and mean the graphic and pictorial portions of the Contract Documents, including profiles, typical cross sections, and general cross sections, showing the design, location, character, details, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams. This information may be developed and stored in a 3D or 4D model of the Project.

Section 1.23. Final Completion.

“Final Completion” means completion of all contract work, including punch list items and final cleaning completed and all close-out documents, including as-builts and other documents required in the Contract Documents.

Section 1.24. Guaranteed Maximum Price Amendment.

“Guaranteed Maximum Price Amendment” or “GMP Amendment” means an amendment to the Agreement that establishes the Contract Sum, stated as a guaranteed maximum price, for the Project or a subsequent amendment revising the Guaranteed Maximum Price for any additional increment.

Section 1.25. Materials and Equipment.

“Materials” is a generic term, which shall include all building materials, articles, supplies, and equipment delivered to the Project for incorporation into the Work. “Materials” includes everything incorporated into the Work except labor, unless otherwise noted.

“Equipment” shall mean all pre-manufactured or partially pre-assembled products or components, assembled or partially assembled before delivery to the Site.

Section 1.26. Notice to Proceed.

“Notice to Proceed” is the notice given to Design-Builder following approval of the Plans and Specifications and approval of the GMP Amendment by the Board, which establishes the start of the construction of an increment of Work or the entire Work and the time for completion of the increment or of the entire Work, and authorizes Design-Builder to begin construction.

Section 1.27. Original Construction Price.

“Original Construction Price” shall mean the Guaranteed Maximum Price for the construction of the Project, or any increment thereof, including all Allowances but excluding any District Contingency and Construction Contingency.

Section 1.28. Performance Criteria.

“Performance Criteria” shall mean the requirements developed by or for the District to describe the District’s program requirements and objectives for the Project, including as appropriate, use, space, price, durability, production standards, ingress and egress requirements, or other criteria for the intended use of the Project, expressed in conceptual documents, performance-oriented preliminary drawings, outline specifications, and/or other documents provided to Design-Builder by the District establishing the Project’s basic elements and scale and their relationship to the Site.

Section 1.29. Product Data.

“Product Data” shall mean illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Design-Builder to illustrate a material, product, or system for some portion of the Work.

Section 1.30. Project.

The total design and construction of the work of improvement addressed in the Contract Documents.

Section 1.31. Project Inspector.

The “Project Inspector” or “Inspector” shall mean the person or persons employed or engaged as (an) independent contractor(s) by the District to inspect the performance of the Work by Design-Builder for compliance with the Construction Documents. The Project Inspector is hereby designated as an agent of the District for such purpose and no other. The Project Inspector is supervised by Design-Builder’s Architect and reports to Design-Builder’s Architect and the District Representative. The authority of the Project Inspector to monitor the work shall be strictly limited to that authority specified herein and in Title 24, California Code of Regulations, and no additional authority has been granted nor shall be inferred.

Section 1.32. Project Management Information System (PMIS).

“PMIS” is the District’s Project Management Information System, currently PROCORE.

Section 1.33. Project Schedule.

The “Project Schedule” is the schedule prepared by Design-Builder and approved by the District for completion of all Work required under the Contract Documents, including all design work. The Construction Schedule shall be included in and become a part of the Project Schedule.

Section 1.34. Proposed Change Order/Work Order (PCO).

A “Proposed Change Order/Work Order” is the name given to a document issued by Design-Builder proposing a change to the Work and stating a proposed basis for use of any Allowance or Contingency or adjustment, if any, in the Contract Sum or Contract Time, or both. A PCO shall be used by Design-Builder to respond to a Request for Proposal. A PCO is not effective to authorize the proposed change to the Work, use of any Allowance or Contingency, or proposed change to the Contract Sum or to the Contract Time unless it is accepted in writing by the District.

Section 1.35. Reference to Codes.

Unless otherwise noted, all references to statutes are to the laws of the State of California as codified in the various specified codes.

Section 1.36. Request for Proposal (RFP).

A “Request for Proposal” or “RFP” is the name given to a document issued by the District Representative requesting pricing information and/or an adjustment in Contract Time for a described scope of Work. An RFP is not a Change Order, a Directive, or a direction to proceed with the scope of work described in the RFP. Design-Builder’s response to the RFP shall be in the form of a Proposed Change Order.

Section 1.37. Samples.

“Samples” shall mean physical examples, which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

Section 1.38. Shop Drawings.

“Shop Drawings” shall mean drawings, diagrams, schedules and other data specifically prepared for the Work by Design-Builder or any Subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

Section 1.39. Site.

“Site” shall mean the worksite on which the Project is being constructed, and may include a laydown area or other area for use by Design-Builder in connection with the Work.

Section 1.40. Specifications.

“Specifications” shall mean the outline Specifications included in the Performance Criteria as well as the Specifications included in the Construction Documents prepared by Design-Builder and approved by District, consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work and warranties.

Section 1.41. Subcontractor.

“Subcontractor” shall mean each person or firm who is required by law to be and who is licensed to and will perform work, labor, or render services to Design-Builder in or about the construction of the Work, or who, under subcontract to Design-Builder, fabricates and installs a portion of the Work. To the extent the term Subcontractor is referred to as if singular in number it shall include the plural and shall mean a Subcontractor or an authorized representative the Subcontractor.

Section 1.42. Submittal.

“Submittal” shall include all product data, shop drawings, manufacturers’ installation instructions, samples, equal or substitution requests, and all other submissions that Design-Builder is required to make to the District and/or the District’s Architect.

Section 1.43. Substantial Completion

The stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the District can occupy or utilize the Work for its intended use, and only minor corrective Work remains to be performed, all required approvals, certificates of occupancy, and other sign-off from any public agencies with jurisdiction have been obtained (provided such approvals are not delayed as a result of causes unrelated to Design-Builder's or its Subcontractors', Sub-subcontractors', or Suppliers' performance or failure to perform the Work or to satisfy its obligations under the Contract Documents), and Design-Builder has cleaned up and removed all equipment, tools, and other materials from the Work area. Substantial Completion shall not relieve Design-Builder from achieving Final Completion within the Contract Time. Notwithstanding Substantial Completion, the period of warranties and guarantees shall commence as of final Project completion, as reflected in the Notice of Completion.

Section 1.44. Work.

“Work” shall mean all of Design-Builder’s design, construction, and all other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services, and labor reasonably inferable from the Contract Documents.

ARTICLE 2. CONTRACT DOCUMENTS

Section 2.01. General Intent of Contract Documents.

The overriding intent of the Contract Documents is that the work performed shall result in a complete and operable project in satisfactory condition for occupancy, with all mechanical equipment in functional operating condition and fit for the use for which it is intended, and which complies in all respects with the Contract Documents. No extra compensation will be allowed for anything omitted but fairly implied to be included in the Contract Documents.

Section 2.02. Labor and Materials.

Unless otherwise provided in the Contract Documents, Design-Builder shall provide and pay for all labor, materials, equipment, tools, construction equipment, and machinery, water, light, heat, utilities, transportation, and other facilities and services necessary for the execution and completion of the Work in accordance with the Contract Documents, whether or not specifically described herein, as long as same is reasonably inferable therefrom as being necessary to produce the intended results, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

Section 2.03. Complementary Feature of Various Parts of Construction Documents.

The Construction Documents, including the Specifications and Drawings, are complementary and what is called for by any one shall be as binding as if called for by all. In case of conflict, large scale (detail) Drawings shall govern over small scale Drawings, the Specifications shall govern over the Drawings except as noted below, and Change Orders shall govern over the original documents.

In case of conflict between the Drawings and Specifications, the Drawings shall govern in matters of quantity, the Specifications in matters of quality. In case of conflict within the Drawings involving quantities or within the Specifications involving quality, the greater quantity and the higher quality shall be provided.

Where on any Drawing a portion of the Work is drawn out and the remainder is indicated in outline, the drawn-out parts shall apply to all other like portions of the Work. Where ornament or other detail is indicated as starting, such detail shall be continued throughout the courses or parts in which it occurs and shall also apply to other similar parts in the Work, unless otherwise indicated.

Scale Drawings, full-size details, and Specifications are intended to be fully coordinated and to agree. All work and materials necessary for construction, even if only briefly mentioned or indicated, shall be furnished and installed fully and completely, including, but not limited to, the manufacturer's instructions and/or recommendations.

Any material specified by reference to the number, symbol, or title of a specified standard such as a Commercial Standard, a Federal Specification, a trade association standard, or other similar standards, shall comply with the requirements in the latest approved revision thereof and any amendments or supplements thereto in effect on the date of the Guaranteed Maximum Price Amendment, except as limited to type, class, or grade, or modified in such reference. The

standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications.

Section 2.04. Written Notice.

Written notice may be accomplished by personal delivery, registered or certified mail, overnight mail, or e-mail (with confirmation of receipt), as specified in the Agreement.

Section 2.05. Rights and Remedies.

The duties and obligations of parties imposed by the Contract Documents and the rights and remedies of the parties available hereunder shall be in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law.

The failure of a party or its representative(s) to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Contract Documents or to exercise any right herein contained or provided by law, shall not be construed as a waiver or relinquishment of the performance of such provision or right(s) or of the right to subsequently demand such strict performance or exercise such right(s) and the rights shall continue unchanged and remain in full force and effect.

Design-Builder agrees that it can be adequately compensated by money damages for any breach of the Agreement which may be committed by the District and hereby agrees that no default, act, or omission of the District, the District Representative, or the Project Inspector shall constitute a material breach of the Agreement entitling Design-Builder to cancel or rescind the provisions of the Agreement or to suspend or abandon performance of all or any part of the Work. **Design-Builder hereby waives any and all rights and remedies to which it might otherwise be or become entitled, saving only its right to money damages.**

ARTICLE 3. BONDS

Section 3.01. Bonds: Time to Submit.

Design-Builder shall furnish and deliver to the District bonds as set forth below in Sections 3.03 and 3.04 within ten (10) days after Board approval of the first Guaranteed Maximum Price Amendment, and prior to the start of any construction Work.

Section 3.02. Qualifications of Surety.

All bonds shall be duly executed by a responsible corporate surety listed in the current version of the United States Department of the Treasury circular entitled “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies,” admitted by the State of California Department of Insurance to do business in the State of California and acceptable to District.

Section 3.03. Performance Bond.

Design-Builder shall submit a faithful Performance Bond in substantially the form provided by the District, conditioned upon the faithful performance by Design-Builder of all requirements of the Design-Build Agreement and the Construction Documents, and in an amount of no less than one hundred percent (100%) of the nondesign contract services.

Section 3.04. Labor and Materials Payment Bond.

Design-Builder shall also submit a payment bond in substantially the form provided by the District, which in all respects complies with Civil Code sections 9550, 9552, and 9554 (“Payment Bond”) in an amount of no less than one hundred percent (100%) of the nondesign contract services.

Section 3.05. Additional Bonding Requirements.

All bonds submitted shall include the following:

1. Full name and address of Design-Builder, Surety, and District
2. Effective Date of the Design-Build Agreement
3. Contract Sum
4. Project name and address
5. Signature of Design-Builder
6. Signature of authorized Surety representative
7. Notarization of Design-Builder and Surety
8. Power of Attorney
9. Local contact for Surety, with name, phone number, and address to which legal notices may be sent

ARTICLE 4. PERMITS, LICENSES, ORDINANCES, AND REGULATIONS

Section 4.01. Basic Standard.

Design-BUILDER shall conduct the Work so that all laws and ordinances for the protection of the public and the workers shall be obeyed fully both by Design-BUILDER and by all Subcontractors on the Site.

Design-BUILDER shall comply with the requirements of the California State Licensing Board and have a valid contractor's license, which is to be active and maintained in "Good Standing" throughout full completion of the Project.

Design-BUILDER, and any subcontractor of any level shall be registered pursuant to Labor Code section 1725.5 prior to executing any contract or engaging in any Work, whichever is earlier, and shall maintain current registration throughout the term of this Agreement.

Section 4.02. Permits.

The District shall pay for specific construction permits related exclusively to the Project and/or Project Site that could include, but are not limited to, encroachment permits, water usage permits, meter permits, fire alarm permits, elevator permits, confined space and special work permits, storm water permits, erosion control permits, and any applicable State, County, or City permits related to agency inspections, utility connection fees, encroachment permits, or utility service charges (other than temporary utility charges unless otherwise indicated), necessary for the completion of the Work. All other fees and permits shall be at the expense of Design-BUILDER.

Proper documentation of fee, permit, and/or utility service charges or estimates shall be submitted in the PMIS with a check request to the District, including all required payee information. Design-BUILDER will be notified when the check is ready to be picked up.

Design-BUILDER shall give all notices and comply with all laws, ordinances, rules, regulations or orders of any public authority bearing on the performance of the Work.

Except as provided above, the District shall secure and pay for necessary approvals, easements, assessments, and charges required for the Construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

Section 4.03. Compliance with Laws and Regulations.

Design-BUILDER shall keep itself fully informed of and shall observe and shall conduct its operations so as to comply with, and shall cause any and all subcontractors or subconsultants employed by it or under it to observe and comply with all federal and state laws, and county or municipal ordinances, regulations, orders, and decrees which affect those engaged or employed on the Work, or the materials used in the Work, or in any way affect the conduct of the Work.

All work shall be performed in accordance with the rules and regulations, latest Edition of Title 24, Parts 1-5 & 9 of the California Code of Regulations, and a copy shall be kept on the job at all times during construction.

ARTICLE 5. PLANS AND SPECIFICATIONS; RECORD DOCUMENTS**Section 5.01. As-Built Drawings and Specifications.**

Design-Builder shall maintain a hard copy or PDF master set of red line Drawings and Specifications at the Site which shall be updated weekly to reflect current as-built conditions of the Work as the Work progresses. Design-Builder will be responsible for preparing the final, reproducible as-built drawings. Design-Builder's as-built information shall be clear and legible, and, at a minimum, the following information shall be inserted and dimensioned on those Drawings and Specifications, in RED, by Design-Builder: the exact horizontal and vertical location of all installations in their finished condition, including all electrical, plumbing, and mechanical installations; all changes in construction, materials, and installed equipment; posting of all issued addenda, along with adequate dimensional data, both horizontal and vertical, with GPS coordinates, to allow location of covered installations; the identification of each change authorized by Directive, and the number of that Directive. The updated drawings and specifications shall be available for review by the District Representative and the Inspector. If as-builts are marked up in PDF format, the file shall be made available on the District's PMIS.

Written confirmation from the District Representative that the as-builts have been properly updated weekly shall be submitted with each pay application request, and the existence of such properly updated as-builts shall be a condition precedent to payment. Failure to comply with the preparation and submission of as-builts may result in the District withholding the current progress payment.

Section 5.02. Record Documents.

As a condition to certification of Final Completion, Design-Builder shall provide signed and dated final, original, and reproducible as-built Drawings and Specifications ("Record Documents") in a PDF color format, with a resolution of at least 600 DPI and each plan sheet and specification section bookmarked by name, number, or title, together with all additional information requested by the District.

Design-Builder shall prepare Record Documents and furnish to the District one (1) Electronic Copy set of Record Drawings and one (1) set of electronically marked-up Specifications and media showing materials and methods of construction as actually accomplished. The Record Documents shall be prepared by revision of the original approved Drawings using Design-Builder's and Project Inspector's marked-up record set and any project documents (including but not limited to, Addenda, Field Clarifications, Requests for Information, Construction Change Directives, and other similar documents) necessary to reflect all changes in the Record Documents and specifications as incorporated into the Project. Design-Builder shall return to the District the Project Inspector's original marked-up record set (if hard copy used, provide the hard copy along with a scanned copy of same documents). Prior to scanning, the drawings shall be approved, signed, and dated by the Project Inspector. Drawings shall be scanned in color.

The Protection Set (redlined version of the Record Documents) shall have proper revision clouds indicating areas that were revised and the source of each revision. In coordination with the District and the Construction Manager, verify that all approved Project documents are saved electronically in the PMIS.

One electronic copy of Record Documents to the following standards shall be delivered through the PMIS:

- (1) Drawing standards such as linetypes, lineweights, fonts, and symbols shall be consistent with the approved set;
- (2) Include text "Record Drawing" on all sheets;
- (3) Remove all revision deltas and clouds on all sheets;
- (4) List design approval date on all sheets;
- (5) Identify appropriate design team company name on corresponding sheets;
- (6) AutoCAD files shall adhere to the following standards:
 - (a) Full drawing package in the version of AutoCAD effective at the time the Record Documents are uploaded, in executable dwg format;
 - (b) Include all fonts and plotting lineweights;
 - (c) Organize dwgs into folders by discipline; and
 - (d) Include all cross-references; and
- (7) Complete Specification book(s) with all revised pages inserted.

Timely submission of complete Record Documents shall be a condition precedent to certification of Final Completion and to final payment. Delays in the submission of complete Record Documents may subject Design-Builder to liquidated damages.

ARTICLE 6. SUBCONTRACTORS

Section 6.01. Subcontracting.

Design-Builder shall give personal attention to the fulfillment of the Contract Documents and all Work of the Project and shall control the Work.

Design-Builder shall be as fully responsible to the District for the acts and/or omissions of its subcontractors and suppliers and of the persons either directly or indirectly employed or engaged as subcontractors by such subcontractors and suppliers as it is for its own acts and omissions.

Design-Builder shall bind every Subcontractor or supplier, and every subcontractor of a Subcontractor, by the terms of the Contract Documents.

All Subcontractors shall be registered pursuant to Labor Code section 1725.5 before performing any Work, and shall maintain current registration through final completion of the Project.

Design-Builder shall not perform work on the Project with a Subcontractor who is ineligible to perform work on public works project pursuant to Labor Code sections 1725.5, 1777.1, or 1777.7.

Section 6.02. Not Used.

Section 6.03 Disputes Between Subcontractors and/or Design-Builder.

Design-Builder shall promptly take reasonable action to resolve any and all disputes with or between its Subcontractors, subconsultants, or suppliers at any level, or workers employed by such Subcontractors, subconsultants, or suppliers, to ensure that such dispute does not interfere with the Work or the Project.

Section 6.04. Compliance With Listing of Subcontractors.

Design-Builder shall comply with the requirements of the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100 *et seq.* ("Act") with respect to all Subcontractors and DVBEs listed at the time of approval of any GMP Amendment. If Design-Builder requests to substitute a listed DVBE, then Design-Builder shall make all reasonable efforts to identify a DVBE as the replacement subcontractor or supplier. Violation any of the provisions of the Act, including as applied to DVBEs through Military and Veterans Code section 999.10, is a material breach of this Agreement and the District shall have all remedies provided by California law, including but not limited to those provided in Public Contract Code section 4110, allowing termination of this Agreement or a penalty assessment of up to ten percent (10%) of the subcontract amount.

In listing DVBE subcontractors and suppliers, Design-Builder represented that the DVBE would perform a "Commercially Useful Function" ("CUF"). In the performance of the Work, Design-Builder and any Subcontractor that contracts with a DVBE for which Design-Builder claimed DVBE credit shall ensure that the DVBE: (a) is responsible for the execution of a distinct element of the Work; (b) actually performs, manages, and/or supervises the Work; (c) performs Work that is normal for its business services and functions; (d) for material suppliers, that the supplier negotiates price, determines quality and quantity, orders, installs (if applicable), and pays for the materials; and (e) does not further subcontract a portion of the Work greater than expected to be subcontracted

by normal industry practices. A DVBE that is an extra participant in a transaction through which funds are passed to obtain the appearance of DVBE participation will not be considered to perform a CUF.

Section 6.05. Dealings with Subcontractors.

Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor or supplier and the District or any of its representatives, nor shall the Contract Documents be construed to be for the benefit of any Subcontractor or supplier.

Section 6.06. Termination of Unsatisfactory Subcontractors.

When any portion of the Work that has been subcontracted by Design-Builder is not being prosecuted in a satisfactory manner, or when materials supplied do not conform to the Contract Documents, the District may direct Design-Builder to discharge the subcontractor or supplier.

Any Subcontractor or supplier that is discharged shall not again be employed on this Project. The District shall not be responsible for any added costs associated with such termination, but Design-Builder may seek authorization to use the Construction Contingency for any such added costs.

Section 6.07. Payment of Subcontractors and Suppliers.

Design-Builder shall make all payments to Subcontractors and suppliers as expeditiously and timely as possible, consistent with any applicable law so as to prevent any stop notices, liens, or claims from being filed against the District or the Site. Provided that the District has not withheld payments contrary to the provisions of the Design-Build Agreement, these General Construction Terms and Conditions, or law, Design-Builder shall indemnify, defend, and hold the District harmless from any claims or actions which allege that any Subcontractor or supplier was not paid with respect to the Project, except for claims resulting from dispute between District and Design-Builder. Election to bond subcontractors and include the cost of subcontractor bond in the Contract Sum is Design-Builder's with prior written approval of the District.

Section 6.08. Subguard.

To the extent Design-Builder obtains subguard insurance (or equivalent) and includes the premiums in the Guaranteed Maximum Price, Design-Builder shall refund to the District at the completion of the Project any savings in the premiums.

ARTICLE 7. STATE REQUIREMENTS REGARDING WAGES, HOURS, AND EQUAL OPPORTUNITY

Section 7.01. Prevailing Wage Rate; Notice.

As provided under Labor Code Sections 1726-1861, the Director of the Department of Industrial Relations (DIR) of the State of California has determined the prevailing rate of wages in the locality in which the work on the project is to be performed for each craft, classification, or type of worker needed to execute this Contract. The prevailing rates so determined are on file with the District, and they are available for public inspection. They may also be obtained on the Internet at <https://www.dir.ca.gov/oprl/DPreWageDetermination.htm>. Those prevailing wage rates hereby are incorporated into this Agreement and made a part hereof.

Design-Builder shall obtain and post copies of these prevailing wage rates in a prominent place at the job site, in accordance with the regulations of the Department of Industrial Relations.

The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Design-Builder shall post on the jobsite a Notice containing the following language:

This public works project is subject to monitoring and investigative activities by the Department of Industrial Relations ("DIR"), State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to enable the DIR to ensure compliance with and enforcement of prevailing wage laws on public works projects.

The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public Design-Builder which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the DIR at any office of the Division of Labor Standards Enforcement ("DLSE").

Local Office Telephone Number:

Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the Project that the DIR may take legal action against those responsible.

Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc) as well as the name of the employer, the public Design-Builder which awarded the public works contract, and the location and name of the project.

For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the DIR website found at:
www.dir.ca.gov/dlse/PublicWorks.html.

Section 7.02. Payment of Prevailing Wage Rates.

Pursuant to Labor Code Section 1772, workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work as defined in Labor Code Sections 1720-1725. Therefore, Design-Builder shall pay, and shall cause all subcontractors, whether under contract with Design-Builder or under contract with any Subcontractor, to pay not less than the specified prevailing wage rates to all workers employed in the execution of this Contract.

In accordance with Labor Code Section 1775, Design-Builder shall monitor the payment of the specified general prevailing rate of per diem wages by subcontractors to employees by periodic review of the certified payrolls of the subcontractors.

Section 7.03. Wage Rate for Crafts Not Listed.

The responsibility to check prevailing wage rates is Design-Builder's. Pursuant to Labor Code Section 1773, Design-Builder may file with the Director of DIR or the Chief of the Division of Labor Standards Enforcement ("DLSE") a petition to review a determination of any rate or rates made by the Director of DIR. Design-Builder may also petition the Director of DIR to make a determination for a particular craft, classification or type of work not covered by a general determination. Pending the review or determination, the wages may be assumed to be those in the applicable collective bargaining agreement, but no adjustment in the Contract Sum shall be made if such assumption is incorrect.

Section 7.04. Records of Hours Worked and Wages.

Design-Builder shall keep, and shall cause all subcontractors on the Project to keep, certified payroll records of the hours and wages of all employees employed on the Project, and those records shall be open at all times for inspection by the District and/or the Division of Labor Statistics and Enforcement, in accordance with Sections 1776 and 1812 of the Labor Code. Certified payroll records shall contain at least the following information: the name, address, social security number, work classification, dates of payroll period, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Design-Builder and/or each subcontractor in connection with the Work.

If the District requests copies of the certified payroll records, then Design-Builder and/or any subcontractor must provide the requested records within ten (10) days of the request. If Design-Builder and/or any subcontractor fails to submit certified payroll records to the District within ten (10) calendar days of a request from the District for the records, then Design-Builder and/or the subcontractor shall, as a penalty, forfeit one hundred dollars (\$100) per calendar day, per worker, until strict compliance is effectuated. These penalties shall be withheld from progress payments then due and/or to become due. Design-Builder is not subject to this penalty assessment due to the failure of a subcontractor to comply with these requirements if Design-Builder can demonstrate that it has fully complied with the provisions of Labor Code Section 1776.

Design-Builder shall not carry on its payrolls any person not actually employed by Design-Builder, nor shall it carry on its payrolls employees of any subcontractor. Design-Builder shall show on its payrolls all persons actually employed by Design-Builder on the Project, in any capacity. Design-Builder shall cause all subcontractors on the Project, whether under contract with Design-Builder or under contract with any Subcontractor, to comply with this Section.

In accordance with Government Code Section 8546.7, or any amendments thereto, all books, records, and files of Design-Builder, or any subcontractor connected with the performance of this Contract, shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment. Design-Builder shall preserve and cause all subcontractors to preserve such books, records, and files for the audit period.

Section 7.05. Additional Requirements for Labor Compliance.

Design-Builder shall comply with all applicable and current requirements of the DIR and the DLSE, including without limitation the following additional requirements, and shall cause all subcontractors on the Project, whether under contract with Design-Builder or under contract with any Subcontractor, to comply. The records kept by Design-Builder and all subcontractors of the hours and wages of all employees employed on Project also shall be open at all times for inspection by DIR and DLSE, in accordance with Sections 1776 and 1812 of the Labor Code. Such records shall be furnished electronically to the Labor Commissioner of DIR monthly, unless more frequent submission is required herein, and shall be furnished within 10 days of any separate request by DIR or DLSE. Such records shall be furnished electronically to the Labor Commissioner of DIR monthly, unless more frequent submission is required herein, and shall be furnished within 10 days of any separate request by DIR or DLSE. Payroll records shall be furnished in a format prescribed by DIR and uploaded into the electronic certified payroll reporting (eCPR) system.

On a random basis and at such other times as it deems appropriate, DIR also may confirm the accuracy of payroll reports, including by corroboration of information in payroll reports through independent sources, including without limitation worker interviews, examination of any time and pay records found within the definition of "Payroll Records" in section 16000 of Title 8 of the California Code of Regulations, direct verification of "Employer Payments" (as defined at section 16000 of Title 8 of the California Code of Regulations) through third-party recipients of those payments, or any other legal and reasonable method of corroboration. As part of its confirmation process, DIR may require Design-Builder and any of its subcontractors to furnish for inspection itemized statements prepared in accordance with Labor Code Section 226. DIR may conduct random confirmation based on a recognized statistical sampling of the records submitted.

DIR may conduct in-person inspection(s) at the site or sites at which the Work of the Project is being performed ("On-Site Visits"). On-Site Visits may include visual inspection of required job site notices, including but not limited to (1) the determination(s) of the Director of DIR of the prevailing wage rate of per diem wages required to be posted at each job site in compliance with Labor Code Section 1773.2; (2) the Notice of pay days and time and place of payment required by Labor Code Section 207; and (3) any other notices prescribed by law. On-Site Visits may also include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by DIR to ensure compliance with prevailing wage requirements. In accordance with Labor Code Section

90, the Labor Commissioner and his deputies and agents shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner, including but not limited to evidence of compliance with Labor Code Section 226 (itemized wage statements for employees) and any other laws enforced by the Labor Commissioner.

In accordance with Section 16463 of Title 8 of the California Code of Regulations ("8 CCR Section 16463"), the District may, on its own or if required by the Labor Commissioner, withhold funds due to Design-Builder when payroll records are delinquent or inadequate. The amount withheld shall be those payments due or estimated to be due to Design-Builder or any subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against Design-Builder or any subcontractor whose payroll records are delinquent or inadequate. Design-Builder shall cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the subcontractor has cured the delinquency or deficiency. When payments are withheld under 8 CCR Section 16463, the Labor Commissioner will provide Design-Builder and any subcontractor, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies what amounts the District has been directed to withhold; and (3) informs Design-Builder or subcontractor of the right to request an expedited hearing to review the withholding of payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Commissioner has exceeded his or her authority under 8 CCR Section 16463. Where the violation is by a subcontractor, Design-Builder shall be notified of the nature of the violation and reference shall be made to Design-Builder's rights to withhold or recover payments from the subcontractor under Labor Code Section 1729. The withholdings under 8 CCR Section 16463 do not preclude assessment of penalties under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records, as set forth below.

Section 7.06. Underpayment of Wages.

Design-Builder agrees that in the event of underpayment of wages to any employee on the Project, whether by Design-Builder or any subcontractor on the Project, the District may retain from payments due to Design-Builder, an amount sufficient to pay such worker the difference between the wages required to be paid by DIR, and the wages actually paid such worker for the total number of hours worked, plus any penalties and forfeitures. The District may disburse such retention to such employees.

Section 7.07. Apprentices.

Attention is directed to the provisions of Sections 1777.5, 1777.6 and 1777.7 of the Labor Code concerning the employment of apprentices by Design-Builder and any subcontractor.

Design-Builder and all subcontractors on the Project shall comply with the requirements of Sections 1777.5 and Section 1777.6 of the Labor Code in the employment of apprentices. Violation of these requirements shall subject Design-Builder and/or subcontractor to the penalties set forth in Section 1777.7 of the Labor Code and/or otherwise provided by law or Contract.

Information relative to apprentice standards, wage schedules, and other requirements may be obtained from the DIR Division of Apprenticeship Standards on the DIR website at www.dir.ca.gov/das/publicworks.html. Apprentices employed on the Project must at all times work with or be under the direct supervision of at least one journeyman.

Section 7.08. Penalties.

In accordance with Articles 2 and 3, Chapter 1, Part 7, Division 2 of the Labor Code, particularly Sections 1775, 1776, 1777.7 and 1813, Design-Builder shall forfeit to District as a penalty the sum specified below, over and above any retention or withholds otherwise authorized by the agreement, as follows:

- A. Up to two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wages for any work done by him/her under this Contract or under any subcontract on the Project, with the amount to be determined by the Labor Commissioner in accordance with the considerations set forth in Labor Code section 1775. If a worker employed by a subcontractor on the Project is paid less than the prevailing wages by the subcontractor, Design-Builder is not subject to this penalty assessment if Design-Builder can demonstrate that it did not have knowledge of that failure of the subcontractor to pay the prevailing wages and that it strictly complied with the requirements of Labor Code Section 1775(b).
- B. Twenty-five dollars (\$25) for each worker employed in the execution of this agreement by Design-Builder or by any subcontractor on the Project for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3.
- C. Failure to provide certified payroll records to the District or to the Labor Commissioner within ten (10) calendar days of a request, shall, in addition to resulting in a withholding of payments due, result in a penalty in the amount of one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Design-Builder is not subject to this penalty assessment due to the failure of a subcontractor to comply with these requirements if Design-Builder can demonstrate that it has fully complied with the provisions of Labor Code Section 1776.
- D. Knowing violation of Labor Code Section 1777.5 shall yield a penalty in an amount not exceeding one hundred dollars (\$100) for each full calendar day of non-compliance. A contractor or subcontractor who knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where noncompliance results in apprenticeship training not being provided as required, shall forfeit as a civil penalty the sum of no more than three hundred dollars (\$300) for each full calendar day of noncompliance.

Section 7.09. Hours of Work; Approval of Schedules.

Eight (8) hours of labor constitutes a legal day's work, and forty (40) hours constitutes a legal work week. No worker employed at any time by Design-Builder, or by any subcontractor upon the Project, shall be required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one week, except as provided in Labor Code Sections 1810 through 1815.

Overtime shall be paid at the rate of not less than one and one-half (1-1/2) times the basic rate of pay, or at such other rate as stated on the applicable Determination issued by DIR, or as may be required by applicable statutes or collective bargaining agreements.

The District reserves the right to approve or disapprove the days scheduled for work, and the hours during which work is in progress.

Section 7.10. Compliance with State Anti-Discrimination Laws.

Design-Builder shall comply with Section 1735 of the Labor Code, which provides as follows:

“A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.”

Section 7.11. Workers' Compensation Insurance.

In accordance with the provisions of Section 3700 of the Labor Code, Design-Builder shall provide, at all times in which it is providing or performing any work on the Project, at its sole cost and expense, workers' compensation insurance for all of its employees engaged in work for the Project. Design-Builder shall require all subcontractors and subconsultants at every level similarly to provide workers' compensation insurance for all of their employees. Any employee performing work directly or indirectly for Design-Builder on the Project and not covered by a subcontractor's or subconsultant's insurance shall be covered by Design-Builder's insurance. If any individual engaged in work for or on behalf of Design-Builder on or at the site of the Project is not protected under Workers' Compensation laws, Design-Builder shall provide, or shall cause a subcontractor or subconsultant to provide, adequate insurance coverage for the protection of such employee, not otherwise protected. Design-Builder shall file with the District certificates of its insurance protecting workers.

ARTICLE 8. SUPERVISION AND LABOR**Section 8.01. Supervision Procedures.**

Design-Builder shall supervise and direct the Work using its best skill and attention. Design-Builder shall be solely responsible for all design, construction means, methods, techniques, and procedures and for coordinating all portions of the Work under the Design-Build Agreement and the Construction Documents.

Design-Builder shall be responsible to the District for the acts and omissions of its employees, all subcontractors/subconsultants and their agents and employees, and other persons performing any of the Work.

Design-Builder shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the District Representative in their administration of the Project or by inspections, tests, or approvals (or the lack thereof) required or performed under Article 9 by persons other than Design-Builder.

Section 8.02. Skilled Labor.

All non-apprentice labor shall have the skills of a journeyperson in the applicable trade. All workmanship shall be of the highest quality and finish in all respects.

Section 8.03. No Tenancy.

All workers, subcontractors, or subcontractors' representatives are admitted to the site only for the proper execution of the Work and have no tenancy.

Section 8.04. Dismissal of Unsatisfactory Employees.

Design-Builder shall at all times enforce strict discipline and good order among all employees including compliance with the District Guidelines for Conduct on School Sites and shall not employ on the Work any unfit person or anyone not skilled in the assigned task as defined in Section 8.02. Design-Builder shall remove, or cause a subcontractor to remove from the Project, any incompetent employee, or any employee not skilled for the type of work required as defined in Section 8.02, or any employee who does not comply with the District Guidelines for Conduct on School Sites. The District may require that Design-Builder immediately remove from the Work any employee for cause at the District's sole discretion.

Section 8.05. Personal Attention and Superintendence; Design-Builder's Agent.

Design-Builder shall supervise the Work to the end that it shall be faithfully prosecuted. Design-Builder shall, at all times while Design-Builder's scope of work is in progress, keep a full-time superintendent who is fully empowered to act as agent for Design-Builder on the site. Design-Builder shall advise the District in writing of its agent prior to the start of any work. Design-Builder shall be responsible for the faithful observation of all instructions delivered to its authorized agent(s).

Section 8.06. Continuity of Design-Builder's Key Personnel.

Design-Builder's Key Personnel, as stated in Design-Builder's Proposal, shall remain fully engaged in the Project throughout the duration of the Project. Design-Builder's Key Personnel shall not be

substituted without written approval by the District. For the purposes of this section, Design-Builder's Key Personnel shall include at least Design-Builder's identified architect(s) and engineer(s), its project manager, and its superintendent, as well as any other Key Personnel specifically identified in the Proposal.

Section 8.07. Design-Builder's Coordination of Work.

The District reserves the right to do other work in connection with the Project by separate contract or otherwise. The District shall give Design-Builder written notice at least thirty (30) days in advance of any work to be done by the District's contractors, agents or employees. Design-Builder and the District shall at all times conduct their work so as to impose no hardship on the other and shall coordinate with each other so that no delays or discrepancies shall result in the whole Project.

Section 8.08. Fingerprinting.

ARTICLE 9. INSPECTION AND TESTING

Section 9.01. Inspection.

Inspection shall be provided as required under CCR Title 24, latest Edition. All inspection costs will be paid for by the District, including special inspection required by Title 24, except as noted otherwise below. A list of required inspections for the Project will be established by Design-Builder and the Project Inspector.

The Project Inspector shall be approved by the District. The Project Inspector will be employed by the District and will perform all inspections in accordance with Title 24, parts 1-5.

Section 9.02. Authority of Project Inspector; Stop Work Notices.

The designated Project Inspector shall be considered to be a representative of the District. It is the Project Inspector's duty to inspect the Work.

The Project Inspector shall have the authority to order the work designated for inspection stopped if a determination is made that work is proceeding in violation of the Construction Documents or any orders issued by the District, District Representative, or Construction Manager. The failure of the Project Inspector to order the work stopped does not excuse Design-Builder from complying with the Construction Documents for that work.

Upon issuing a stop work notice, the Project Inspector shall notify the Construction Manager and Design-Builder's architect; the Design-Builder's architect and a Construction Manager's representative with design experience and expertise both shall review the work in question and determine whether it does or does not comply with the Construction Documents. The decision of the Construction Manager's design representative shall be final, subject to the dispute resolution provisions in Article 23. Design-Builder shall thereafter comply with the instructions of the Construction Manager regarding corrections needed to cure the defect. The suspended work shall be resumed only when the instructions are fulfilled. Design-Builder shall not be entitled to an extension of time in the event of such suspension of work if the stop work notice is determined to be validly supported by facts.

Section 9.03. Effect of Inspections.

Neither the final inspection and payment, nor any interim inspection or payment shall relieve Design-Builder of its obligation to fulfill the Work of the Project as required by the Design-Build Agreement and/or the Construction Documents.

Any work, materials or equipment not meeting the requirements and intent of the Construction Documents may be rejected, and unsuitable work or materials shall be made good, notwithstanding the fact that such work or materials may previously have been inspected and/or payment therefore may have been made.

Section 9.04. Inspection of Completed Work.

Should the District Representative determine that it is necessary or advisable to make an inspection of work already completed at any time before final inspection and acceptance of the Work, by removing or exposing any work, Design-Builder shall, upon instruction of the District

Representative, promptly furnish all necessary facilities, labor, and materials to do so. If the work is found to be defective in any respect due to the fault of Design-Builder or any subcontractor, Design-Builder shall bear all expenses of such examination and satisfactory reconstruction. If, however, the work is found to meet the requirements of the Construction Documents, the additional cost of labor and material necessarily involved in the examination and replacement shall be allowed Design-Builder and a Change Order shall be issued for such cost and any time extension justified by delays to the critical path.

Section 9.05. Notice to District of Inspection.

Where the Construction Documents, instructions by the Project Inspector or District Representative, laws, ordinances, or any public authority having jurisdiction require work to be inspected, tested, or approved before the Work proceeds, such work shall not proceed, nor shall it be covered up, without inspection. If any part of the Work is covered prior to inspection, then the District may order the Work to be uncovered so that inspection may be accomplished. Design-Builder shall bear all expenses of such examination and satisfactory reconstruction.

Design-Builder shall provide notice to the Project Inspector at least twenty-four (24) hours in advance of the readiness for inspection, except for special inspection, which requires at least forty-eight (48) hours' advanced notice.

All work shall be available for inspection, and the Project Inspector shall have full access to review all work during all working times. Design-Builder shall provide all necessary means of access (e.g. ladders) for the Project Inspector to perform its duties. Design-Builder shall furnish the Project Inspector with any information necessary to fully inform him/her of conditions. Inspection does not relieve Design-Builder from fulfilling the requirements of this Agreement and the Construction Documents.

Section 9.06. Not Used.

Section 9.07. Overtime Work.

Whenever Design-Builder arranges to work at night or any time when work is conducted other than the normal forty (40) hour week, or to vary the period during which work is carried on each day, it shall give the District Representative and the Project Inspector a minimum of forty-eight (48) hours' notice for weekend work and twenty-four (24) hours' notice for daily work so that inspection may be provided. Additional inspection costs incurred because of overtime or shift work shall be paid by the District. If this overtime work is necessitated by Design-Builder's error or failure to perform, the cost of inspection will be borne by Design-Builder.

Section 9.08. Materials Which May be Tested.

The District reserves the right to require Design-Builder to provide samples, and to perform tests on any materials, articles, equipment, installations, or construction performed by Design-Builder in addition to those specified in the Contract Documents. The District shall assume the cost of sampling and testing materials only when the Contract Documents do not require Design-Builder to do so.

Section 9.09. Testing.

All tests shall be performed under the supervision of the testing laboratory or consultant employed by the District and at such times as are convenient to the Project. Design-Builder shall provide written notice to the District Representative at least twenty-four (24) hours prior to the need for off-site tests or inspections, and the District Representative will arrange such tests or inspections. Design-Builder shall bear all expenses of tests performed where Design-Builder failed to provide this minimum notice.

Section 9.10. Selection of Samples.

All samples and specimens for testing shall be selected by the Project Inspector or by the testing laboratory, but not by Design-Builder.

Section 9.11. Delivery of Samples.

Design-Builder shall, at its sole cost and expense, furnish, package, mark, and deliver all samples to be tested at locations other than the Site. Samples shall be delivered either to the Project Inspector or to the testing laboratory or such other address specified by the District Representative.

Delivery of all samples to the testing laboratory shall be made in ample time to allow the test to be made without delaying construction. No extra time will be allowed for the completion of the Work by reason of delay in testing samples required by the Contract Documents or due to Design-Builder's request for substitution.

Design-Builder shall allow free access at all times to the representatives of the testing laboratory to the Work, and shall point out the sources from which samples are taken.

All test reports shall be sent to all parties specified by the District Representative.

Section 9.12. Approval of Samples.

No materials or work of which samples and/or tests are required shall be used or covered until the District Representative informs Design-Builder that such samples and/or tests have been approved. If Design-Builder installs, uses, or covers any such material, article, or work prior to testing and approval, such shall be at Design-Builder's sole risk and expense, and it shall bear all costs of uncovering, repair, and replacement thereof.

The approval of any samples shall be for the characteristics thereof, or for the uses named in such approval, and no other. No approval of any samples shall be deemed a change or modification in any requirement of the Contract Documents. Upon testing of any sample of material or work, no additional sample shall be considered. All material or work installed after the sampling and testing is performed and approved shall be equal to or better than the approved sample in all respects and shall be accompanied by documentary proof that the materials and work sampled is representative of that installed.

Section 9.13. Damage Due to Testing.

Design-Builder shall, at its sole cost and expense, repair all damage resulting from testing specified in the Contract Documents. The District shall issue a Change Order for repair of damage due to sampling or testing other than specified in the Contract Documents.

Design-Builder shall not make any tests upon portions of the Project already completed, except with the prior written consent and under the direction and supervision of the District Representative.

Section 9.14. Retesting.

If as a result of any test, whether originally specified or not, any material or work is found to be unacceptable, it shall be rejected, and all further sampling and testing required by the District or District Representative shall be at Design-Builder's expense. The District shall pay initial costs; however the District may deduct that cost from a subsequent payment.

Section 9.15. Effect of Sampling and Testing.

The District assumes no obligation, and Design-Builder shall be relieved of no obligation undertaken pursuant to the Contract Documents by virtue of sampling and testing specified in this Article.

The responsibility for incorporating satisfactory materials and workmanship which meet the Contract Documents into the Work rest entirely with Design-Builder, notwithstanding any prior samples or tests.

ARTICLE 10. PROTECTION OF WORKERS, PUBLIC AND PROPERTY**Section 10.01. Safety Precautions and Programs.**

Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work, for maintaining all safety and health conditions on the Site, and for ensuring against and/or correcting any hazardous conditions on the Site. Also, in no case shall the District, the District Representative, the Inspector, or their agents, employees or representatives, have either direct or indirect responsibility for the means, methods, techniques, sequences or procedures utilized by Design-Builder, or for safety precautions and programs in connection with the Work, or for maintaining any safety or health conditions on the Site, or for ensuring or correcting any hazardous conditions on the Site.

Certain work may be ongoing at the time school is in session; therefore, Design-Builder shall take precautions to prevent injury and access to children and staff and shall comply with the District's Guidelines for Onsite Safety. Material storage and vehicle access and parking shall be subject to District approval.

Design-Builder shall designate a responsible member of its organization at the Site whose duty shall be the prevention of accidents and overall jobsite safety for contractors'/subcontractors' employees, District Representative, Project Inspector, and visitors. This person shall be Design-Builder's superintendent unless otherwise designated by Design-Builder in writing to the District Representative.

Section 10.02. Protection of Persons and Property.

Design-Builder shall at all times, until final acceptance and the Final Payment, maintain adequate protection against injury to persons, including employees, or damage to property, on or near the Project, or adjacent to the Site. Design-Builder shall be responsible for maintaining all safety and health conditions on the Site and for ensuring against and/or correcting any hazardous conditions on the Site. With respect to Design-Builder's operations and/or duties under this Agreement, in no case shall the District, the District Representative, the Inspector, or their agents, employees or representatives, have either direct or indirect responsibility for maintaining any safety or health conditions, or for ensuring against or correcting any hazardous conditions, on or near the Site, or adjacent to the Site.

Design-Builder shall provide a safe environment for all functions to be performed by the District, the District Representative, and Project Inspector, and a safe place for all employees to work. The use of alcohol, drugs, or tobacco (including e-cigarettes) will not be permitted on the Site and/or on District property.

Design-Builder shall comply with all Occupational Safety laws, rules and regulations applicable to the Work.

Section 10.03. Protection and Repair of Work.

Design-Builder shall take all reasonable measures to protect the District's structures, facilities, equipment, tools, materials, and any other property on or adjacent to the Site against damage, loss, or theft by providing adequate security measures for its work. Design-Builder shall, until Final

Completion of the Project and acceptance by the District, maintain protection of all of its work and work performed by others for the Work of the Project from damage, loss, defacement, or vandalism, except that if the District takes occupancy, in whole or in part, of any portion of the Project prior to the date of Final Completion, Design-Builder shall no longer have any obligation to protect the occupied portion(s) of the Project except (1) to the extent they may be affected by Design-Builder's ongoing work, and/or (2) as provided in this Article. Design-Builder shall provide protection of completed work (even if the District has taken beneficial occupancy), which may be subject to damage as a result of Design-Builder's failure to perform as scheduled.

Section 10.04. Protection of Workers.

Design-Builder shall take every precaution for the safety of all employees and others on the Work, and to comply with all applicable provisions of federal, state and local safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to the premises where the Work is being performed.

Design-Builder shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public, and shall post danger signs warning against hazards created by construction including, but not limited to, protruding nails or reinforcing steel, hoists, elevator hatchways, scaffolding, window openings, stairways, and falling materials.

Design-Builder shall immediately replace or repair any unsafe ladder, scaffolding, shoring, or bracing, or correct any other dangerous or hazardous situation that may exist. In the event that such situation is due to a pre-existing condition of the facility, Design-Builder may be entitled to additional compensation under provisions of Article 15 to repair or replace such condition in order to maintain a safe worksite. The responsibility for maintaining a safe working site shall be Design-Builder's, and the District and District Representative undertake no obligation to suspend the work or notify Design-Builder of any hazardous conditions or noncompliance with safety laws. In no case shall the District, the District Representative, the Inspector, or their agents, employees or representatives, have either direct or indirect responsibility for maintaining any safety or health conditions, or for ensuring against or correcting any hazardous conditions on the Site.

Section 10.05. Working Limits and Regulations.

Design-Builder shall confine its apparatus, storage and materials, and construction operations within the limits established by the District Representative, and shall not unreasonably encumber the Site or adjacent areas with its materials and/or equipment.

Design-Builder shall enforce any reasonable instructions from the District Representative or District regarding placement of signs, fires, danger signals, barricades, radios, and noise, provided such instructions are in compliance with health and safety laws governing construction activities.

Section 10.06. Protection of Existing Improvements.

Design-Builder shall clean the portions of existing improvements and facilities which are used by, traversed or dirtied by the workers on the Work, normal maintenance due to use by District employees or the public excepted.

All existing improvements and facilities shall be protected from any damage resulting from the operations, equipment or workers of Design-Builder during the course of the construction.

Design-Builder shall take all necessary precautions to protect existing facilities against the effects of the elements and Design-Builder shall be strictly liable for failure to adequately protect any facility.

All damaged improvements and facilities shall be replaced, repaired, and restored to their original condition without additional cost to the District and without an extension of the Contract Time.

Section 10.07. Traffic Signals and Traffic Control.

Existing signs, lights, traffic signals, control boxes, hydrants, meters, and other similar items occurring within the street or sidewalk areas shall be kept free of obstructions and accessible at all times. All such items shall be protected from Design-Builder's operations and shall not be obliterated or obscured by its equipment or materials.

Should it be necessary to cover up, move, or alter such items, this shall be done only with permission of the authorities having jurisdiction over the items involved.

Should it be necessary to block a street or sidewalk, Design-Builder shall first notify the District Representative and the police and fire departments and other agencies with jurisdiction, and shall comply with their instructions, including scheduling limitations.

Section 10.08. Security of the Site.

Design-Builder shall provide and maintain temporary fencing surrounding the buildings and/or rooms under construction, and staging areas. Set-up/relocation of temporary fencing is included in the Contract Sum. Design-Builder is responsible for the security of all equipment, material, and completed construction items. Design-Builder is responsible for maintaining access to any occupied buildings on the school site at all times. Temporary covered walkways and/or barricades may be required. Design-Builder is responsible for securing any breeches to existing security system/building caused by its Work. Temporary measures may include security guards, temporary doors, temporary alarm, etc.

Section 10.09. Removal of Barricades.

Upon completion of the work, Design-Builder shall remove from the Site all materials used for barricades, temporary scaffolding, or any other temporary uses.

Section 10.10. Protection of Adjacent Property; Notices.

In addition to any requirements imposed by law, Design-Builder shall shore up, brace, underpin, and protect as may be necessary all foundations and other parts of all existing structures on the Site or adjacent to the Site which are in any way affected by the excavations or other operations connected with the completion of the Work.

Prior to excavation, Design-Builder shall notify all public utilities and governmental agencies of the work proposed, and shall ascertain from them the exact location of their utilities.

Prior to commencing any work which in any way affects adjoining or adjacent land or buildings thereon, or public utilities, Design-Builder shall notify the District Representative, who will send the District and occupants thereof a notice, which specifies the type of work to be done, the schedule of the work, the impacts expected from the work and the protective measures being taken by Design-Builder. The notice shall also specify that any person receiving notice who has questions regarding it may contact the District Representative.

Whenever any notice is required to be given to any adjoining or adjacent landowner, utility, governmental agency or other party before commencement of any work, the notice shall be given by Design-Builder at least seven (7) days in advance of the work, or longer if required by law or regulation, with a copy delivered to the District Representative.

Design-Builder shall, at the written instruction of the District Representative, meet with any recipient of such notice to explain and discuss the proposed work.

Section 10.11. Indemnification of Adjacent Property Owners.

In the event Design-Builder enters any agreement with the owners of any adjacent property to enter upon or adjacent to such property for the purpose of performing the Work, Design-Builder shall fully indemnify, defend and save harmless such person, firm, or Design-Builder, state or other governmental agency which owns or has any interest in the adjacent property. The form and content of the indemnification agreement shall be approved by the District prior to commencement of any work on or about such property.

Section 10.12. Fire Protection.

Design-Builder shall take all steps necessary to protect all structures from fires and sparks originating from the Work, shall comply with all laws and regulations regarding fire protection, and shall comply with all instructions of the fire department with jurisdiction.

Design-Builder shall notify the District Representative and the fire department in writing at least seventy-two (72) hours prior to disconnection of either water or electrical service to the Site, and shall comply with the fire department's instructions regarding fire safety.

Design-Builder must keep the fire intrusion detection systems operational throughout the duration and scope of its Work.

Section 10.13. Repairs or Replacement.

Any damage to existing conditions, or to any other improvement or property above or below the surface of the ground, whether private or public, arising from performance of this contract shall be repaired within forty-eight (48) hours by Design-Builder without expense to the District, unless disruption of school operation or creation of a safety hazard has occurred, in which case damage will be corrected immediately. If the work cannot be completed within forty-eight (48) hours, then Design-Builder must be able to show substantial progress toward completion within that time frame.

If, in the opinion of the Architect, the best interest of the District requires that repairs be made prior to the execution of any further work, the District Representative will so notify Design-Builder who shall delay or discontinue that part of the Work until the necessary repair has been made. Such delay shall be considered non-compensable.

Upon the failure of Design-Builder to comply with any such order, or upon Design-Builder's failure to make immediate emergency repairs which are necessary to protect the Work, the District shall do that work itself as is necessary to protect life and property, in its sole discretion, and deduct the total cost of such work from the next payment otherwise due. No prior notice to Design-Builder shall be necessary for the District to take this action.

Section 10.14. Emergency Safety Actions.

In an emergency affecting the safety of life or property, including adjoining property, Design-Builder, without previous instructions or authorizations from the District, is authorized and shall act at its discretion and risk to prevent such threatened loss or injury. Design-Builder shall bear all costs of such action, unless such emergency is caused by the District's negligence or willful misconduct or by other action, event, or Act of God entirely beyond Design-Builder's control. Design-Builder shall immediately notify the District Representative of such actions, and thereafter shall comply with any instructions issued by the District Representative.

ARTICLE 11. SUBMITTALS, SUBSTITUTIONS AND MATERIALS**Section 11.01. Submittals.**

Design-Builder, at its sole cost and expense, shall furnish to the District Representative all Submittals and other descriptive material as are required by the Specifications or requested by the District Representative.

Shop drawings shall be done with sufficient detail to adequately describe items proposed to be furnished or methods of installation to enable the District Representative to determine compliance with the Specifications, design/Performance Criteria, and with the design and arrangement shown on the working drawings.

Design-Builder shall check and coordinate all Submittals with the Work of all trades involved before they are submitted. Design-Builder shall review each Submittal for conformance with the requirements of the Construction Documents.

All Submittals for the Project shall be made in accordance with a Submittal schedule to be agreed upon between the District and Design-Builder; however, Design-Builder shall have the additional responsibility to coordinate the schedule of its Submittals with the requirements of the Construction Schedule so as not to delay the Project. No delay claims related to Submittals will be entertained on the Project for any Submittal originally received after the date indicated in the Construction Schedule. The District shall not be required to accept limitations in materials, colors, quality, or any other aspect of products or materials due to Design-Builder's failure to provide Submittals as required. At the District's discretion, Design-Builder may be directed to furnish and install temporary materials until District selected material, if any, is available. Further, the District may require Design-Builder to install District selected materials, if any, during non-school hours/days without an increase in the Contract Sum and without an extension of the Contract Time.

Design-Builder shall submit a schedule of Submittals organized by Specification section required for the Project. It shall delineate whether product data, installation instructions, shop drawings, samples, extra stock or mock-ups are required. The schedule of Submittals shall indicate whether the Submittal will be in electronic format, as set forth below. In general, other than items requiring color selections, samples, and shop drawings, Submittals will be in electronic format. This schedule of Submittals shall be submitted within the timeframe indicated in the approved Project Schedule. Any omissions or inaccuracies shall not relieve Design-Builder of the obligation for conforming to the requirements in the Contract Documents. Design-Builder's Submittal schedule shall provide sufficient time for delivering the Submittal to the District Representative, the District Representative's review of each Submittal, delivering the Submittal to Design-Builder, and re-submittal as necessary. In no case shall Design-Builder allow fewer than fourteen (14) days, exclusive of delivery time, for the District Representative to review each Submittal.

Section 11.02. Submission of Submittals.

Most Submittals shall be submitted electronically. Electronic Submittals which are submitted together shall be compiled into a single, bookmarked PDF file, containing links to enable navigation to each item within the Submittal package. Design-Builder shall name the electronic Submittal file

with a consistent project identifier, composed of the project name, bid package number, and specification section number. Electronic Submittals shall be transmitted via the PMIS. Submittals shall be submitted to the District Representative who will not review the Submittals for technical compliance, but may reject any Submittal found, in the District Representative's judgment, to be incomplete. The District Representative will maintain a Submittal log, and weekly meeting minutes shall note if Submittals have been accepted. Submittals requiring color selections, samples, or shop drawings will be logged into the PMIS.

For shop drawings, color selections, and samples, Design-Builder shall submit no less than three (3) originals. All Submittals of shop drawings, color selections, and samples shall be marked with the project name, Design-Builder's name, and the specification section number, and shall be accompanied by a letter of transmittal to the District Representative. The letter of transmittal for shop drawings shall list the identifying number of the drawings submitted and cross-reference them to the page or sheet in the specifications and/or working drawings to which they are related. The letter of transmittal shall be uploaded into the PMIS.

By approving and submitting shop drawings, product data, manufacturer's installation instructions, and samples, Design-Builder represents that it has determined and verified all materials, field measurements, and field construction criteria related thereto and that it has checked and coordinated the information contained within those submittals with the requirements of the Work and to the Construction Documents. Design-Builder shall adhere to any supplementary processing and scheduling instructions pertaining to shop drawings as may be issued by the District Representative.

The District Representative will not accept shop drawings, product data, or manufacturers' installation instructions which are not sufficiently dimensioned and detailed to demonstrate compliance with the Construction Documents.

The Submittals shall be submitted promptly, and no later than specified in the Submittal schedule, so as to cause no delay in the Work.

Section 11.03. Review of Submittals.

Following submission, the Submittals will be reviewed and returned with one or more of five possible responses by the District Representative. These possible responses are as follows:

- A. Unreviewed: If the Submittal is not required, or if it is not complete, or if it does not meet the form, format, and number requirements specified, it may be returned unreviewed. If the Submittal is not required, work may commence; if the Submittal was returned due to form requirements, it shall be resubmitted and approval obtained prior to commencement of the work.
- B. Approved, Reviewed, or No exceptions taken: In the event the Submittal is acceptable as submitted, it will be returned with this status. Work may proceed upon receipt of approved Submittal.

- C. Make Corrections Noted: If the Submittal is acceptable except for certain items, which have been noted by the District Representative, it will be so designated. Work may proceed with the corrections made, and no resubmittal is necessary.
- D. Revise and Resubmit: This status indicates that revisions are noted on the Submittal, and an additional Submittal is required to reflect those revisions and/or additional information. Work may not commence until the resubmittal is approved.
- E. Rejected: A Submittal may be rejected if it is not in compliance with the Construction Documents, or if it proposes a substitution which is not acceptable to the District Representative. A superseding Submittal shall be submitted and approved prior to commencement of the work.

Should Design-Builder proceed with the work shown on a Submittal before approval is received, it shall remove and replace or adjust any work which is not in accordance with the shop drawings or manufacturers' instructions as ultimately approved, and it shall be responsible for any resultant damage, defect, or added cost. Design-Builder shall resubmit Submittals in categories "D" and "E" above after making any changes required so that Submittals will comply with the Construction Documents. When resubmitting, Design-Builder shall direct specific attention to deficient areas. Resubmittals shall be made within ten (10) days of return of previous Submittal, and in any event in sufficient time so as to avoid delay to the Work. No delay claims related to resubmittals will be entertained on the Project for any resubmittal originally received after the ten (10) days.

The District Representative shall determine the adequacy and completeness of all Submittals. Where the District Representative deems a Submittal to be inadequate, incomplete, or otherwise unsuitable for proper review, Design-Builder shall submit all additional information requested by the District Representative. There shall be no change to the Contract Time or the Contract Sum when such additional information is required.

Section 11.04 Submittals Showing Variation from Contract.

It shall be the responsibility of Design-Builder to specifically point out any variation or discrepancy between the shop drawings, product data, or manufacturers' installation instructions submitted and the Construction Documents, along with an explanation of why they are requested, in its letter of transmittal. Failure by Design-Builder to identify in its letter of transmittal any variation, discrepancy, or conflict with the Construction Documents shall render the approval null and void, and Design-Builder shall bear all risk of loss and reconstruction costs or delays.

If any architectural, plumbing, mechanical, electrical, or structural modifications are required as a result of the approval of shop drawings or manufacturers' instructions, which deviate from or do not comply with the Construction Documents, those modifications shall be made without extra cost to the District, and without extension of the Contract Time. Any other resultant costs, including but not limited to design fees, and cost incurred by other contractors, or inspection fees, shall be at the expense of Design-Builder.

Section 11.05. Effect of Approval of Submittals.

The approval of Submittals or other descriptive material shall not relieve Design-Builder of the obligation for accuracy of dimensions and details or for conforming the Work to the requirements

of the Construction Documents at no extra cost to the District, within the Contract Time and shall not, in any way, shift the risk of the design to the District. Design-Builder remains responsible for all design and construction of the Project, in accordance with the Contract Documents.

Section 11.06. Substitutions.

Unless otherwise provided in the technical specifications, Design-Builder may make proposals for substitutions to materials and/or processes shown or specified.

A proposal for substitution shall include all information required by the District Representative to evaluate the substitute material or process. All substitutions shall be submitted with an approved "Substitution Request Form." Such proposal constitutes a certification that Design-Builder:

- A. Has investigated the proposed product and determined that it meets or exceeds the performance requirements of the specified product.
- B. Will provide the same or better warranty for substitution as for specified product.
- C. Will coordinate installation and make other changes, including relating to work of others, which may be required for the Work to be complete in all respects at no additional cost to the District.
- D. Waives claims for additional costs and/or Contract time, which may subsequently become apparent.

The District Representative shall evaluate a timely Substitution request, and shall approve, deny, approve with conditions, or initiate the procedure for a change order in response to Design-Builder's request. This decision shall be final. This decision will be rendered within twenty one (21) business days after submission of all required information for the proposal. If the request is not accepted, then Design-Builder shall provide the specified system, process, product, or material without an increase in the Contract Sum and/or Contract Time.

Failure by Design-Builder to identify all deviations from the Construction Documents in its request for substitution shall render any District action taken thereon null and void. Design-Builder shall bear all costs resulting from any error in the request for Substitution.

Only one request for Substitution will be considered for each product, except due to unavailability.

Neither the submission of a request for a Substitution nor the District Representative's review of the application will extend the time for submission of any required Submittals.

Section 11.07. Not Used

Section 11.08. Samples and Testing of Proposed Substitutions; Costs of Adapting to Work.

When the District Representative determines that samples and testing are required to evaluate a request for a substitution, the District Representative shall so advise Design-Builder, and specify the materials or work to be sampled. Design-Builder shall, at no cost to the District, provide samples as required by Article 9, dealing with samples and testing, or the technical specifications.

Design-Builder shall bear all costs of sampling and testing required to decide a request for Substitution, and if a Substitution is accepted, Design-Builder shall bear all costs associated therewith, including all costs of mechanical, electrical, structural, or other changes needed to adapt the Substitution to the Work.

Section 11.09. Effect of Approval of Substitution Request.

If the substitution request is approved, Design-Builder shall be solely and directly responsible for setting substituted materials and/or equipment into the available space, and for the proper operation of the substituted equipment with all other equipment with which it may be associated, all in a manner acceptable to the District.

Neither time extensions nor any increases in the Contract Sum shall be granted on account of a substitution. In the event of a savings, the Contract Sum shall be adjusted by the price difference between the substitution and the originally specified item.

Section 11.10. Quality of Materials and Products.

Design-Builder shall, if required by the Project Inspector or District Representative, furnish satisfactory evidence as to the kind and quality of materials provided.

The District Representative may require, and Design-Builder shall submit if required, a list designating the source of supply of each item of materials incorporated into the Work, and in such event, those materials or products shall not be delivered to the Site or incorporated therein until after the District Representative has approved the list.

Design-Builder shall certify that the materials and equipment installed comply with the Construction Documents and to the best of Design-Builder's knowledge, no installed materials or equipment contain asbestos.

Section 11.11. Better Material or Process.

If Design-Builder furnishes a material, product, process, or article better than that specified in the Construction Documents, the difference in cost of that material, product, process, or article shall be borne by Design-Builder.

Section 11.12. Industry Standards.

- A. Any material specified by reference to the number, symbol, or title of a specified standard such as a Commercial Standard, a Federal Specification, a Trade Association Standard, or other similar standard, shall comply with the requirements in the latest revision thereof, including any amendments or supplements thereto, in effect on the effective date of the Design-Build Agreement, except as limited to type, class, or grade, or modified in that reference.
- B. The standard referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications.

1. Where Federal Specifications are referred to as a measure of quality and standard, they refer to Federal Specifications established by the Procurement Division of the United States Government and are available from the Superintendent of Documents, U.S. Government Printing Office.
2. Where Federal Specification numbers are used, they refer to the latest edition including amendments thereto.
3. Where Commercial Standards (CS) or Product Standards (PS) are referred to as a measure of quality, standard, and method of fabrication, they refer to Commercial Standards and Product Standards issued by the U.S. Department of Commerce.
4. Where ASTM serial numbers are used, they refer to the latest tentative specifications, standard specifications, standard method or standard methods of testing, issued by the American Society for Testing Materials, unless specifically noted.

Section 11.13. Original Packages or Containers; Labels.

All materials delivered to the Site shall be new, unless otherwise specified, of the type, capacity, and quality specified, and free from defects. All materials shall remain in their original packages or containers until ready for use. The labels of all packages or containers shall remain affixed and kept legible. No product shall be stored in any container, the label of which does not accurately describe the contents of the container.

Section 11.14. Providing and Paying for Materials.

Except as otherwise specifically stated in the Contract Documents, Design-Builder shall provide and pay for all materials, products, articles, processes, labor, tools, equipment, and installation, and all associated superintendence of every nature whatsoever necessary to execute and complete the Work within the Contract Time.

Section 11.15. Warranty of Title.

No material, article, product, supplies, or equipment for the Work shall be subject to any chattel mortgage, or a conditional sale or other agreement by which an interest therein or in any part thereof is retained by the seller or supplier.

Design-Builder warrants good and sufficient title to all material, supplies, and equipment installed or incorporated in the Work, and agrees upon completion of the Work and payment of the Contract Sum to deliver the premises, together with all improvements and appurtenances, constructed or placed thereon by Design-Builder, to District, free from any claims, liens, or charges.

Design-Builder agrees that neither it nor any person, firm, or entity furnishing any materials or labor for any work covered by this contract shall have any right to a lien upon the premises or any improvement or appurtenances thereon; provided, however, that nothing contained in this Section shall defeat or impair the rights of persons furnishing materials or labor under the payment bond given by Design-Builder, nor any rights under any law permitting such persons to look to funds due to Design-Builder but retained by the District.

Design-Builder shall cause the substance of these provisions to be included in all subcontracts and material contracts executed by Design-Builder and notice of this provision shall be given to all persons furnishing materials for the Work.

This Section shall not disallow Design-Builder's installing any devices or equipment of utility companies or of governmental agencies, the title to which is commonly retained by the utility company or the agency.

Section 11.16. Patents and Royalties.

Design-Builder and its sureties shall protect, indemnify and hold harmless the District, the District Representative, the Project Inspector, and each of their respective officers, agents, and employees against any and all demands made for such fees or claims and against any and all suits, demands, claims or causes of action brought or made by the holder of any invention, patent, copyright, or trademark, or arising from any alleged infringement of any invention, patent, copyright, or trademark by Design-Builder in the course of its performance under this Design-Build Agreement.

Section 11.17. Payment of Federal or State Taxes.

Any federal, state or local tax, specifically including sales and use taxes, payable on materials furnished by Design-Builder pursuant to the Contract Documents shall be paid by Design-Builder.

ARTICLE 12. PROGRESS PAYMENTS

Section 12.01. Schedule of Values.

Within ten (10) days of the Effective Date of the Design-Build Agreement, Design-Builder shall submit to the District Representative a schedule of values for the design of the Project, broken down by design phase. Within ten (10) days of District approval of the GMP Amendment, Design-Builder shall submit to the District Representative an amended schedule of values to include construction of the Project, broken down by phase (if any), in sufficient detail to evaluate progress and costs at any point in the Work. In no event shall an individual line item for construction phase services on the schedule of values exceed five percent of the Contract Sum unless so approved by the District Representative in advance. Labor, material, and subcontract costs shall be shown separately. Cost of Contract closeout shall be shown as individual line items, including, but not limited to, closeout documents, punchlist, and as-built documentation. Each of these line items shall be no less than three percent (3%) of the amount of the Guaranteed Maximum Price Amendment.

All other General Conditions items should be prorated among the actual construction values. The schedule of values must be prepared in sufficient detail and supported by such data to substantiate its accuracy as the District Representative may require. This schedule, when approved, shall be used as a basis for Design-Builder's applications for payment, and the approved schedule of values is an express condition precedent to processing Design-Builder's payment applications.

Section 12.02. Application for Payment.

- A. Prior to the date for each progress payment review established in the Preconstruction Meeting, Design-Builder shall submit to the District Representative a copy of the schedule of values, marked in pencil to show the percentage of completion proposed by Design-Builder for each line item. No extension of dollar amounts is required.
- B. At a meeting held on or before the assigned billing date of each month, the District Representative, Project Inspector, and Design-Builder will review Design-Builder's proposed percentages of completion and agree on a final percentage to be paid for that month. The progress payment will be based on the estimated percentage complete. No progress payment will be made unless all general conditions items demonstrate satisfactory progress. Upon agreement of the amount due, Design-Builder will prepare a hard copy of the Application of Payment Summary and transmit it to the District Representative for processing by the assigned day of each month.
- C. Release of Liens: With each final monthly application for payment, Design-Builder shall submit a conditional lien release in the form set forth in California Civil Code section 8132. Additionally, Design-Builder shall submit unconditional lien releases in the form set forth in California Civil Code section 8134 for all work through the prior progress payment. When a subcontractor completes its scope of work, Design-Builder shall submit with its pay application either a conditional lien release in the form provided in Civil Code section 8136 if retention has not been paid or an unconditional lien release in the form provided in Civil Code section 8138 if the subcontractor has been paid in full. For the final payment application, Design-Builder and all of its Subcontractors and material suppliers that have not

previously submitted unconditional lien releases under Civil Code section 8138 shall submit final conditional lien releases in the forms set forth in Civil Code section 8136.

- D. The signing of a certificate of payment will constitute a representation by the District Representative and Project Inspector to the District that, based on their observations and the data comprising the application for payment, the Work has progressed to the point indicated and that, to the best of their knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to any specific qualifications stated in the certificate for payment); and that Design-Builder is entitled to payment in the amount certified. However, by signing a certificate for payment, the District Representative and Project Inspector shall not thereby be deemed to represent that any of them has made exhaustive or continuous on-site inspections to check the quality or quantity of the work, that any of them has reviewed the construction means, methods, techniques, sequences or procedures, or that any of them has made an examination to ascertain how or for what purpose Design-Builder has used the monies previously paid on account of the Contract Sum.
- E. No progress payment will be released until District Representative has received all of the following items in acceptable form: as-built updates, schedule updates, certified payroll and other pay records if requested by the District, lien releases, all required safety reports for the pay period, and the monthly status report required by Agreement paragraph 3.1.9.

Section 12.03. Payment for Stored Materials.

Payments may be made by the District, at its discretion, on account of materials or equipment not incorporated in the Work but delivered to the Site and suitably stored by Design-Builder. Payments for materials or equipment stored shall only be considered upon submission by Design-Builder of satisfactory evidence demonstrating that it has acquired title to such material, that the material will be used in the Work, that it is satisfactorily stored, protected and insured, and that Design-Builder has undertaken such other procedures satisfactory to the District Representative and Project Inspector to protect the District's interests. Materials stored off-site, to be considered for payment, shall, in addition to the above requirements, be stored in a bonded warehouse, fully insured, and available to the District Representative for inspection. The District Representative shall have complete discretion as to the amount of material and equipment that may be stored on the Site at any given time.

Section 12.04. Payment Time; Retention.

There shall be reserved from the monies earned by Design-Builder on estimates a sum equal to five percent (5%) of such estimates. It is understood that, if payment requests are made in accordance with established time schedule, payment requests received and approved by District will be processed within thirty (30) days following approval. Payment for Change Orders, if any, under this Contract shall be made in like manner after the Change Order is fully executed.

Section 12.05. Posting Securities in Lieu of Withholds.

Pursuant to Public Contract Code Section 22300, at the request and expense of Design-Builder, Design-Builder may elect to deposit securities equivalent to the amount withheld pursuant to Section 12.04 with the District or with a state or federally chartered bank in California as the escrow

agent, who shall then pay the retainage to Design-Builder. Upon satisfactory completion of the Contract, the securities shall be returned to Design-Builder.

Alternatively, Design-Builder may request, pursuant to Public Contract Code Section 22300, and the District shall make, payment of retentions under Section 12.04 directly to the escrow agent. Design-Builder shall receive the interest earned on the investments upon the same terms provided for in Section 22300 for securities deposited by Design-Builder. Upon satisfactory completion of the Contract without grounds to withhold as addressed in Section 12.06, Design-Builder shall receive from the escrow agent all securities, interest and payments received by the escrow agent from the District.

If Design-Builder elects to receive interest on moneys deposited with an escrow agent in lieu of retention, Design-Builder shall provide written notice to all subcontractors performing at least five percent (5%) of the Work of Design-Builder's option within fifteen (15) days of electing to receive interest. Design-Builder shall, at the request of any such subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by Design-Builder from the subcontractor. The subcontractor shall receive the identical rate of interest received by Design-Builder, less any actual pro rata costs associated with administering and calculating that interest, as provided for in section 22300. If Design-Builder elects to substitute securities in lieu of retention, then, by mutual consent of Design-Builder and the subcontractor, the subcontractor may substitute securities in exchange for the release of moneys held in retention by Design-Builder.

Securities eligible for investment under this Section shall include those listed in Government Code Section 16430 or bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, stand by letters of credit, or any other security mutually agreed to by Design-Builder and the District.

Design-Builder shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

Section 12.06. Withholding Additional Amounts; Grounds.

In addition to the amounts which the District may retain as provided in Section 12.04, the District may withhold a sufficient amount from any payment or payments otherwise due to Design-Builder as in the District's sole discretion may be necessary to protect the District in the event of the following:

- A. Third party claims filed or reasonable evidence indicating probable filing of such claims;
- B. Defective work not remedied;
- C. Failure of Design-Builder to make proper payments to any of its Subcontractors or for labor, materials or equipment;
- D. The occurrence of reasonable doubt that the Contract can be completed for the balance of payments then unpaid to Design-Builder, or in the time remaining until expiration of the Contract Time;

- E. Failure of Design-Builder to comply with any lawful or proper direction concerning the Work given by any District representative authorized to have given such instruction;
- F. Claims and/or penalties which state law assesses or may assess against Design-Builder for violation of such law;
- G. Any claim or penalty asserted against the District or that may be asserted against the District by virtue of Design-Builder's failure to comply with the provisions of all governing laws, ordinances, regulations, rules, and orders;
- H. Any liquidated damages which may accrue as a result of Design-Builder's progress failing to meet the schedule milestones or failing to achieve substantial completion or final completion within the Contract Time; or
- I. Any reason specified elsewhere in the Contract Documents as grounds for a retention or that would legally entitle the District to a set off.

In order to adequately protect the District, Design-Builder agrees that the basic standard to determine the amount to be withheld pursuant to this Section shall be one hundred fifty percent (150%) of the amounts claimed or the value of the work not done or defectively done; provided, however, that District reserves the authority to retain greater sums should such sums be necessary in the District's discretion to adequately protect it.

Section 12.07. Disbursement of Withheld Amounts.

The District, in its sole discretion, may apply any withheld amount or amounts to the payment of any claim resulting in a withhold. Design-Builder agrees and hereby designates the District as its agent for such purposes, and any payment so made by the District shall be considered as a payment made under this Contract by the District to Design-Builder. The District shall not be liable to Design-Builder for any payments made in good faith and with reasonable notice to Design-Builder. Such payments may be made without a prior judicial determination of the claim or claims. The District shall render to Design-Builder a proper accounting of any funds disbursed on behalf of Design-Builder.

Prior to disbursing any amounts, District shall afford Design-Builder an opportunity to present good cause, if any, why the claim or claims in issue are not valid or just claims against Design-Builder. The District reserves the right then to take such further steps as are appropriate, in its sole discretion, including, but not limited to, seeking a judicial resolution of the controversy.

Section 12.08. Correction of Statement and Withholding of Payment.

No inaccuracy or error in any statement provided by Design-Builder shall operate to release Design-Builder or any surety from the error, or from damages arising from such work, or from any obligation imposed by the Contract Documents. The District shall retain the right subsequently to correct any error made in any previously issued claim for the progress or other payment, or payment of any kind issued, by adjustments to subsequent payments.

Section 12.09. Effect of Progress Payments.

Neither the payment, the withholding, nor the retention of all or any portion of any progress payment claimed to be due and owing to Design-Builder shall operate in any way to relieve Design-Builder from its obligations under this Contract Documents. Except to the extent provided otherwise in the Design-Build Agreement or applicable law, in the event of a District default, Design-Builder shall continue diligently to prosecute the Work without reference to the payment, withhold, or retention of any progress payment. Except as provided in the Design-Build Agreement or applicable law, the payment, withhold, or retention of any progress payment shall not be grounds for an extension of the Contract Time.

ARTICLE 13. TIME OF WORK

Section 13.01. Construction Schedule Development.

Design-Builder shall submit to the District Representative a detailed proposed Construction Schedule for the Project within ten (10) days of District approval of the Guaranteed Maximum Price Amendment. The detailed proposed Construction Schedule shall present an orderly and realistic plan for completion of the Work, in conformance with the requirements of this Article.

The Contract Schedule shall furnish and comply with the following requirements:

- A. A time scaled CPM type schedule prepared in Oracle Primavera P6 or other scheduling software approved in writing by the District. Submit the project schedule electronically (pdf, tiff or jpeg format not acceptable)-through the PMIS and in hard copy format
- B. No activity on the schedule shall have a duration longer than fourteen (14) days, with the exception of fabrication and procurement activities, unless otherwise approved by the District Representative. Activity durations shall be the total number of actual days required to perform that activity including consideration of weather impact on completion of that activity.
- C. Procurement of major equipment, through receipt and inspection at the job site, identified as a separate activity.
- D. District furnished materials and equipment if any, identified as separate activities.
- E. Dependencies (or relationships) between activities.
- F. Processing/approval of submittals and shop drawings for major equipment. Activities that are dependent on submittal acceptance and/or material delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates.
- G. Separate buildings and other independent project elements shall be individually identified in the network.
- H. No less than fourteen (14) days for developing punch list(s), completion of punch list items, and final clean up for the work or any designated portion thereof. No other activities shall be scheduled during this period.
- I. Interface with the work of other Contractors (or entities).

No unspecified milestones, contractor-designated Constraints, Float suppression techniques, or use-of-Activity durations, logic ties and/or sequences deemed unreasonable by the District Representative shall be used in the Construction Schedule.

Design-Builder shall submit the reports and the number of copies as required under Section 13.05 of these General Construction Terms and Conditions.

The District Representative will review the proposed Construction Schedule for conformance with the requirements of the Contract Documents. Within ten (10) days after receipt, the District Representative will accept the Construction Schedule or will return it with comments. If the proposed Construction Schedule is not accepted, Design-Builder shall revise the schedule to incorporate comments and become the Construction Schedule. Design-Builder shall have the right to modify the schedule to alter sequences or durations of work in the interests of the Project provided it gives timely notice to the District of such modifications. The District shall have the right to reasonably object to any modifications. In the event of such objection by the District, Design-Builder will not make the modification(s).

The accepted Construction Schedule shall be incorporated into the Project Schedule developed under the Agreement and be the basis for evaluating construction job progress and for District planning purposes. The responsibility for developing the Project and Construction Schedules and monitoring actual progress as compared to the Project Schedule rests with Design-Builder. The Project Schedule shall be the basis for evaluating time extension requests.

Failure of either the Project Schedule or the Construction Schedule to include any element of the Work or any inaccuracy in either Schedule will not relieve Design-Builder from responsibility for accomplishing all the Work in accordance with the Contract Documents.

Acceptance of the Project Schedule and/or the Construction Schedule will not relieve Design-Builder of the responsibility for accomplishing the Work in accordance with the Contract Documents.

Failure to obtain District approval of the Contract Schedule within forty (40) calendar days of the GMP Amendment may result in the District withholding up to ten percent (10%) of each progress payment until a Contract Schedule is approved. Any such amounts withheld shall be paid to Design-Builder upon approval of the Contract Schedule.

Section 13.02. Not Used.

Section 13.03. Monthly Updates.

Design-Builder shall submit to the District Representative each month, in hard copy and through the PMIS, an up-to-date status report of the Work. The status report shall include:

- A. Design-Builder's estimated percentage complete and remaining duration for each activity not yet complete.
- B. Actual start/finish dates for activities as appropriate.
- C. Identification of processing errors, if any on the previous update reports.
- D. Revisions, if any, to the assumed activity durations including revisions for weather impact for any activities due to the effect of the previous update on the schedule.

- E. Best efforts to identify activities that are affected by Proposed Change Orders issued during the update period. (See Section 13.04, Network Window). Depending on the nature, amount, or timing of changes, this may be difficult to accomplish.
- F. Best efforts to resolve any conflicts between actual work progress and schedule logic. When out of sequence activities develop in the Construction Schedule because of actual construction progress, Design-Builder shall submit revision to schedule logic to conform to current status and direction. The parties recognize that depending on the nature, amount, or timing of changes this may be difficult to accomplish.

The Project Schedule shall be updated on a monthly basis throughout the entire Project performance period until Project completion is achieved.

The District Representative will review the updated information and meet with Design-Builder each month at the Site to determine the status of the Work. If agreement cannot be reached on any issue, Design-Builder will use the District Representative's determination in the processing of the update.

No progress payments will be made without the required monthly update of the Project Schedule.

Section 13.04. Schedule Revisions.

If the sequence of construction differs significantly, as determined by the District Representative, from the Construction Schedule, Design-Builder shall submit within fifteen (15) days a revised schedule to the District Representative for acceptance. The accepted updated Construction Schedule shall be incorporated into an updated Project Schedule and submitted to the District Representative. Updating the Construction Schedule to reflect actual progress shall not be considered revisions to the Construction Schedule.

When a Proposed Change Order is issued which has the potential to impact specified completion dates, a Network Window shall be prepared by Design-Builder to reflect the impact of such changes as expeditiously as is reasonably possible in light of the nature, quantity and timing of potential changes. The District Representative will promptly review and act on the Network Window. If the Network Window has been accepted by the District and Design-Builder has been permitted by the District to proceed with the Proposed Change Order, the Network Window shall be incorporated into the Project Schedule and/or Construction Schedule. Time extensions will be considered only to the extent there is insufficient remaining float to accommodate these changes, and pursuant to Article 14 of these General Conditions. No additional cost beyond that provided in Article 15 will be allowed for the incorporation of approved Proposed Change Orders into the Construction Schedule.

Should Design-Builder, after acceptance of the Construction Schedule, intend to change its plan of Construction, it shall submit its requested revisions to the District Representative, along with a written statement of the revision, including a description of the logic for rescheduling the Work, methods of maintaining adherence to Intermediate milestones and other specific dates and the reasons for the revisions. If the requested changes are acceptable to the District Representative,

they will be incorporated into the Construction Schedule and the Project Schedule in the next reporting period.

Schedule revisions shall be submitted at least seven (7) days prior to the date of submission of update information. The District will have seven (7) days to review the revisions.

Section 13.05. Construction Schedule Reports.

Together with the monthly schedule updates, Design-Builder shall submit the following reports for the proposed Construction Schedule, Construction Schedule Updates, Construction Schedule Revisions and Recovery Schedules:

- A. A Schedule Logic Report listing the activities, their early/late and actual start and finish dates, duration, float and the logic relationship of activities sorted by early start.
- B. Network Plots presenting time scaled network diagram showing activities and their relationships.
- C. A narrative providing additional clarification/explanation of items such that District is informed of the approach used to plan and sequence the work and coordinate with other contractors to the extent applicable. This narrative shall also address the following: (1) description of Work performed during the reporting period; (2) Description of the primary, secondary and tertiary Critical Paths; (3) description of the Work anticipated to be performed during the next reporting period; (4) number of days ahead/behind the Completion Date; (5) discussion of the changes to the primary Critical Path since the prior month's update; (6) description of problem areas and anticipated problem areas; (7) current and anticipated delays including cause of delay, corrective actions taken, and impact of the delay on other activities, milestones, and completion dates; (8) the actual weather days used (9) pending items (change orders, requests for time extensions, etc) and status thereof.
- D. A schedule calculation summary report which includes listing of constraints, open-ends, out-of-sequence work, and scheduling statistics. This report is computer generated when the Construction Schedule is calculated upon completion of inputting all activity progress at the month end processing.

Design-Builder shall upload the report to the PMIS. Design-Builder shall also provide all the schedule files in the original electronic format (files in pdf format are not allowed).

Section 13.06. Short Interval Schedules.

Design-Builder shall prepare a Short Interval Schedule (SIS) to be used throughout the duration of Work. The SIS shall include all current activities and projected activities for the succeeding two (2) weeks. The SIS shall include actual start/finish dates for the preceding one (1) week and it shall be tied to the updated Construction Schedule. The SIS shall be submitted to the District Representative prior to the weekly construction meeting. Design-Builder shall participate in short interval scheduling coordination during the weekly construction meetings.

Section 13.07. Time of Essence.

Time is of the essence. Design-Builder shall, to the fullest extent possible, carry on the various classes or parts of the Work concurrently, and shall not defer construction of any portion of the Work in favor of any other portion of the Work, without the express approval of the District Representative.

Section 13.08 Date of Completion.

Design-Builder shall fully and satisfactorily complete the Work within the Contract Time. The Date of Completion will be set forth in the Notice to Proceed with construction.

Section 13.09 Responsibility for Completion.

Design-Builder shall furnish sufficient manpower, materials, facilities, and equipment and shall work sufficient hours, including night shifts, overtime operations, Sundays and holidays as may be necessary to insure the prosecution and completion of the Work in accordance with the accepted Project Schedule. Unless there are excusable and/or compensable grounds for delay, if work on the critical path is seven (7) days or more behind the currently updated Project Schedule and it becomes apparent that the Work will not be completed within the Contract Time, Design-Builder will implement whatever steps it deems necessary to make up all lost time. If Design-Builder's solution is not successful, it will make further attempts using the following sequence of events:

- A. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities.
- B. If the above cannot be achieved then;
 - 1. Design-Builder shall increase workers in such quantities and crafts as will substantially eliminate, in the judgment of the District Representative, the backlog of work; or increase the number of working hours, shifts per working day, working days per week, or the amount of equipment or any combination of the foregoing sufficiently to substantially eliminate in the judgment of the District Representative the backlog of work.
 - 2. In addition, the District Representative may require Design-Builder to submit a recovery schedule demonstrating its program and proposed plan to make up a lag in scheduled progress and to ensure completion of the Work within the Contract Time. If the District Representative finds the proposed recovery schedule unacceptable, it may require Design-Builder to submit a new plan. If the actions taken by Design-Builder or the second plan proposed are unsatisfactory, the District Representative may require Design-Builder to take any of the actions set forth in the previous paragraph without additional cost to the District to make up the lag in scheduled progress.

Float, the amount of time an activity can be delayed without affecting the Completion Date, is considered a project commodity jointly shared between District and Design-Builder and shall be used in the best interest of completing the Project on time by the party who needs it first.

Failure of Design-Builder to comply with the requirements of this Section 13.09 shall be considered grounds for a determination by the District, pursuant to the Design-Build Agreement and these

General Construction Terms and Conditions, that Design-Builder is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

Section 13.10. Daily Reports.

No less than on a weekly basis, Design-Builder's superintendent shall submit to the District Representative daily reports via the PMIS. If Design-Builder enters the daily reports in the PMIS, Design-Builder shall place the daily report in a 'locked' status, on a weekly basis, such that it may no longer be modified. The daily reports shall include, without limitation, the identity of subcontractors on the Site; an accurate headcount of workers on the Site; materials and equipment delivered to the Site; visitors to the Site; any problems encountered; and photos as necessary to appropriately document the Work.

ARTICLE 14. DELAYS AND EXTENSIONS OF TIME**Section 14.01. Extensions of Time; Unavoidable Delays.**

Design-Build shall not be granted an extension of time except on the issuance of a Change Order by the Board, upon a finding of good cause for such extension.

A. As used herein, the following terms shall have the following meanings:

1. "Excusable Delay" means any delay in completion of the Work beyond the expiration of the Contract Time caused by conditions beyond the control and without the fault or negligence of Design-Build or the District or its agents. These events may include strikes, embargoes, fire, unavoidable casualties, national emergency, and stormy and inclement weather conditions beyond the number of days included in the weather allowance in the Project Schedule in which the District Representative and Project Inspector agree that work on the critical path cannot continue. The financial inability of Design-Build or any Subcontractor or supplier and any default of any Subcontractor, without limitation, shall not be deemed conditions beyond Design-Build's control. An Excusable Delay will entitle Design-Build to an extension of the Contract Time, in accordance with this Section of the General Construction Term and Conditions and shall not entitle Design-Build to any adjustment of the Contract Sum but shall be a permitted use of the Construction Contingency for the period of delay.
2. "Compensable Delay" means any delay in the completion of the Work beyond the expiration date of the Contract Time caused solely by the wrongful acts of the District or its agents, including but not limited to the District's Architect, and which delay is unreasonable under the circumstances and not within the contemplation of the parties. A Compensable Delay entitles Design-Build to an extension of the Contract Time and an adjustment of the General Conditions at the time of the contract extension based on actual General Conditions costs as allowed by the Contract Documents but not to exceed the daily rate of **Two thousand five hundred dollars (\$2,500.00)** for every day of delay to the date of Substantial Completion. Except as provided herein, Design-Build shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.
3. "Inexcusable Delay" means any delay in completion of the Work beyond the expiration of the Contract Time resulting from causes other than those listed in Subparagraphs A1 and A2, above. An Inexcusable Delay will not entitle Design-Build to an extension of the Contract Time, use of any contingency, or an adjustment of the Contract Sum and subjects Design-Build to liquidated damages.

B. Design-Build may make a claim for an extension of the Contract Time, for an Excusable Delay or a Compensable Delay, subject to the following:

1. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last. Any allowed adjustment of

the Contract Sum shall be based on an adjustment of the General Conditions at the time of the contract extension based on actual General Conditions costs as allowed by the Contract Documents but not to exceed the daily rate of **Two thousand five hundred dollars (\$2,500.00)**. For the period of concurrency, the adjustment is a permitted use of the District Contingency. To the extent that a contingency fund is not used to compensate Design-Builder for such concurrent delay, any increase in the Contract Sum shall be based only on the non-concurrent portion of any Compensable Delay. Design-Builder may be compensated for the concurrent portion of an Excusable Delay and a Compensable Delay only out of available contingency funds, and only if approved by the District at the District's sole discretion.

2. If an Inexcusable Delay occurs concurrently with either an Excusable Delay and/or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, from commencement of the first Excusable and/or Compensable Delay to the cessation of the Excusable Delay and/or the Compensable Delay. For any concurrency period with a Compensable Delay, Design-Builder shall not be entitled to an adjustment of the Contract Sum but may request that the District authorize use of the Construction Contingency, if any is available, for the period of the Compensable Delay based on an adjustment of the General Conditions at the time of the contract extension based on actual General Conditions costs as allowed by the Contract Documents but not to exceed the daily rate of **Two thousand five hundred dollars (\$2,500.00)** and not to include any delays between Substantial and Final Completion. The non-concurrent Inexcusable Delay will not entitle Design-Builder to an extension of the Contract Time, use of any contingency, or an adjustment of the Contract Sum and subjects Design-Builder to liquidated damages.

Delays in the prosecution of parts or classes of the Work which do not prevent or delay the completion of the whole Work within the Contract Time are not to be considered Excusable or Compensable.

Section 14.02. Notice of Delays; Requests for Time Extensions.

No later than ten (10) calendar days from the time Design-Builder reasonably foresees any delay in the prosecution of the Work, and in any event immediately upon the occurrence of any delay which Design-Builder regards as good cause for an extension, Design-Builder shall notify the District Representative in writing of the delay or anticipated delay. The notice shall specify with detail the cause asserted by Design-Builder to constitute good cause for an extension and a quantification of the length of the requested extension of time together with a detailed schedule analysis showing the effect of the delay on the critical path of the Project Schedule. **Failure of Design-Builder to submit such timely notice shall constitute a waiver by Design-Builder of any entitlement to a time extension, as well as to any associated additional compensation, and no extension shall be granted as a consequence of such delay.** The District shall have no obligation to consider any time extension request unless the requirements of the Contract Documents are complied with. If Design-Builder cannot quantify the delay or prepare a detailed schedule analysis at the time the notice of delay is submitted, including because the delay is anticipated and/or is ongoing of an unclear duration, then Design-Builder shall supplement its notice of delay as soon as it can reasonably quantify the delay, but no later than ten (10) days after the cause of the delay is concluded.

The District shall consider and respond promptly to time extension requests that comply with the terms of the Design-Build Agreement and the Construction Documents. The District shall not be responsible or liable to Design-Builder for any constructive acceleration due to failure of the District to grant time extensions should Design-Builder fail to comply with the submission and justification requirements of the Construction Documents for time extension requests.

Section 14.03. Investigation; Procedure.

Upon receipt of a request for extension, the District Representative shall conduct an investigation of the facts asserted by Design-Builder to constitute good cause for an extension. The District Representative shall report the results of this investigation, as well as the propriety of the time extension requested, to Design-Builder in writing within ten (10) days of receipt of the complete request, including quantification of the delay, and shall indicate whether it will recommend for or against the extension. Upon receiving the District Representative's recommendation, Design-Builder may either concur in the recommendation or reject the recommendation and proceed with a claim as provided for in Article 23.

Section 14.04. Discretionary Time Extensions for Best Interest of District.

The District reserves the right to extend the time for completion of the Work if the Board determines that such extension is in the best interest of the District. In the event that a discretionary extension is granted at the request of Design-Builder, the District shall have the right to charge to Design-Builder all or any part, as the Board may deem proper, of the actual cost of project management, engineering, inspection, supervision, incidental, and other overhead expenses that accrue during the period of the extension, and to deduct all or any portion of that amount from the final payment.

In the event a discretionary time extension is ordered over the objection of Design-Builder, and the decision rests solely with the Board and is not legally compelled for any cause, Design-Builder shall be entitled to a Change Order adjusting the price paid to reflect the actual costs incurred by Design-Builder as a direct result of the delay, upon its written application therefore, accompanied with such verification of costs as the District Representative requires. The decision of the Board on any discretionary time extension and the costs thereof shall be final and binding on the District and Design-Builder.

Section 14.05. Liquidated Damages.

If the Work or any specified portion, phase, or Increment of Work is not completed by Design-Builder in the time specified in the Notice to Proceed with construction, or within any period of extension authorized pursuant to this Article, Design-Builder acknowledges and admits that the District will suffer damage, and that it is impracticable and infeasible to fix the amount of actual damages. Therefore, it is agreed by and between Design-Builder and the District that Design-Builder shall pay to the District as fixed and Liquidated Damages, and not as a penalty, the sum specified in the Design-Build Agreement, and that both Design-Builder and Design-Builder's surety shall be liable for the total amount thereof, and that District may deduct Liquidated Damages from any monies due or that may become due to Design-Builder.

Pursuant to Government Code Section 4215, Design-Builder shall not pay fixed and Liquidated Damages for delay in completing the Project or any specified portion, phase, or Increment caused by the failure of the District or the owner of utility facilities located on the Project Site to provide for removal or relocation of such facilities.

Section 14.06. Extension of Time Not a Waiver.

Any extension of time granted Design-Builder pursuant to this Article shall not constitute a waiver by the District of, nor a release of Design-Builder from Design-Builder's obligation to perform its Work in the time specified by the Design-Build Agreement, as modified by the particular extension in question.

The District's decision to grant a time extension due to one circumstance set forth in one request, shall not be construed as a grant of an extension for any other circumstance or the same circumstance occurring at some other time, and shall not be viewed by Design-Builder as a precedent for any other request for extension.

Section 14.07. Effect of Stop Work Notice.

If the District issues a Stop Work Notice pursuant to Article 9, the days on which the suspension is in effect shall be included in determining the required completion date, and shall not otherwise modify or extend the time within which Design-Builder is to perform. In such event, Design-Builder shall not be entitled to any damages or compensation on account of such suspension or delay, unless Design-Builder can establish that Stop Work Notice was not warranted.

ARTICLE 15. CHANGES TO THE WORK**Section 15.01. No Changes Without Consent.**

Subject to Design-Builder's right to access the Contingencies and Allowances, Design-Builder will complete the Project for no more than the Contract Sum, except as provided below. Design-Builder agrees, for itself and on behalf of its Subcontractors and Suppliers, that no use of an Allowance or Contingency or increase in the Contract Sum will be made for work that Design-Builder or its Subcontractors and Suppliers might otherwise claim as a Change Order or extra work unless Design-Builder establishes that the additional cost is the result of one of the following:

- (a) a material change in the scope of work directed or authorized by the District;
- (b) a change in applicable law that was not reasonably foreseen or a change required by regulatory authorities (including inspections) that was not reasonably ascertainable from the Contract Documents and not reasonably inferable from Design-Builder's or Subcontractor's knowledge of local practices or circumstances;
- (c) regulatory fees not included in the Contract Sum or excluded by the Contract Documents;
- (d) Differing Site Conditions;
- (e) whenever costs are more than or less than the sum of Allowances, if any, and the Contingencies, the compensation shall be adjusted accordingly by Change Order, and the amount of the Change Order shall reflect the difference between actual costs and the Allowances and Contingencies; or
- (f) wrongful acts of District or a separate contractor employed by District, or by damage to the Work caused by fire or other unavoidable casualties not the fault of Design-Builder or Subcontractors or Suppliers.

Design-Builder further acknowledges that its contractual obligation to indemnify District extends to claims asserted by Subcontractors or Suppliers seeking compensation for alleged Change Orders or extra work for which District is not liable to Design-Builder as a result of these provisions. Subject to the provisions in Article 4 of the Design-Build Agreement, nothing in this section shall foreclose Design-Builder from access to the Construction Contingency for properly incurred Costs of the Work that are attributable to causes for which a Change Order is prohibited by this section.

No extra work shall be performed, and no change shall be made, except pursuant to a written Change Order or Proposed Change Order, signed by the District, or by a Directive (signed by either the District or the District Representative) stating that the extra work or change is authorized, and no claim for any addition to the Contract Sum or Contract Time shall be valid unless so authorized; provided, however, that nothing in this Article shall excuse Design-Builder from proceeding with the prosecution of the work so changed. Design-Builder shall furnish an itemized breakdown of the quantities and prices used in computing the value of any change, including permitted uses of Contingencies and Allowances requested by Design-Builder, or that may have been ordered by the District, including all items listed in Section 15.06 and 15.07, below.

Change Orders shall specify the cost adjustments associated therewith, and in no case shall the District pay or become liable to pay any sums different than those specified or those established under Section 15.06 and 15.07.

Section 15.02. Change Orders.

The District may require changes in, additions to, or deductions from the Work to be performed or the materials to be furnished pursuant to the Construction Documents. Changes may be made pursuant to a written Change Order (signed by the District), which shall state the agreement of the District, Design-Builder, and the Architect, regarding all of the following:

- A. The scope of the change in the Work;
- B. The amount of the adjustment in the Contract Sum, if any; and
- C. The extent of the adjustment in the Contract Time, if any.

The District may also issue unilateral Change Orders based upon a previously issued Directive. Unilateral Change Orders shall be approved by the District and the District Representative, but need not be signed by Design-Builder.

All adjustments to the Contract Sum or the Contract Time must be approved by the District Board.

Signature by Design-Builder on the Change Order constitutes its agreement with and acceptance of use of Allowances or Contingencies, the adjustments in the Contract Sum, and/or adjustments to Contract Time, if any, set forth in the Change Order as full and complete satisfaction of any direct or indirect additional cost and/or time incurred by Design-Builder in connection with performance of the change work.

Section 15.03. Not Used.

Section 15.04. Change Orders Regarding Time for Completion.

Any time extension authorized by the District pursuant to Article 14 hereof shall be set forth in a Change Order signed by the District.

Section 15.05. Construction Change Directive/Directive.

Changes also may be made pursuant to a Directive, which shall direct a change in the Work and state a proposed use of Allowances or Contingencies or basis for adjustment, if any, in the Contract Sum or Contract Time, or both. A Directive shall be used in the absence of total agreement on the terms of a Change Order, or when time does not permit processing of a Change Order prior to implementation of the change. Directives shall be approved by the District and the Architect, but need not be signed by Design-Builder. Upon receipt of a Directive, Design-Builder shall promptly proceed with the change in the Work involved. It is the intent of the District that all Directives will be converted to a Change Order.

When a Directive is used because time does not permit processing of a Change Order prior to implementation of the change, signature by Design-Builder on the Directive constitutes its agreement with and acceptance of the use of Allowances or Contingencies or adjustments in the Contract Sum and Contract Time, if any, set forth in the Directive as full and complete satisfaction of any direct or indirect additional cost and/or time incurred by Design-Builder in connection with performance of the changed work.

If Design-Builder disagrees with the method for payment for the change, the adjustment shall be determined by the District Representative on the basis of any of the methods described in Section 15.06A, Paragraphs 2, 3, or 4.

Section 15.06. Pricing of Changes.

A. The following pricing methods shall apply to permitted uses of any Contingency or Allowance:

1. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. Unit prices as mutually agreed upon;
3. The District Representative's estimate of the value of the change; or
4. A "cost plus" adjustment subject to the limitations in Section 15.08.

Section 15.07. Allowable Costs.

A. Allowable costs for any permitted use of Contingency or Allowance shall be limited to the following:

1. Costs of labor, including social security, Medicare and unemployment insurance, fringe benefits required pursuant to Article 7, and workers' compensation insurance;
2. Costs of first line supervision labor, including labor burden as described in Paragraph 1. "First Line Supervision" shall mean a working foreman or lead craft worker other than the project superintendent;
3. Actual cost of the project superintendent associated with any period of compensable delay caused by issuance of the Change Order. In the absence of a compensable delay, all of the project superintendent's time is considered to have been paid for as part of the Overhead;
4. Actual costs of materials, including sales tax and delivery;
5. Rental costs of machinery and equipment, exclusive of small tools, whether rented from Design-Builder or others;
6. Overhead and Profit as specified below. "Overhead" shall include the following:

Preparation of all paperwork related to changes in the Work, including field review, estimating and cost breakdown; coordination and supervision, both office and field, including the project superintendent; vehicles including gas and maintenance; small tools, incidentals and consumables; engineering, detailing, and revisions to shop drawings and as-built drawings; general office and administrative expense; extended and unabsorbed home office overhead; warranty; costs of bonds, liability insurance,

builder's risk insurance, all taxes; and all other expenses not specifically included in Paragraph A above.

- B. For permitted use of the Contingencies or Allowances included in the Contract Sum, or changes to the Contract Sum above Contingencies and Allowances, the following markups shall apply to the costs specified in Section 15.07 (1) – (5): (1) Design-Builder's combined Overhead and Profit for Work performed by its own forces shall be its actual fee as stated in its Proposal in response to the RFP plus its actual markup for bonds and insurance; (2) If the changed Work is performed by a Subcontractor, the Subcontractor shall be entitled to an allowance of up to fifteen percent (15%) as determined by Design-Builder, for its labor, material, and rental costs for Overhead and Profit and Design-Builder shall be allowed to markup the Subcontractor's price its actual fee as stated in its Proposal in response to the RFP plus its actual markup for bonds and insurance. Cumulative total markup for all tiers of contractors and subcontractors shall not exceed twenty-two percent (22%).
- D. If the net value of a change results in a credit from Design-Builder or subcontractor, the credit shall be the actual net cost, and the credit shall be applied to the Construction Contingency and/or District Contingency at the District's discretion. When both additions and credits covering related work or substitutions are involved in any one change, the allowance for Overhead and Profit shall be figured on the basis of the net increase or decrease, if any, with respect to the change.

Section 15.08. Time and Materials Adjustment.

- A. Record Keeping. In the event that the pricing method selected is the "time and materials" method described in Section 15.06A, Paragraph 4, the pricing shall be calculated using the formula and costs set forth in Section 15.07, except that time and material (T&M) labor rates shall be pre-approved by the District Representative for T&M work. Design-Builder shall keep and present daily, in such form as the District Representative may prescribe, an itemized accounting together with appropriate invoices and other supporting data of the labor, materials, and equipment used during that day. All labor shall be recorded on separate time sheets clearly identified with the Directive number and scope of extra work involved. These time sheets shall be signed daily by the District Representative. No costs will be allowed for time not recorded and signed the same day the work takes place. Design-Builder and the District Representative shall discuss and attempt to resolve any disputes concerning Design-Builder's daily records at the time the report is submitted.
- B. Reconciliation. Design-Builder shall on a monthly basis accompanying its progress payment submissions submit a reconciliation for all work performed under a cost plus Directive during the period of the progress payment. A final reconciliation shall be submitted within thirty (30) days after the work of the Directive is completed. The reconciliation shall recap all costs and appropriate markups for the period. No costs will be allowed for work not included in a reconciliation within the time periods specified.

Section 15.09. Effect on Sureties.

All changes authorized by the Construction Documents may be made without notice to or consent of the sureties on the contract bonds, and shall not reduce the sureties' liability on the bonds.

Section 15.10. Differing Site Conditions.

If the Contract Documents require the digging of trenches or other excavations that extend deeper than four feet below the existing surface, the following provision shall apply to those trenches or excavations:

- A. In the event that any of the following described conditions is suspected to exist in the trench or excavation, Design-Builder shall promptly, and before the condition is disturbed, notify the District Representative, in writing, of any:
 1. Material that Design-Builder believes may be material that is 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.
 2. Subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract Documents.
 3. Unknown physical conditions at the Site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- B. Upon receipt of notice from Design-Builder, the District Representative and the District shall promptly investigate the conditions, and if it is determined that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in Design-Builder's cost of, or the time required for, performance of any part of the work shall issue a Change Order or Directive under the procedures described in the Contract Documents.
- C. In the event that a dispute arises between the District and Design-Builder as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Design-Builder's cost of, or time required for, performance of any part of the Work, Design-Builder shall not be excused from any scheduled completion date provided for by the Construction Documents, but shall proceed with all Work to be performed under the Contract Documents. Design-Builder shall retain any and all rights provided either by the Contract Documents or by law, which pertain to the resolution of disputes and protests between the contracting parties.
- D. No cost or time adjustment, which results in a benefit to Design-Builder, will be allowed unless Design-Builder has provided the required written notice under Paragraph A of this Section 15.10.
- E. Nothing in these provisions relieves Design-Builder of its design obligations, including, without limitation, for geotechnical work. All such design obligations must be performed according to the professional standard of care stated in the Design-Build Agreement. In the event Design-Builder makes a claim for differing site conditions, and as a condition to such claim, Design-Builder will be required to establish that its design work related to the site, subsurface conditions, and geotechnical conditions, did not fall below the standard of care.
- F. No cost or time adjustment will be allowed under the provisions specified in this Section for any effects caused on unchanged work.

As between Design-Builder and the District, the District is responsible for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site if such

utilities are not identified in the Plans and Specifications, provided the failure to locate such facilities on the Plans and Specifications is not due to Design-Builder's services following below the standard of care and/or could not reasonably be assumed to be a component of the existing Site. If Design-Builder, while performing its work, discovers utility facilities not identified in the Plans or Specifications, it shall immediately notify the District and the associated utility in writing. Thereafter, and provided it has given such notice, Design-Builder shall be entitled to use of the District Contingency or an adjustment of the Contract Sum and an extension of the Contract Time, in accordance with Articles 14 and 15 of these General Construction Terms and Conditions, for the costs of locating, repairing damage not due to the failure of Design-Builder to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work when such costs and time are caused by the failure of the District or the owner of the utility to provide for removal or relocation of such utility facilities. Notwithstanding anything to the contrary herein, the District is not required to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the Site. Nothing herein shall preclude the District from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility.

Section 15.11. Notice of Dispute

If Design-Builder intends to make a claim for use of an Allowance or Contingency or a change in the Contract Sum or Contract Time, Design-Builder must give the District Representative written notice within ten (10) days of the occurrence of the event giving rise to the claim. Thereafter, Design-Builder may proceed with a claim as provided for in Articles 21 and 23. **Failure to provide the written notice within ten (10) days of the occurrence of the event giving rise to the claim shall constitute a waiver by Design-Builder of any claim for a change in the Contract Sum or Contract Time.**

ARTICLE 16. NOT USED

ARTICLE 17. REJECTION AND REPLACEMENT OF WORK AND MATERIALS**Section 17.01. Rejection of Materials and Workmanship.**

The District shall have the right to reject materials and workmanship, which are determined, by the District Representative or the Project Inspector to be defective or fail to comply with the Contract Documents. Rejected workmanship shall be corrected to the satisfaction of the District Representative, and rejected materials shall be removed from the premises and replaced, all without added cost or time to the District.

If Design-Builder does not correct such rejected work and/or materials within a reasonable time, fixed by the District Representative in a written notice to Design-Builder, the District may correct the same and charge the expense to Design-Builder, and deduct such expense from the next payment otherwise payable to Design-Builder.

If the District determines that it is in its best interest not to correct defective workmanship and/or materials, or work not done in accordance with the Contract Documents, Design-Builder agrees that an equitable deduction from the Contract Sum shall be made therefore.

Section 17.02. Correction of Work.

Design-Builder shall promptly correct all work rejected by the District Representative or Project Inspector as defective or as failing to conform to the Construction Documents, whether observed before or after Final Completion and whether or not fabricated, installed, or completed. Design-Builder shall bear all costs of correcting such rejected work including compensation for additional services of the Project Inspector and the District Representative.

If within two (2) years after the Notice of Completion date for the Project, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, Design-Builder shall correct any and all such work, together with any other work which may be displaced, destroyed, or damaged in so doing, without expense to the District, promptly after receipt of a written notice from the District, unless the District has previously given Design-Builder a written acceptance of such condition. The District shall issue a correction notice promptly after discovering the condition. Design-Builder shall notify the District upon completion of repairs. This obligation shall survive termination of the Design-Build Agreement with respect to work in place prior to termination.

Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligations which Design-Builder might have under the Construction Documents or by operation of law. The establishment of the time period of two (2) years after the Date of Completion, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Construction Documents, relates only to the specific obligation of Design-Builder to correct the Work and has no relationship to the time within which an action may be commenced to establish Design-Builder's liability with respect to its obligations other than specifically to correct the work.

ARTICLE 18. DISTRICT'S RIGHT TO TERMINATE CONTRACT**Section 18.01. Termination by the District for Convenience.**

The District may at any time and for any reason, terminate, in whole or in part, Design-Builder's Work at the District's convenience. Termination shall be by written notice to Design-Builder. Upon receipt of such notice, Design-Builder shall, unless the notice directs otherwise, immediately discontinue its work and the placing of orders for materials, facilities and supplies in connection therewith, and shall, if requested, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to the District, or at the option of the District, the District shall have the right to assume those obligations directly, including all benefits to be derived therefrom. Design-Builder hereby assigns to the District all of its interest in said orders and/or contracts, and the assignment of said orders and/or contracts shall be effective upon notice of acceptance by the District in writing, and only as to those orders and/or contracts which the District designates in writing. Following receipt of notice of termination, Design-Builder shall thereafter do only such work as may be necessary to preserve and protect portions of its work already in progress and to protect materials and equipment on or in transit to the Project.

Upon such termination, Design-Builder shall be entitled to payment only as follows: (1) Design-Builder's direct, actual cost of the Work allocable to the portion of the Work completed in conformity with the Contract, but in no event to exceed the amount of the Contract Sum allocable to the portion of the Work completed in conformity with the Contract; plus (2) previously unpaid costs of any items delivered to the Project Site which were fabricated for subsequent incorporation in the Work, but in no event to exceed the portion of the Contract Sum allocable to said items; plus (3) an allowance of ten percent (10%) of the foregoing costs for Design-Builder's overhead and profit; plus (4) any proven losses with respect to materials and equipment directly resulting from the termination; plus (5) reasonable demobilization costs. Design-Builder is required to incorporate these terms into its subcontracts so no costs of terminating subcontracts other than as specified herein will be permitted. The costs referred to in this section shall be calculated and documented as required for a change order under Article 15 of the General Conditions, except that mark-up for overhead and profit shall be only as allowed by this section. There shall be deducted from such sums the amount of any payments made to Design-Builder prior to the date of the termination of this Contract. Design-Builder shall not be entitled to any claim or claim of lien against the District for any additional compensation or damages in the event of such termination and payment beyond that provided for in this Section.

In connection with any termination for convenience, Design-Builder shall allow the District, District Representative or any authorized representative(s) to inspect, audit, or reproduce any records to the extent necessary for the District or District Representative to evaluate and verify the costs incurred by Design-Builder in performing the Work, including direct and indirect costs such as overhead allocations. Design-Builder will make this material available upon 48-hours' written notice from the District or District Representative. The District and District Representative may inspect and copy, from time to time and at reasonable times and places, any and all information, materials and data of every kind and character (hard copy, as well as electronic data), including without limitation, books, papers, documents, subscriptions, recordings, estimates, price quotations, agreements, purchase orders, leases, contracts, commitments, arrangements, notes,

daily diaries, superintendent reports, drawings, receipts, vouchers, monthly, quarterly, yearly or other financial statements, and any and all other information or documentation that may, in the judgment of the District or District Representative, have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by the Contract Documents. Such records shall include but not be limited to, the following: accounting records, payroll records, job cost reports, job cost history, margin analysis, written policies and procedures, subcontract files (contracts, correspondence, change order files, including documentation covering negotiated settlements), back charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends, and any other documents customarily maintained by contractors performing work on public works projects or that the District or District Representative otherwise deem necessary to substantiate charges related to a termination.

If this Contract is terminated for default under Section 18.02 and if it is later determined that the default was wrongful, such default termination automatically shall be converted to and treated as a termination for convenience under this section. In such event, Design-Builder shall be entitled to receive only the amounts payable under this section, and Design-Builder specifically waives any claim for any other amounts or damages, including any claim for consequential damages or lost profits.

Section 18.02. Termination by the District for Cause.

The District may terminate the Contract and/or Design-Builder's right to proceed with the Work, pursuant to the provisions of this Article, for the following causes:

- A. Design-Builder is insolvent or has made a general assignment for the benefit of creditors, or a receiver has been appointed on account of the insolvency of Design-Builder.
- B. Design-Builder or any of its Subcontractors materially violate any of the provisions of the Contract Documents or fail to perform the work within the time specified in the current Contract Schedule.
- C. Design-Builder or any of its Subcontractors should fail to make prompt payment to Subcontractors or material suppliers for material or for labor as required by statute.
- D. Design-Builder or a Subcontractor persistently disregards laws, ordinances, or the instructions of the District Representative or the District.
- E. Design-Builder fails to abide by a stop work notice issued pursuant to Article 9 or fails to correct rejected work or materials as required by Article 17.
- F. Design-Builder fails to provide and keep in full force and effect all insurance required by the Contract Documents 3, or fails to cause all Subcontractors to so comply.
- G. Design-Builder fails to supply a sufficient number of properly skilled workers or proper materials to timely complete the Work.
- H. Design-Builder commits any violation of the terms and conditions of the Contract Documents which the District, in its sole discretion, finds to be a material breach of the Contract.

Section 18.03. Procedure for Termination for Cause.

The District may, without prejudice to any other right or remedy, give written notice to Design-Builder and its surety or sureties of its intention to terminate the Contract and/or Design-Builder's right to proceed with the Work.

Unless Design-Builder shall cease such violation and make satisfactory arrangements for a correction thereof within seven (7) days of the delivery of such notice, or such longer period specified in the notice, which arrangements are set forth in a written agreement signed by Design-Builder and the District, Design-Builder's right to complete the Work shall cease and terminate.

In the event of any such termination, the District shall immediately give written notice thereof to the surety and to Design-Builder and the surety shall have the rights and obligations set forth in the performance bond. If the District is forced to take over the Work, it may prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of Design-Builder, and Design-Builder and its sureties shall be liable to the District for any excess costs, including management, supervision, and design support, occasioned thereby. In such event, the District may, without liability, take possession of and utilize in completing the Work, Design-Builder's materials whether stored at the Site or elsewhere, that are necessary for completion. Design-Builder hereby assigns to the District all of its interest in orders and/or contracts existing at the time of termination. The assignment of said orders and/or contracts shall be effective upon notice of acceptance by the District in writing, and only as to those orders and/or contracts which the District designates in writing. Whenever Design-Builder's right to proceed is terminated, Design-Builder shall not be entitled to receive any further payment until the Work is finished and shall be liable to the District for liquidated damages for all periods of time from such termination date until the Date of Substantial Completion, as well as for all losses incurred by the District in completing the Work.

Section 18.04. Not Used.Section 18.05. Not Used.Section 18.06. Survival of Obligations.

No termination of this Contract or of Design-Builder's right to proceed with the Work shall excuse or otherwise relieve Design-Builder of its responsibilities under the Contract Documents with respect to any Work performed prior to the date of termination, including, without limitation, its obligation to perform the Work in a good and workmanlike manner, free of defects, and in accordance with the Contract Documents, its warranty obligations with respect to the Work, and its obligation to make all payments due. All of Design-Builder's responsibilities under the Contract Documents with respect to the Work performed prior to the date of termination shall survive any termination.

Section 18.07. Termination After Contract Time.

In addition to any rights it may have, the District may terminate this Contract or Design-Builder's right to proceed with the Work at any time after the Contract Time, as adjusted by any extensions of time that the District may have granted.

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Upon such termination, in addition to Design-Builder's obligations under Section 18.06 and the other provisions of the Contract Documents, Design-Builder shall not be entitled to receive any compensation for services rendered before or after such termination until the Work is completed, and Design-Builder shall be liable to the District for liquidated damages for all periods of time from the Contract Time, adjusted by any extensions of time that the District may have granted, until the date of Substantial Completion, as well as for all losses incurred by the District in completing the Work.

ARTICLE 19. PRESERVATION AND CLEANING**Section 19.01. Periodic Cleaning of Project.**

Design-Builder shall properly clean its Work and the Site, and maintain its Work area in an orderly manner. Design-Builder shall remove all dirt, debris, waste, rubbish, and implements of service from the Project, the adjacent sidewalks and streets, and the working area daily or as directed by the District Representative. Debris, waste, or unused construction materials shall not be left under, in, or about the Project, nor allowed to accumulate on the Site or in the working area.

Design-Builder, at its sole cost, shall contract with a disposal company to remove all rubbish, and shall have the refuse containers emptied at frequent enough intervals so that waste does not overflow the containers.

If Design-Builder fails to clean up during progress or upon completion of the Work, the District may, at Design-Builder's expense and reduce the amount of the Contract Sum, including any payment(s) due or to become due, accordingly.

Section 19.02. Final Cleaning of Project.

Prior to final acceptance, Design-Builder shall thoroughly clean the interior and exterior of the buildings, and the Site and adjacent areas, of all material related to its performance of the Work, including spots, stains, paint spots, trade markings and labels, and accumulated dust and dirt. In the event Design-Builder fails to do so, the District may cause this work to be done at Design-Builder's expense and reduce the amount of the Contract Sum, including any payment(s) due or to become due, accordingly.

The following list is not inclusive but to act as a guideline to include:

- A. Removal of all paint spots, stains, petrochemical spills, and other foreign deposits.
- B. Removal of all rubbish, construction debris, grime, waste material, litter, and other foreign substances.
- C. Removal of all tools, construction equipment, machinery, and surplus material not required to be turned over to the District from all areas.
- D. Remove all labels that are not permanent labels.
- E. Wipe surfaces of mechanical and electrical equipment, elevator equipment, and similar equipment. Remove excess lubrication, paint and mortar droppings, and other foreign substances.
- F. Cleaning interior and exterior of the buildings to a dirt-free condition, free of stains, films, and similar foreign substances, including without limitation all walls, doors, ledges, registers/grilles, light fixtures, and windows, in any area affected by the Work. Removing glazing compounds and cleaning transparent materials, including mirrors and glass in doors and windows.

- G. Sweeping paved areas broom clean. Raking grounds that are neither planted nor paved to a smooth, even-textured surface. Brushing off, broom sweeping, dusting and cleaning ledges, stairs, doors, hardware,.
- H. Finishing all floors with sealer, wax, and/or other finishes required by the Construction Documents and mopping same; vacuuming all carpets.
- I. Repairing any areas damaged during the course of construction.

Prior to Final Completion or District occupancy, Design-Builder shall conduct an inspection of sight-exposed surfaces, and all work areas, to verify that the entire work is clean. In the event Design-Builder fails to do so, the District may cause this work to be done at Design-Builder's expense and reduce the amount of the Contract Sum, including any payment(s) due or to become due, accordingly.

ARTICLE 20. COMPLETION, INSPECTION, AND OCCUPANCY BY DISTRICT**Section 20.01. Inspection.**

When Design-Builder believes that its Work is complete, it shall request in writing a final inspection. Before calling for final inspection, Design-Builder shall determine that the following work has been performed:

- A. General construction has been completed.
- B. Mechanical and electrical work complete, fixtures and portables, in place, connected and ready for tryout and test.
- C. Electrical circuits scheduled in panels and disconnect switches labeled.
- D. Painting and special finishes complete.
- E. Doors complete with hardware, cleaned of protective film and relieved of sticking or binding and in working order.
- F. Tops and bottoms of doors sealed, if needed.
- G. Floors waxed and polished as specified.
- H. Broken glass replaced and glass cleaned.
- I. Grounds cleared of Design-Builder's equipment, raked clean of debris, and trash removed from the Site.
- J. Work cleaned, free of stains, scratches, and other foreign matter, replacement of damaged and broken material.
- K. Finish and decorative work shall have marks, dirt and superfluous labels removed.

Final inspection will be made upon written notification from Design-Builder to District that the Work has been completed. Design-Builder shall receive a list (punch list) of items found unacceptable and shall promptly correct them. Upon written notification from Design-Builder that all items have been corrected, re-inspection for final acceptance of the Project will be made. Failure of Design-Builder to complete punch list items will necessitate further re-inspection. Costs of re-inspection will be deducted from any amounts due to Design-Builder.

If punch list work needs to be performed after the District has taken occupancy of a phase or the entire Work, then the Work shall be conducted outside of normal school hours at the direction of the District Representative.

No one is authorized to amend the Contract Documents by use of the punch list; it is provided solely for the benefit of Design-Builder to enable it to determine what items must be corrected

before final acceptance will be recommended. The District reserves the right to require compliance with the Contract Documents, notwithstanding the issuance of a punch list or the completion by Design-Builder of all items on the punch list.

Section 20.02. Use of Work Prior to Acceptance.

Whenever, in the opinion of the District, the Work or any part thereof, is in a condition suitable for use, and the best interests of the District require such use, the District may take possession of, connect to, and open for public or District use that portion of the Work. The District shall provide Design-Builder not less than ten (10) days' notice of such possession or use.

The District's occupancy shall not constitute acceptance by the District of the Work or any part thereof. Such use shall neither relieve Design-Builder of any of its responsibilities under the Contract Documents, nor act as a waiver by the District of any of the terms or conditions of the Contract Documents. Any damage done by the District is the responsibility of the District. Design-Builder acknowledges and agrees that any occupancy and/or use of all or any portion of the work of improvement does not constitute acceptance or completion within the meaning of California Civil Code section 9200.

Section 20.03. Repairs or Renewal in the Work.

Prior to the Date of Completion, Design-Builder shall make all repairs or renewals in the portion of the Work occupied pursuant to Section 20.02 made necessary due to defective material or workmanship, or the operations of Design-Builder, ordinary wear and tear accepted.

Section 20.04. Not Used.

Section 20.05. Coordination with Other Activities.

Design-Builder shall conduct its operations so as not to interfere unreasonably with the District's use of the occupied portions of the Site. Design-Builder shall submit periodic schedules to the District Representative proposing the times, areas, and types of work to be done within such areas.

If the Work produces conditions rendering the occupied portions of building, the Site, or other areas uninhabitable, either because of noise, dust, vibration, smoke, fumes, or for any other cause whatsoever, the District Representative may suspend the Work or request Design-Builder to modify the Construction Schedule, and Design-Builder shall comply.

If the District takes occupancy pursuant to Section 20.02 it shall not unreasonably interfere with Design-Builder's ability to complete its work in a timely and efficient manner.

Except as provided by Change Order, Design-Builder shall not be entitled to a time extension or increase in the Contract Sum by virtue of conflicts between Design-Builder's Work and the District's occupancy.

ARTICLE 21. PROJECT CLOSEOUT**Section 21.01. Design-Builder's Certificate of Completion.**

When Design-Builder determines that the Project is complete and all items on the punch list have been satisfied, Design-Builder shall submit a Certificate of Completion to the District Representative.

Section 21.02. Additional Submissions.

Simultaneously with Design-Builder's Certificate of Completion, Design-Builder shall submit the following items to the District Representative:

- A. As-built drawing information pursuant to Section 5.02.
- B. One (1) original set of documentation and one (1) PDF file(s) in electronic format uploaded into the PMIS completely covering the operation and maintenance of the mechanical and electrical installation, elevators, kitchen equipment, and all other equipment required by the technical specifications to be furnished with such manuals. The documentation shall include charts, diagrams, performance curves, catalog information, lubrication manuals, and details pertaining to the functioning of various items of equipment. The documentation shall be divided logically into "systems" on the basis of operation, without respect to trades, subcontractors or arbitrary specifications sections. The relationship of the "systems" shall be clearly and concisely detailed.
- C. Hazardous material documentation if required.
- D. DVBE Compliance Report documenting and certifying the amount of Work performed by DVBEs.
- E. Any extra stock material and equipment and manufacturer warranties/guarantees as required by the contract documents.
- F. Other items as required in the Contract Documents.

Section 21.03. Final Payment Process.

Upon approval of the submittals required by this Article and receipt of the Contractor's final payment application, and upon verification that all of the Work is complete, including all punch list items, the District Representative shall either (1) recommend to the District that the payment application be accepted, which recommendation shall be made within five (5) business days of receipt of Design-Builder's final payment application, or (2) send a notice to Design-Builder rejecting the payment application, stating the basis therefor, and submitting a written estimate of the sum due to Design-Builder, which written estimate shall be provided to Design-Builder within twenty (20) calendar days of the District Representative's receipt of Design-Builder's final payment application. The District Representative's estimate shall take into account the Contract Sum, as adjusted by any Change Orders; amounts already paid; and sums to be retained for incomplete work, liquidated damages, and for any other cause under the Contract Documents. Any protest by Design-Builder of the District Representative's estimate shall be as set forth in Section 21.04 and Article 23.

The District Representative shall prepare a statement of final inspection, stating that the Work has been given a final inspection, that Design-Builder has submitted the required documents (or which documents are missing), setting forth with detail any deviations in the Work as completed from the Contract Documents, and estimating the cost of correction of such deviations.

The District Representative's statement shall be transmitted to the District along with Design-Builder's application for final payment approved by the District Representative and Project Inspector. The District Representative shall provide a copy of the District Representative's statement of final inspection to Design-Builder.

Section 21.04. Protest of the District Representative's Estimate; Claims.

If Design-Builder contests the estimate of sums due prepared by the District Representative, Design-Builder may file a claim in writing with the District Representative pursuant to the requirements of Article 23 and setting forth in detail all grounds alleged by Design-Builder to justify an adjustment to the District Representative's estimate. Design-Builder's claim shall be certified under penalty of perjury and in compliance with the California False Claims Act. Failure to include these required certifications will constitute grounds for immediate rejection of the claim.

Failure to file a timely claim shall constitute a waiver and acceptance by Design-Builder of the District Representative's estimate, which shall then become final and be forwarded to the District for approval of payment.

Section 21.05. Completion; Acceptance of Contract; Notice of Completion.

Design-Builder acknowledges and agrees that completion shall mean Design-Builder's complete performance of all Work required by the Contract Documents, amendments, Change Orders, Construction Change Directives and punch lists, and the District's formal acceptance of the Work, without regard to prior occupancy, substantial completion doctrine, beneficial occupancy or otherwise.

Acceptance of the Work shall be made only by formal acceptance by the District. Recordation of a Notice of Completion shall be in the manner prescribed by law, provided that the Work shall then be fully and satisfactorily completed and the provisions of the Contract Documents fully and satisfactorily performed in all respects.

Section 21.06. Approval of Final Payment.

Following acceptance of the Work, the District shall authorize final payment to Design-Builder of the undisputed sums found due, subject to retentions for stop payment notices as provided in Section 21.07 below. This final payment shall be made within sixty (60) days after completion, as defined in Section 21.05 above, and recordation of the Notice of Completion.

Section 21.07. Withholding for Stop Payment Notices.

The District will withhold from Design-Builder any unpaid claims alleged in stop payment notices filed pursuant to California Civil Code sections 9350 *et seq.* The District reserves all remedies it may have in the event of a stop payment notice dispute. The basic standard to determine a sufficient withholding in the event of a stop payment notice shall be one hundred fifty

percent (150%) of the total of all stop payment notices filed; provided, however, the District reserves the right to withhold different or greater sums in its discretion.

Section 21.08. Non-Waiver.

Neither acceptance of, nor payment for, the Work or any part thereof, nor any extension of time, nor any possession taken by District shall operate as a waiver of any of the provisions of this Contract, nor shall a waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach. In addition, recordation of a Notice of Completion shall not be deemed an acceptance of latent defects, nor shall it constitute a waiver of any of the provisions of this Contract.

ARTICLE 22. GUARANTEES

Section 22.01. Guarantee Required.

Neither the final payment nor any provision in the Contract Documents shall relieve Design-Builder of responsibility for any faulty Work under the Contract Documents. As provided in greater detail in the Guarantee form required in connection with Project close-out, Design-Builder shall and does unconditionally guaranty the quality and adequacy of all of Work provided under the Contract Documents including, without limitation, all labor, materials, and equipment provided by Design-Builder and its Subcontractors (of all tiers) in connection with the Work and hereby agrees, immediately upon receiving notification from District, to remedy, repair, or replace, without cost to District, all defects which may appear as a result of any faulty Work in the Project, at any time, or from time to time, during a period beginning with commencement of the Project and ending two (2) years after the Notice of Completion date for the Project.

The foregoing warranty of Design-Builder applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by Design-Builder and/or any party retained by, through or under Design-Builder in connection with the Project, but the foregoing warranty of Design-Builder does not guarantee against damage to the Project sustained by lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Design-Builder, except where such changes or additions to the Project are made in accordance with Design-Builder's directions. No guarantee furnished by a party other than Design-Builder with respect to equipment manufactured or supplied by such party shall relieve Design-Builder from the foregoing warranty obligation of Design-Builder. The warranty period set forth hereinabove shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply.

If, in the opinion of the District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District, the District will attempt to give the notice required by this Article. If Design-Builder cannot be contacted or does not comply with the District's requirements for correction within a reasonable time as determined by the District, the District may proceed to make such correction and the reasonable cost shall be charged to Design-Builder. Such action by the District will not relieve Design-Builder of the guarantee provided in this Article or elsewhere in the Design-Build Agreement and/or Construction Documents.

This Article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Design-Builder shall furnish District all appropriate guarantee and warranty certificates upon completion of the Project.

The guarantee is in addition to, and not in lieu of, the District's rights under the Design-Build Agreement, these General Conditions, and/or the Contract Documents.

ARTICLE 23. CLAIMS AND DISPUTES

Claims shall be subject to the requirements of Public Contract Code sections 20104 *et seq.* and 9204. A summary of those provisions is set forth below. A waiver of the rights granted by the referenced statutes is void and contrary to public policy, provided, however, that (1) upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the District may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the statutory requirements, so long as the contractual provisions do not conflict with or otherwise impair the statutory timeframes and procedures. To the extent that the summary below is inconsistent with any requirement of those statutes, the statutes shall control. The terms below are intended to be consistent with the governing statutes, and any modifications shall be understood as lawful modifications or additions to the statutory requirements if at all possible.

Section 23.01. Notice of Potential Claim.

Design-Builder shall promptly provide a written Notice of Potential Claim to the District upon discovery of concealed or unknown conditions or discovery of facts regarding any disagreement, protest, direction, situation, event, or occurrence that may result in a claim, including but not limited to changes in work and delays. The written Notice of Potential Claim shall set forth the reasons for which Design-Builder believes application of an Allowance or Contingency or adjustment to the Contract Sum or Contract Time will or may be due, the nature of the costs and/or time involved, and, insofar as possible, the amount of the potential claim. The Notice shall be submitted as soon as practical, but no more than five (5) working days after the discovery of any facts or event that does or may give rise to the claim, unless a different period for notice is specified in the Contract. **Failure to timely submit the Notice of Potential Claim constitutes acknowledgement that the condition(s), fact(s), occurrence(s) or event(s) did not cause any increase in cost or time to perform and waives any Claim that Design-Builder otherwise may have had the right to submit based on such condition(s), fact(s), occurrence(s) or event(s).**

Section 23.02. Definitions.

“Claim” means a separate demand by Design-Builder sent by registered mail or certified mail with return receipt requested, for one or more of the following:

- (A) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.
- (B) payment by the public entity of money or damages arising from work done by, or on behalf of, Design-Builder pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.
- (C) payment of an amount that is disputed by the District.

“Mediation” means any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation.

“Public works contract” or “public works project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

“Subcontractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with Design-Builder or is a lower tier subcontractor.

Section 23.03. Claims Procedure.

All Claims under this Agreement shall be resolved using the following procedure.

23.03.01 The Claim shall be in writing and include the documents necessary to substantiate the Claim. The evaluation of the Claim will be based on the District's records and the Claim documentation submitted by Design-Builder, which shall include but not be limited to the following: an explanation of the background; a chronology (including dates of all key events and date(s) that the Notice of Potential Claim was given); an explanation of Design-Builder's position; supporting documentation of merit; analysis of delay for any claimed additional time, including CPM schedules; and a calculation of damages or additional amounts claimed, if any. Supporting documentation of merit may include, but not be limited to, Construction Documents, correspondence, conference or meeting notes, shop drawing logs, survey books, inspection reports, delivery schedules, test reports, daily reports, subcontracts, CPM schedules, photos, RFIs, Directives, and other such records. Supporting documentation of damages may include, but not be limited to, certified payroll reports; purchase orders; invoices; project as-planned and as-built costs; Subcontractor payment releases; quantity reports; other related records; general ledger and any other accounting materials.

Claims must be filed on or before the date of final payment, except that the Claim must be submitted no later than thirty (30) days from the date of the District Representative's estimate of sums due. Any Claim shall be certified under penalty of perjury and in compliance with the California False Claims Act, as set forth in Section 23.04 below. **Failure to include these required certifications will constitute grounds for immediate rejection of the Claim and shall be deemed a waiver and absolute bar of the Claim, including any right to pursue the Claim further.**

23.03.02 If a Subcontractor, including a lower tier Subcontractor, lacks legal standing to assert a Claim against the District because privity of contract does not exist, then Design-Builder may present a Claim on behalf of such a Subcontractor. A first-tier Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that Design-Builder present a Claim on behalf of the Subcontractor for work that was performed by the Subcontractor. The Subcontractor requesting that the claim be presented shall furnish reasonable

Appendix B

documentation to support the Claim. Within 45 days of receipt of this written request, Design-Builder shall notify the Subcontractor in writing as to whether Design-Builder presented the Claim and, if Design-Builder did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.

- 23.03.03 Upon receipt of a Claim, the District shall conduct a reasonable review of the Claim. Within 30 days of receipt of the Claim, the District may request, in writing, any additional documentation supporting the Claim or relating to defenses to the Claim that the District may have against Design-Builder. Where additional information is requested by the District, the time in which the District must respond to a Claim shall be tolled until all requested information is provided. If additional information is thereafter required, then it shall be requested and provided upon mutual agreement of the District and Design-Builder.
- 23.03.04 Within 45 days of receipt of the Claim, as that time may be tolled as provided in Section 23.03.03 above, the District shall provide Design-Builder with a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, the District and Design-Builder may, by mutual agreement, extend the time period for a response. Failure by the District to respond to a Claim within the time periods described herein shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by failure of the District to respond shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of Design-Builder.
- 23.03.05 Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement. The District shall not fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the Agreement.
- 23.03.06 If Design-Builder disputes the District's written response, or the District fails to respond within the time prescribed, Design-Builder may so notify the District, in writing, either within 15 days of receipt of the District's response or within 15 days of the District's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, sent by registered mail or certified mail, return receipt requested, the District shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- 23.03.07 Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, then the District shall provide Design-Builder a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Failure by the District to provide the written statement within the time periods described herein shall result in the remaining Claim issues being deemed rejected in their entirety. Denial by failure of the District to respond shall not constitute an adverse finding with regard to the merits of the remaining Claim issues or the responsibility

or qualifications of Design-Builder. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after the District issues its written statement.

- 23.03.08 Any remaining disputed portion of the Claim following the meet and confer conference shall be submitted to nonbinding mediation, with the District and Design-Builder sharing the associated costs equally. The District and Design-Builder shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. Unless otherwise agreed to by the District and Design-Builder in writing, the mediation conducted pursuant to this Section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced. This Section does not preclude arbitration if mediation under this Section does not resolve the parties' dispute.
- 23.03.09 If mediation is unsuccessful, then Design-Builder may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code with respect to the parts of the Claim remaining in dispute. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time Design-Builder submits its written Claim pursuant to Section 23.03.01 until the time that mediation of disputed portions of that Claim is completed. This Section does not apply to tort claims, and nothing in this Section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.
- 23.03.10 Amounts not paid in a timely manner as required by this Section shall bear interest at seven percent (7%) per year.
- 23.03.11 Claims of \$375,000 or less are subject to the following procedures for civil actions filed to resolve the claims:
- (a) The case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any such proceeding, consistent with the rules pertaining to judicial arbitration.
 - (b) The parties stipulate that the arbitrator shall be experienced in construction law and shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid

equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

- (c) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who, after receiving an arbitration award, requests a trial *de novo* but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorneys' fees of the other party arising out of trial *de novo*.
- (d) The court may, upon request by any party, order any witnesses to participate in arbitration process.

In any suit filed under Public Contract Code Section 20104.4, the District shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

Section 23.04. Claim Certification.

Design-Builder acknowledges that it has read and is familiar with the provisions of the False Claims Act (California Government Code sections 12650 *et seq.*). Submission by Design-Builder of any claim (as the term "claim" is defined in False Claims Act) to the District in connection with the Project, whether on its behalf or on behalf of a subcontractor or material supplier, shall constitute a representation by Design-Builder to the District that submission of the claim does not in any respect, violate the False Claims Act. Any party with an interest in the claim, including Design-Builder and any subcontractor or material supplier, shall certify under penalty of perjury the validity and accuracy of any claim submitted to the District, as provided below. Compliance with this claims certification requirement shall be a condition precedent to any obligation District might otherwise have to review the claim and failure to provide such certification shall constitute a waiver of the claim.

The claim certification required by this Section shall provide as follows:

CLAIM CERTIFICATION

Under penalty of perjury, and with specific reference to the California False Claims Act, Government Code sections 12650 *et seq.*, I certify that submission of the attached claim is made in good faith; that the supporting data prepared by the undersigned company are accurate and complete to the best of my knowledge and belief; that submission of the claim to the District does not violate the False Claims Act; and that I am duly authorized to certify the claim on behalf of the claimant.

Dated: _____

(Company)

(Signature)

Title: _____

Section 23.05. Continuance of Work.

In the event of a dispute between the parties as to performance of the Work or the interpretation of the Contract Documents, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Design-Builder agrees to continue the Work diligently to completion. If the dispute is not resolved, Design-Builder agrees it will not stop the progress of the Work on the Project.

ARTICLE 24. ADDITIONAL PROVISIONS**Section 24.01. Conflict of Interest.**

No official of the District who is authorized on behalf of the District to negotiate, make, accept, or approve, any architectural, engineering, inspection, construction, or materials supply contract, or any subcontract in connection with the design and/or construction of the Project, or any land acquisition in connection with the Project, shall become directly or indirectly interested personally in the contract or in any part thereof.

No officer, employee, architect, attorney, consultant, engineer, or inspector of or for the District who is authorized on behalf of the District to exercise any executive, supervisory, or other similar function in connection with the Construction of the Project shall become directly or indirectly interested personally in the contract or any part thereof.

Section 24.02. No Oral Agreements.

No oral agreement or conversation with any officer, agent, or employee of the District, either before, during, or after the execution of the Design-Build Agreement, shall affect or modify any term or condition contained in the Contract Documents, nor shall such oral agreement or conversation entitle Design-Builder to any additional payment or time to perform.

Section 24.03. Anti-Trust Assignment.

By execution of the Design-Build Agreements, or any Subcontract awarded by Design-Builder, Design-Builder or any Subcontractor offers and agrees to assign and hereby does assign to the District all rights, title, and interest in and to all causes of action Design-Builder or Subcontractor may have under Section 4 of the Clayton Act (15 USC section 15) or under the Cartwright Act (Chapter 2 of Part 2 of Division 7 of the Business and Professions Code, commencing with Section 16700), arising from purchases of goods, services, or materials pursuant to the Contract Documents or subcontract. This assignment shall be made and shall become effective at the time the District tenders final payment to Design-Builder, without further acknowledgement by the parties.

Section 24.04. Design-Builder Not Agent Or Employee.

Neither Design-Builder nor any subcontractor, nor any officer, agent, or employee of either, is, nor shall they represent themselves to be, an officer, agent, or employee of the District for any purpose whatsoever.

No person employed by Design-Builder, or by any subcontractors, are, nor shall they be construed to be in any manner or for any purpose whatsoever, employees of the District.

Section 24.05. Access to Records.

The District or the District's Authorized Representative shall have access, upon reasonable notice, during normal business hours, to any books, contracts, documents, accounting records, papers, project correspondence, project files, scheduling information and other relevant records of Design-Builder and all subcontractors directly or indirectly pertinent to the Work, original as well as change and claimed extra work, to verify and evaluate the accuracy of cost and pricing

data submitted with any permitted use of the Contingencies or Allowances, Change Order prospective or executed, or any claim for which additional compensation has been requested.

Such books, documents, and other records mentioned above shall include, but are not limited to, all those reasonably necessary in the opinion of the District to determine the accurate amount of direct and indirect costs, job site, area and home office overhead, delay and impact costs, however characterized, and shall include all documents related to the GMP Amendment and bidding conducted in connection therewith, as well as all documents related to the planned and actual Contract Schedule.

Such access shall include the right to examine and audit such records, and make excerpts, transcriptions, electronic copies, and/or photocopies at the District's cost.

Section 24.06. Waiver of Consequential Damages

Neither Design-Builder nor the District shall be liable for consequential or incidental damages, even if notification has been given as to the possibility of such damages, except to the extent that the potential liability for such damages arises from violation of intellectual property rights of a third party and/or from the indemnification obligation herein if such damages are awarded to a third-party. Nothing in this Section shall preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents or shall preclude, compromise, or modify the duties to indemnify and/or defend set forth in the Contract Documents.

Section 24.07. Force Majeure

No delay in, or failure of performance, shall constitute default if such delay or failure is caused by acts of the State in its sovereign capacity, fires, floods, earthquakes, disabling labor strikes, epidemics, quarantine restrictions, freight embargoes, riot, war, terrorism, extraordinary weather conditions, or any other cause beyond the reasonable control of either party, provided that the party asserting such an event as a cause of delay shall give the other party written notice of the same as soon as practical, but in no event later than five (5) days after the occurrence of the event giving rise to the delay.

EXHIBIT E**Insurance Requirements****Section I. Workers' Compensation and Employer's Liability Insurance.**

In accordance with the provisions of Section 3700 of the Labor Code, Design-Builder and its consultants and subcontractors at every level shall purchase and maintain Workers' Compensation Insurance as will protect Design-Builder and its consultants and subcontractors from claims under workers' compensation, disability benefit, and other similar employee benefit acts which are applicable to the Work to be performed, whether such operations are by the Design-Builder, a consultant, a subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

Design-Builder and its consultants and subcontractors at every level shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment. The Employer's Liability Insurance required of Design-Builder and its consultants and subcontractors at every level hereunder may be obtained by them as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained hereunder. The limits of liability for the Employer's Liability Insurance required hereunder shall be as set forth in the Special Conditions. In accordance with the provisions of applicable law or regulation, including waiver of subrogation by the insurance carrier with District and Construction Manager, the Design-Builder, and each consultant and subcontractor at any level, shall secure the payment of compensation to its employees. The Contractor shall sign and file with the District the following certificate on the form provided by the District.

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract.

Design-Builder shall require each consultant and subcontractor at any level to execute such statement and have such executed statements delivered to the District prior to allowing that consultant or subcontractor to commence Work at the Site, and this clause will be made a part of all Subcontracts issued by Design-Builder for the Work.

Design-Builder shall furnish a certificate of insurance or a certificate of permission to self insure under the Workers' Compensation and Employers' Liability Insurance statutes of the State of California. Said certificate shall provide that at least thirty (30) days prior written notice shall be served on District and Construction Manager prior to the cancellation or change of such insurance or self insurance. Said certificate shall also provide that the insurer shall waive all rights of subrogation against the District and Construction Manager, and each of their respective officials, employees, and volunteers, for losses arising from work performed by Design-Builder for the District. Such certificate of insurance shall be delivered to the District and Construction Manager within five (5) days of being notified of the intent to award the contract, and before the District will execute the Design-Build Agreement.

Section 2. Commercial General Liability and Property Insurance.

Design-Builder shall purchase and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from Design-Builder's operations under the Contract Documents and for which Design-Builder may be legally responsible:

- (i) claims for damages because of bodily injury, sickness or disease or death of any person other than the Design-Builder's employees;
- (ii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of such person by the Design-Builder, or (b) by another person;
- (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle;
- (v) contractual liability insurance applicable to Design-Builder's obligations under the Design-Build Agreement;
- (vi) completed operations and products liability; and
- (vii) independent contractor's contingent coverage.

Insurance is to be placed with insurers approved by the State of California, Department of Insurance and with a Bests' rating of no less than (A-) Level VII.

2.1 *Commercial General Liability Requirement, Maintaining Insurance.* Design-Builder and its consultants and subcontractors at any level shall procure and maintain insurance on all of their operations during the progress of the Work, issued by insurance companies meeting the Insurer requirements set forth above, on forms acceptable to District, for the minimum insurance coverage limits as set forth in the Special Conditions:

2.1.1 *Automobile Bodily Injury and Property Damage Insurance.* This coverage shall include all owned, hired and non owned equipment with combined bodily injury and property damage not less than the limits as set forth in the Special Conditions. An excess liability policy with a total dollar amount of three times the amount of the contract or \$1,000,000, whichever is greater may be used to supplement the automobile liability to the full amount. If Contractor or their subcontractors or venders will be hauling hazardous materials, the automobile liability policy shall include the MCS 90 endorsement and bodily Injury / Property Damage Combined Single Limit shall not be less than \$3,000,000.

2.1.2 *Aircraft Liability Insurance.* If Design-Builder and/or its consultants or subcontractors use any owned, leased, chartered, or hired aircraft of any type (including helicopters or drones) in the performance of the Design-Build Agreement, it shall maintain aircraft liability insurance not less than the limits as set forth in the Special Conditions or a limit sufficient to replace the item being hoisted, whichever is greater, or shall require subcontractor performing such work to provide such coverage and shall have named as additional insured the District and Construction Manager. Acceptable evidence of coverage and additional insured status shall be provided prior to any work being performed.

2.1.3 *Pollution Liability.* Should the scope of work include any elements that may give rise to a pollution claim, or if Design-Builder is required to perform remedial Hazardous material operations such as asbestos-containing materials, contaminated soil, etc., they must, in addition to the above requirements, carry a "Contractor's Pollution Liability" policy with limits not less than the limits as set forth in the Special Conditions naming the District and Construction Manager, and their respective officers, employees and agents as additional insureds including contractual liability coverage. Design-Builder shall provide Design-Builder's Pollution Liability which includes coverage for "Mold" with limits of liability of not less than the limits as set forth in the Special Conditions naming the District and Construction Manager, and their respective officers, employees and agents as additional insured's including contractual liability coverage.

2.1.4 *Additional Insured.* All policies shall be endorsed to include the District, Construction Manager, District Inspector, and their officers and employees as additional insureds and shall provide that they are primary with, any insurance maintained by District or Construction Manager as non-contributory. Such policies shall be provided using the ISO Additional Insured Endorsement or CG2010 (1993 or later) in combination with CG2037 (10/01). Copies of the additional insured endorsement(s) shall be attached to the certificate of insurance.

2.1.5 *Occurrence Basis.* All liability insurance shall be issued on an occurrence basis.

2.1.6 *Application of Coverage.* Coverage shall state that the Design-Builder's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2.1.7 *Waiver of Subrogation.* The insurer shall agree to waive all rights of subrogation against the District, Construction Manager, District Inspector, and any of their respective officers, agents, employees and volunteers for losses arising from work performed by the Design-Builder for the District.

2.1.8 *Primary Insurance.* The policy shall state that it is primary insurance and that any insurance or self-insurance fund maintained by or available to the District, Construction Manager, District Inspector, or any of their respective officers, agents, employees, or volunteers shall be in excess of the Design-Builder's insurance and shall not be called upon to contribute to a loss covered by the policy.

2.1.9 *Cross-Liability Endorsement.* A cross-liability endorsement must be included to the effect that each insured is covered as if separate policies had been issued to each insured.

2.1.10 *Deductible.* Any deductibles or self-insured retentions must be declared to and approved by the District and Construction Manager. Any and all deductibles or self-insurance retentions in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of Design-Builder.

Section 3. Builder's Risk "All-Risk" Insurance.

Design-Builder, during the progress of the Work and until Final Acceptance of the Work by the District upon completion of the entire Contract, shall maintain Builder's Risk "All-Risk" Completed Value Insurance Coverage on all insurable Work included under the Contract Documents which coverage is to provide extended coverage and insurance against vandalism and malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, collapse and flood upon the entire Work which is the subject of the Contract Documents, and including completed Work and Work in progress to the full insurable value thereof. Design-Builder's Builders Risk Insurance shall include coverage and insurance against the perils of earthquake, if so indicated in the Special Conditions. Such insurance shall include the District as an additional named insured, and any other person with an insurable interest designated by the District as an additional named insured. The risk of 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 Design-Builder 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 Design-Build Agreement by the Design-Builder.

Section 4. Professional Liability Insurance.

As a condition precedent to Design-Builder performing any design-build operations under the Contract Documents, Design-Builder shall obtain at its own expense project specific Professional Liability (Errors & Omissions) coverage to protect, defend, and hold harmless the District and its officers, agents, employees, and volunteers from all claims arising out of the professional services provided by Design-Builder under the Contract Documents. This policy shall also provide coverage for the acts and omissions of Design-Builder's entire design team for this Project. Design-Builder's policy shall have limits of not less than \$10,000,000 and shall agree to waive all rights of subrogation. Design-Builder shall maintain coverage for this policy and retroactive dates that will continue coverage for a period of at least five years from final acceptance of the Project.

Section 5. Coverage Amounts.

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

Section 6. Evidence of Insurance; Subcontractor's Insurance.

6.1 *Certificates of Insurance.* Prior to commencing the Work, Design-Builder shall deliver to the District Certificates of Insurance evidencing the insurance coverage required by the Contract Documents. Notwithstanding the foregoing, Design-Builder shall not be required to provide Builder's Risk Insurance certificates until the Board approves the GMP Amendment including Project construction costs. Failure or refusal of the Design-Builder to so deliver Certificates of Insurance may be deemed by the District to be a default of a material obligation of the Design-Builder under the Contract Documents, and thereupon the District may proceed to exercise any right or remedy provided for under the Contract Documents or at law. The Certificates of Insurance and the insurance policies required by the Contract Documents shall contain a provision that coverage afforded under such policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the District. The insurance policies required of Design-Builder hereunder shall also name the District and

Construction Manager as an additional insured as its interests may appear. Should any policy of insurance be canceled before final acceptance of the Work by the District and Design-Builder fails to immediately procure replacement insurance as required, the District reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by the District in connection therewith from any sum then or thereafter due Design-Builder under the Contract Documents. Design-Builder shall, from time to time, furnish the District, when requested, with satisfactory proof of coverage of each type of insurance required by the Contract Documents; failure of Design-Builder to comply with the District's request may be deemed by the District to be a default of a material obligation of Design-Builder under the Contract Documents.

6.2 *Consultants' and Subcontractors' Insurance.* Design-Builder shall require that every consultant and subcontractor, of any tier, performing or providing any portion of the Work obtain and maintain the policies of insurance set forth in Sections 1 and 2 of this Exhibit E; the coverage and limits of liability of such policies of insurance to be obtained and maintained by consultants and subcontractors shall be as set forth in the Special Conditions. The policies of insurance to be obtained and maintained by consultants and subcontractors hereunder are in addition to, and not in lieu of, Design-Builder obtaining and maintaining such policies of insurance. Each of the policies of insurance obtained and maintained by a consultant or subcontractor hereunder shall conform with the requirements of this Exhibit E. Upon request of the District, Design-Builder shall promptly deliver to the District Certificates of Insurance evidencing that the consultants and subcontractors have obtained and maintained policies of insurance in conformity with the requirements of this Exhibit E. Failure or refusal of the Design-Builder to provide the District with consultants' or subcontractors' Certificates of Insurance evidencing the insurance coverages required hereunder is a material default of Design-Builder hereunder.

Section 7. Maintenance of Insurance.

Any insurance bearing on the adequacy of performance of Work shall be maintained after the District's final acceptance of all of the Work for the full two-year guarantee period and any longer specific guarantee or warranty periods set forth in the Contract Documents. Should such insurance be canceled before the end of any such periods and Design-Builder fails to immediately procure replacement insurance as specified, the District reserves the right to procure such insurance and to charge the cost thereof to Design-Builder. Nothing contained in these insurance requirements is to be construed as limiting the extent of Design-Builder's responsibility for payment of damages resulting from its operations or performance of the Work under the Contract Documents, including without limitation the Design-Builder's obligation to pay Liquidated Damages. In no instance will the District's exercise of its option to occupy and use completed portions of the Work relieve the Design-Builder of its obligation to maintain insurance required under this Exhibit until the date of final acceptance of the Work by the District, or such time thereafter as required by the Contract Documents. The insurer providing any insurance coverage required hereunder shall be to the reasonable satisfaction of the District.

Section 8. Contractor's Insurance Primary.

All insurance and the coverage required to be obtained and maintained by Design-Builder hereunder, if overlapping with any policy of insurance maintained by the District, shall be deemed to be primary and non-contributing with any policy maintained by the District and any policy or coverage there under maintained by District shall be deemed excess insurance. To the extent that the District maintains a policy of insurance covering property damage arising out of the perils of fire or other casualty covered by Design-Builder's Builder's Risk Insurance or the Comprehensive

General Liability Insurance of Design-Builder or any consultant or subcontractor, the District, Design-Builder, consultants, and all subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurance coverage required herein shall be included in the Contract Sum.

EXHIBIT H
DVBE Good Faith Efforts Outreach Standards

Definitions:

“Disabled Veteran Business Enterprise” (DVBE) means a business concern that is certified as a DVBE by the Department of General Services, Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS).

“Design-Builder” means the Design-Builder that will design and construct the Project.

“Participation Goal” or “Goal” means a numerically expressed DVBE objective that Design-Builder is expected to make efforts to achieve.

“Good Faith Efforts” means that Design-Builder took all necessary and reasonable steps to achieve the DVBE Participation Goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DVBE participation, even if they were not fully successful. Good Faith Efforts are further delineated below.

DVBE Certification:

The District has a Participation Goal for DVBEs of three percent (3%) per year. For any work performed by a DVBE subcontractor (including materials suppliers) to be counted toward meeting the DVBE Participation Goal, such business concern must possess current and valid certification as a DVBE through the OSDS. In addition, the work must conform to the most current regulations and requirements as published by the California Department of General Services (DGS) and/or OSDS.

A DVBE cannot self-certify. An OSDS certification letter or printout from the DGS certification website (<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>) verifying current DVBE status must be provided for each DVBE participating in the contract. The OSDS certification letter or website printout must be provided with the Proposal or during establishment of the Guaranteed Maximum Price. The District will not give Design-Builder DVBE credit for any DVBE for which Design-Builder fails to provide the required status verification.

Good Faith Efforts

Design-Builder shall either commit to meeting the Participation Goal or make Good Faith Efforts to do so, as described below. All DVBEs for which Design-Builder is claiming credit (including Design-Builder itself if it is a DVBE) must be listed in the Guaranteed Maximum Price Proposal (on the Subcontractor listing form) on which the GMP Amendment is based and identified as DVBEs, even if the work to be performed is less than one-half of one percent (0.5%) of the bid amount, involves supply of materials, or is to be performed by a lower-tier subcontractor.

To make good faith efforts, Design-Builder should perform the following directly and/or through bidders for the subcontracts:

1. Select portions of the work for which to solicit DVBEs in order to increase the likelihood that the DVBE goals will be achieved. This may include breaking out contract work items into smaller units.
2. Search at least the OSDS DVBE database to identify DVBEs to solicit to perform the portions of work identified.

3. Advertise for DVBE participation in focus or trade publications reasonably expected to reach DVBEs in the region as early in the process as is practicable. Depending on the project and results, multiple advertisements may be appropriate. Generally, the first publication should occur no later than one week before bids are due, whichever is earlier.
4. Solicit interest from identified DVBEs (from the OSDS database or otherwise) as early in the bidding process as practicable to allow the DVBEs to respond to the solicitation and submit a timely bid. Solicitations may be by phone, fax, email, letter, or other reasonable means, but must be documented.
5. Follow up initial solicitations.
6. Work with interested DVBEs, including providing adequate information about the project and portions of work available and negotiating in good faith with interested DVBEs to assist them with being able to bid.

Substitutions

Design-Builder and its subcontractors must use the DVBE subcontractor(s) and/or supplier(s) proposed unless Design-Builder requests and receives authorization to substitute from the District. A DVBE subcontractor or supplier shall be replaced by another DVBE if possible. At a minimum, any request for substitution must include:

- (1) The reason for the substitution, which shall be limited to the circumstances permitted under Public Contract Code section 4107(a).
- (2) The identity of the listed DVBE and the name, address, contractor number, and DIR registration number of the proposed replacement.
- (3) If a DVBE cannot be identified as a replacement, documentation of efforts to find available DVBEs.

The DVBE shall be given the rights afforded by Public Contract Code section 4107 prior to the District acting on a requested substitution.

END OF DOCUMENT

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EXHIBIT I

Certification Regarding Russian Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" hereunder refers to sanctions imposed by the United States government in response to Russia's actions in Ukraine, as those sanctions may be updated from time to time, as well as any sanctions imposed under state law. By its signature below, the Respondent represents that it is not a target of Economic Sanctions.

Should the District determine that the Respondent is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Respondent's Proposal **for lack of responsibility** any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination for default by the District. The LLB Entity will be required to obtain a similar certification from all proposed trade contractors subject to the protections of Public Contract Code section 4100 *et seq.*; failure to obtain such certification and/or a determination that any such proposed subcontractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities will be grounds for rejection of the proposed subcontractor.

I, the official named below, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this certification is executed on _____ at _____, California.

[Date]

[City]

RESPONDENT: _____

BY: _____
Signature

Type/Print Name

Title

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EXHIBIT J

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EXHIBIT K Payment and Performance Bond Forms

BID BOND

KNOW ALL MEN BY THESE PRESENTS that we, _____, as Surety and _____, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto **WESTLANDS WATER DISTRICT** ("the Oblige") for payment of the penal sum hereof in lawful money of the United States, as more particularly set forth herein.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal has submitted the accompanying Bid Proposal to the Oblige for the Work commonly described as: _____ **[PROJECT]**

WHEREAS, subject to the terms of this Bond, the Surety and the Principal are jointly and severally firmly bound unto the Oblige in the penal sum equal to Ten Percent (10%) of the maximum amount of the Bid Proposal submitted by the Principal to the Oblige, inclusive of amounts proposed for additive Alternate Bid Items, if any.

NOW THEREFORE, if the Principal shall not withdraw said Bid Proposal within the period specified therein after the opening of the same, or, if no period be specified, for sixty (60) days after opening of said Bid Proposal; and if the Principal is awarded the Contract, and shall within the period specified therefore, or if no period be specified, within five (5) days after the prescribed forms are presented to him for signature, enter into a written contract with the Oblige, in accordance with the Bid Proposal as accepted and give such bond(s) with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract and for the payment for labor and materials used for the performance of the Contract, or in the event of the withdrawal of said Bid Proposal within the period specified for the holding open of the Bid Proposal or the failure of the Principal to enter into such Contract and give such bonds within the time specified, if the Principal shall pay the Oblige the difference between the amount specified in said Bid Proposal and the amount for which the Oblige may procure the required Work and/or supplies, if the latter amount be in excess of the former, together with all costs incurred by the Oblige in again calling for Bids, then the above obligation shall be void and of no effect, otherwise to remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or the Call for Bids, the Work to be performed there under, the Drawings or the Specifications accompanying the same, or any other portion of the Contract Documents shall in no way affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract, the Call for Bids, the Work, the Drawings or the Specifications, or any other portion of the Contract Documents.

[CONTINUED NEXT PAGE]

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In the event suit or other proceeding is brought upon this Bond by the Obligee, the Surety and Principal shall be jointly and severally liable for payment to the Obligee all costs, expenses and fees incurred by the Obligee in connection therewith, including without limitation, attorneys fees.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this _____ day of _____, 20____ by their duly authorized agents or representatives.

_____ (Bidder/Principal Name)
By: _____ (Signature)
_____ (Typed or Printed Name)
Title: _____
(Attach Notary Public Acknowledgement of Principal's Signature)

_____ (Surety Name)
By: _____ (Signature of Attorney-In-Fact for Surety)
_____ (Typed or Printed Name of Attorney-In-Fact)
(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature.)

Contact name, address, telephone number and email address for notices to the Surety
_____ (Contact Name)
_____ (Street Address)
_____ (City, State & Zip Code)
(_____) _____ (_____) _____ Telephone Fax
_____ (Email address)

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PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, _____, as Surety and _____, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto **WESTLANDS WATER DISTRICT** ("the Obligee") for payment of the penal sum the penal sum of _____ Dollars (\$_____) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board has awarded to the Principal a Contract for the Work described as: _____ **[PROJECT]**

WHEREAS, the Principal, has entered into an agreement with the Obligee for performance of the Work; the Agreement and all other Contract Documents set forth therein are incorporated herein and made a part hereof by this reference.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond ensuring the Principal's prompt, full and faithful performance of the Work of the Contract Documents.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully perform each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract Documents as they may be modified or amended from time to time; and if the Principal shall indemnify and save harmless the Obligee and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description, which may be incurred by the Obligee by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or the obligations of the Contract Documents, including all modifications, and amendments, thereto, and any warranties or guarantees required thereunder; then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, adjustment of the Contract Time, adjustment of the Contract Price, alterations, deletions, additions, or any other modifications to the terms of the Contract Documents, the Work to be performed thereunder, or to the Specifications or the Drawings shall limit, restrict or otherwise impair Surety's obligations or Obligee's rights hereunder; Surety hereby waives notice from the Obligee of any such changes, adjustments of Contract Time, adjustments of Contract Price, alterations, deletions, additions or other modifications to the Contract Documents, the Work to be performed under the Contract Documents, or the Drawings or the Specifications.

In the event of the Obligee's termination of the Contract due to the Principal's breach or default of the Principal's obligations thereunder, within twenty (20) days after written notice from the Obligee to the Surety of the Principal's breach or default of the Contract Documents and Obligee's termination of the Contract, the Surety shall notify Obligee in writing of Surety's assumption of obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense ("the Notice of Election"); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Obligee, which approval shall not be unreasonably withheld, limited or

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restricted. The insolvency of the Principal or the Principal's denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety's prompt, diligent inquiry and investigation of such denial, be justification for Surety's failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

In the event the Surety fails to issue its Notice of Election to Obligor within the time provided for hereinabove, the Obligor may thereafter cause the cure or remedy of the Principal's failure of performance or default or to complete the Work. The Principal and the Surety shall be jointly and severally liable to the Obligor for all damages and costs sustained by the Obligor as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion of the Work exceeding the then remaining balance of the Contract Price; provided that the Surety's liability hereunder for the costs of performance, damages and other costs sustained by the Obligor upon the Principal's failure of performance or default under the Contract Documents shall be limited to the penal sum hereof, which shall be deemed to include the costs or value of any Changes to the Work which increases the Contract Price.

In the event that suit or other proceeding is brought upon this Bond by the Obligor, the Surety and Principal shall be jointly and severally liable for payment to the Obligor of all costs, expenses and fees incurred by the Obligor therewith, including without limitation, attorneys' fees.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this ____ day of _____, 20____ by their duly authorized agent or representative

_____ (Contractor-Principal Name) By: _____ (Signature) _____ (Typed or Printed Name) Title: _____ (Attach Notary Public Acknowledgement of Principal's Signature)

_____ (Surety Name) By: _____ (Signature of Attorney-In-Fact for Surety) _____ (Typed or Printed Name of Attorney-In-Fact) (Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature.)
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Contact name, address, telephone number and email address for notices to the Surety _____ (Contact Name) _____ (Street Address) _____ (City, State & Zip Code) (_____) _____ (_____) _____ Telephone Fax _____ (Email address)

[END OF SECTION]

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EXHIBIT L Guarantee Form

{Print on Design-Builder Letterhead}

_____ (“Design-Builder”) hereby unconditionally guarantees that the Work performed at _____ [insert Project name and address] (“Project”) has been done in accordance with the requirements of the Design-Build Agreement and the Construction Documents (“Contract”), therefore and further guarantees the Project Work to be and remain free of defects in workmanship and materials for a period of two (2) years from and after completion of the Project and recordation of the Notice of Completion of the Project, unless a longer guarantee period is called for by the Contract Documents, in which case the terms of the longer guarantee shall govern. Design-Builder specifically waives any right to claim or rely on the statutory definition of completion set forth in Civil Code section 9200. Design-Builder specifically acknowledges and agrees that completion shall mean Design-Builder’s complete performance of all Work required by the Contract, including without limitation any change orders, construction change directives, and punch lists, and the District’s formal acceptance of the entire Project, without regard to prior occupancy, substantial completion doctrine, beneficial occupancy, or otherwise. Design-Builder hereby agrees to repair or replace any and all Work, together with any adjacent Work which may have been damaged or displaced in so doing, that may prove to be not in accordance with the requirements of the Contract or that may be defective in its workmanship or materials within the guarantee period specified, without any expense whatsoever to the District, ordinary wear and tear and unusual abuse and neglect only excepted. Design-Builder has provided contract bonds, which will remain in full force and effect during the guarantee period.

Design-Builder further agrees that, within ten (10) calendar days after being notified in writing by the District of any Work not in accordance with the requirements of the Contract or any defects in the Work, it will commence and prosecute with due diligence all Work necessary to fulfill the terms of this guarantee, and to complete the Work within a period of time stipulated in writing. In the event it fails to so comply, Design-Builder does hereby authorize the District to proceed to have such Work done at Design-Builder’s expense and it will pay the cost thereof upon demand. The District shall be entitled to all costs, including reasonable attorneys’ fees, necessarily incurred upon Design-Builder’s refusal to pay the above costs.

The guarantee period for corrected defective work shall continue for a duration equivalent to the original guarantee period.

Notwithstanding anything to the contrary herein, in the event of an emergency constituting an immediate hazard to the health or safety of the employees, students, or property of the District, or of the public, the District may undertake at Design-Builder’s expense and without prior notice, all Work necessary to correct such hazardous condition as was caused, in whole or in part, by the Work of Design-Builder not being in accordance with

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the requirements of the Contract, or being defective, and to charge the same to Design-Builder as specified herein.

The guarantee set forth herein is not intended by the parties, nor shall it be construed, as in any way limiting or reducing the District's rights to enforce all terms of the Contract referenced hereinabove or the time for enforcement thereof. This guarantee is provided in addition to, and not in lieu of, the District's rights on such contract.

DESIGN BUILDER'S SIGNATURE

PRINT NAME

NOTICE: SIGNATURE(S) ON BEHALF OF DESIGN-BUILDER MUST BE NOTARIZED.

A certificate of acknowledgment in accordance with the provisions of California Civil Code section 1189 must be attached for each person executing this agreement on behalf of Design-Builder. This section provides, at part (b): "Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made."