

BERRYESSA UNION SCHOOL DISTRICT

**REQUEST FOR PROPOSALS
TO PROVIDE DESIGN-BUILD SERVICES**

FOR

RFP 01-2022-23

**NEW MODULAR GYMNASIUM BUILDING
PIEDMONT MIDDLE SCHOOL**

MEASURE U BOND PROJECT

SUBMIT PROPOSALS TO:

**BERRYESSA UNION SCHOOL DISTRICT
1376 PIEDMONT ROAD
SAN JOSE, CA 95132
ATTN: BONNY GREGORIUS**

DUE DATE:

July 12, 2022 BEFORE 2:00 P.M.

**REQUEST FOR PROPOSALS
TO PROVIDE DESIGN-BUILD SERVICES**

RECEIPT OF PROPOSALS. Sealed proposals and one electronic copy to be received at the office of the:

BERRYESSA UNION SCHOOL DISTRICT
Purchasing Department
1376 Piedmont Road,
San Jose, CA 95132
ATTN: Bonny Gregorius

Due Date: July 12, 2022 Before 2:00 P.M.

DESCRIPTION OF WORK. Pursuant to Education Code sections 17250.10 et seq., the Berryessa Union School District seeks a design-build entity to prepare the final design for, and to construct, the New Modular Gymnasium Building at Piedmont Middle School (the “Project”), with this work for the Project (“Work”) being in full compliance with the requirements of this Request for Proposals, including the Contract Documents. The Project will be constructed at 955 Piedmont Road, San Jose, CA 95132. The Project will be constructed on the west side portion of the campus. (See *Exhibits F.*) The Project will be a +/- 7,642sf gross modular gymnasium building comprised of a 12’ wide structural grid +/- 70’x180’ and include gymnasium space to house a set of bleachers, basketball court with retractable hoops on a main court and (4) sets of hoops on the side courts and a volleyball court. Boys and girls restrooms and a single all-gender restroom. Large storage room with ladder access to the roof. Janitor closet with sink and hot water, electrical room, fire riser room. Building shall have a fire sprinkler system. As set forth herein, the design-build entity will be responsible for the final design and transmission of their final design to the Division of the State Architect (“DSA”). The design-build entity will be responsible for obtaining final DSA approval. No construction work shall be performed until the design-build entity receives written approval of the plans, as to the safety of design and construction, from the DSA.

ELIGIBLE DESIGN-BUILD ENTITIES. Only the design-build entities that have already been prequalified, or short-listed, by the District for this Project based on their Statements of Qualifications will be allowed to submit proposals.

A design-build entity will not be eligible to submit a proposal, if the entity, or any consultant or contractor to the entity, participated in the preparation of the Request for Qualifications or this Request for Proposals (including the design-build contract [“Contract”] documents [“Contract Documents”], which include the agreement and general conditions [see *Exhibit E*] and District’s requirements for design of the Project [the “Design Requirements” or “Bridging Documents”; see *Exhibit F*]).

ESTIMATED COST OF THE PROJECT: The District estimates a Contract price of \$4,900,000.00 to \$5,300,000 for this Project. The District will withhold retention of 5% from all payments for the Work. Upon receipt of DSA approval, the District may elect to release the retention related to Work performed prior to DSA approval.

PROJECT LABOR AGREEMENT.

No project labor agreement applies to this contract.

FEDERAL FUNDING.

No federal funds are being used by Owner for the Contract.

PROJECT ADMINISTRATION. All questions relative to this Project shall be directed to the following District representatives. No telephone calls will be accepted; submit letter or email questions only.

Berryessa Union School District
1376 Piedmont Road
San Jose, CA 95132
Attn: Bonny Gregorius- Purchasing and Contracts Manager
E-mail: bgregorius@busd.net
Please add “RPF 01-2022-23 Piedmont” to the subject line

NON-MANDATORY SITE MEETING. A non-mandatory site meeting will be held at the Project location at 955 Piedmont Road, San Jose, CA 95132, on Tuesday, June 21, 2022 @ 10:00 a.m. for a question and answer session followed by a site visit. If a proposing entity does not appear at the non-mandatory site meeting and site visit, it will nevertheless be held accountable for all information that could have been obtained at the meeting.

DISTRICT'S RIGHTS RESERVED. The District reserves the right to reject any and all proposals in its discretion, to waive any informality in a proposal, to reject the proposal of any proposer who has been delinquent or unfaithful in any former contract with the District, and to make awards in the interest of the District.

EVALUATION OF PROPOSALS.

The District shall award the design-build contract for the Project to the proposal that provides the best value to the District, pursuant to Education Code section 17250.15(a) and 17250.25(f).

The schedule for submittal of proposals and selection of the design-build entity will be as follows:

Site meeting	June 21, 2022
Last day for design-build entities to submit questions	June 27, 2022
Last day for District to respond to questions	June 30, 2022
Bids or proposals due	July 12, 2022
Interviews if needed (save the date)	July 14, 2022
District Board approves agreement	August 2, 2022

The District reserves the right to amend this schedule for any reason.

COMPLETION OF WORK. The entire scope of the Work (design and construction) shall be fully (not substantially) Complete within three hundred fifty-one (351) calendar days of the date established in the District’s Notice to Proceed or, if no such date is established by the Notice to Proceed, the date ten (10) days after award of the Contract. Milestone deadlines may also apply (see Section III of the Agreement).

The District will issue a Notice to Proceed within ten (10) days of the Board approval of the design-build agreement. The design-build entity shall prepare the plans and specifications in conformance with the District’s design requirements or “Bridging Documents” (see *Exhibit F*) that were prepared by the District’s architect for the project, McKim Design Group (“Architect”).

Summary Design Schedule:

Notice to proceed issued:	By August 12, 2022
DSA appointment request submitted:	By August 19, 2022
70% CD package due to District:	By September 9, 2022
70% CD Comments issued to contractor by District:	By September 16, 2022
100% DSA Submittal to DSA:	By October 4, 2022
100% DSA Submittal to District	By October 4, 2022
Comments issued to contractor by District:	By October 11, 2022

Upon receipt of the District’s approval of the 70% design package, the design-build entity may begin issuing equipment and material submittals for District approval.

The design-build entity shall complete and submit the 100% DSA Plans and Specifications within fifty-three (53) calendar days from the date of the Notice to Proceed and submit them to DSA for approval.

The District will review the 100% DSA Submittal for conformance of the bridging documents and provide approval or comments and revisions to the design-build entity within seven (7) calendar days of receipt of the Final 100% Plans and Specifications. If the District does not approve the 100% design package, the design-build entity shall make all necessary revisions and re-submit to the District for review. The design-build entity shall make all revisions before back-check with DSA so that the revisions can be approved during the back-check process.

If DSA requires changes in the design, the design-build entity shall obtain District approval of any changes before making the changes and re-submitting to DSA. The design-build entity may not perform site work until DSA has approved all Final Plans and Specifications.

Pursuant to the Agreement, liquidated damages shall accrue for any and all failures to meet the Contract deadlines, including milestone deadlines.

COVID-19. During the Work, the Design-Builder shall ensure that all Work, including but not limited to Work performed by Subcontractors, is performed in compliance with all applicable legal, contractual, and local government requirements related to the novel coronavirus and

COVID-19, including “social distancing,” masks, and hygiene as may be ordered by the State or local authorities. Each bidder must include in its bid all costs related to these requirements in effect at the time of bidding. If additional COVID-19 requirements are imposed after the bid and the Design-Builder believes that it is entitled to additional time or money, it must timely submit proper requests pursuant to the Contract Documents.

OBTAINING REQUEST FOR PROPOSAL. Interested parties may obtain an electronic copy of the RFP Document, which will be sent via e-mail in a PDF format, by contacting the District representatives listed above. To ensure receipt of any other notifications regarding this proposal and to have the proposal considered valid, **documents must be obtained from the District.**

WAGE RATES. Pursuant to Sections 1773 et seq., and following, of the California Labor Code, the successful proposer shall pay not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations. The successful proposer shall post a copy of the determinations at the job site. Per California Education Code section 17250.30(d), the District shall reimburse the Department of Industrial Relations of the costs of its Compliance Monitoring Unit (“CMU”) for the Project.

Public works projects shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations. A design-builder or subcontractor shall not be qualified to submit a proposal or to be listed in a proposal subject to the requirements of Public Contract Code section 4104 unless currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code. A design-builder or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work and proof of registration is provided.

INSTRUCTIONS TO PROPOSING ENTITIES

FORM OF PROPOSAL. The proposal shall be made on the form provided herein. The proposal shall give the price(s) proposed in the space(s) provided; shall give all other information requested; and shall be signed by the proposer or proposer's authorized representative, with proposer's address. An original, two copies and one electronic copy of the proposal shall be submitted in one envelope or package clearly marked bearing the name of the proposer and name of the project.

The Proposal must contain the following documents in the forms attached to this Request for Proposal (see *Exhibit C*), or the District reserves the right to reject the Proposal as non-responsive:

- Proposal form, including confirmation of receipt of all addenda and certification
- Noncollusion declaration
- Designation of subs
- Sufficient funds declaration
- Workers' compensation certification
- Drug-free workplace certification
- Iran Contracting Act certification
- Asbestos and Other Hazardous Material Certification
- Imported Material Certification
- Fingerprinting notice and acknowledgement for other than construction contracts
- Fingerprinting notice and acknowledgement for construction contracts
-

Within ten (10) calendar days of the award of the Contract to a proposer, the proposer shall submit payment and performance bonds from a California admitted surety in the form attached to this Request for Proposal (see *Exhibit D*), and shall submit an executed certification from the fingerprinting notice and acknowledgement for design services (see *Exhibit C*); and prior to commencing any construction services, the proposer shall submit an executed Student Contact Form from the fingerprinting notice and acknowledgement for construction services (see *Exhibit C*).

DELIVERY OF PROPOSAL. The proposal shall be delivered by the time and to the place stipulated in this Request for Proposals. It is the proposer's sole responsibility to see that the proposal is received in proper time. Any proposal received after the scheduled closing time for receipt of proposals will be returned to the proposer unopened.

WITHDRAWAL OF PROPOSAL. A proposal may be withdrawn by the proposer by means of a written request, signed by the proposer or proposer's properly authorized representative. Such written request must be delivered to the place stipulated in this Request for Proposals for receipt of proposals prior to the scheduled closing time for receipt of proposals. After the deadline for submittal of proposals, a proposal may not be withdrawn for any reason for at least sixty (60) days.

OPENING OF PROPOSALS. There will *not* be a public opening and reading of the proposals. The District will open the proposals at its convenience and will rank them based on the selection criteria specified below.

MODIFICATIONS AND ALTERNATIVE PROPOSALS. Unauthorized conditions, limitations, or provisions attached to a proposal will render a proposal incomplete and non-responsive, and may cause its rejection. The completed proposal forms shall be without interlineations, alterations, or erasures. Alternative proposals will not be considered unless requested. Oral, telegraphic, or telephonic proposals or modifications will not be considered.

DISCREPANCIES IN PROPOSALS. The proposer shall furnish a price for all proposal items. Failure to do so will render the proposal incomplete and non-responsive, and may cause its rejection. In the event there are unit price proposal items in a proposal form and the total "amount" indicated for a unit price proposal item does not equal the product of the unit price and quantity, the unit price shall govern and the amount will be corrected accordingly. In the event there is more than one proposal item in a proposal form and the total indicated for the form does not agree with the sum of the prices proposed on the individual items, the prices proposed on the individual items shall govern and the total for the form will be corrected accordingly.

BUILDERS RISK COVERAGE. The district shall provide. (see General Conditions Article 11)

DISABLED VETERAN BUSINESS ENTERPRISES (“DVBE”).

DVBE participation is not required for this contract.

PROPOSER'S EXAMINATION OF SITE. Before submitting a proposal, the proposer shall carefully examine the Bridging Documents and other Contract Documents, and shall inspect the site of the work to satisfy proposer by personal examination, or by such other means as may be preferred, of the location of the proposed work and of the actual conditions of the site of work. Proposer may inspect the site of the work by arranging a time with the District’s representatives, as identified in this Request for Proposals, above.

Submission of a proposal by the proposer shall constitute acknowledgment that, if awarded the Contract for the Project, proposer has relied and is relying on personal examination of (1) the site of the Work, (2) access to the site, and (3) all other data and matters necessary to the fulfillment of the Work and on proposer's own knowledge of existing facilities on and in the vicinity of the site of the Work to be constructed under the Contract.

The information provided by the District is not intended to be a substitute for, or a supplement to, the independent verification by the proposer to the extent such independent investigation of site conditions is deemed necessary or desirable by the proposer. Proposer acknowledges that proposer has not relied upon information furnished by the District regarding site conditions in preparing and submitting a proposal thereunder.

DISQUALIFICATION OF PROPOSER. More than one proposal from an individual, firm, partnership, corporation, joint venture, or association under the same or different names will not be considered. Reasonable grounds for believing that any proposer is interested in more than one proposal for the work contemplated will cause the rejection of all proposals in which such proposer is interested. If there is reason for believing that collusion exists among the proposers, all proposals will be rejected and none of the participants in such collusion will be considered in future proposals.

REGISTRATION. The District shall not accept any proposal or enter into any contract without proof of the proposer's current registration to perform public work under Labor Code section 1725.5. The proposer shall not accept any subbid or enter into any subcontract without proof of the subcontractor's current registration to perform public work under Labor Code section 1725.5.

NO REIMBURSEMENT FOR COSTS INCURRED. The District accepts no liability for the costs and expenses incurred by firms in responding to any clarification requests, resubmittals, interviews, negotiations, or any other portion of this design-build selection process. Each party that enters into this selection process shall prepare the required materials and submittals at its own expense and with the express understanding that they cannot make any claims whatsoever for reimbursement from the District for the costs and expenses associated with this process.

INTERVIEWS. After receipt of the proposals, the District may conduct interviews with one or more of the proposing design-build entities. The District reserves the right not to conduct interviews.

SUBCONTRACTORS. In its proposal, the Design-Builder shall list the following types of subcontractors in its proposal that it will use for the specified types of design or construction work:

- Mechanical
- Electrical
- Plumbing
- Fire/Sprinkler

After DSA approval of the design, the Design-Builder may select additional subcontractors for performance of construction work, and if the scope of a subcontractor's construction work is greater than 0.5% of the contract price allocable to construction work, then the Design-Builder shall use the procedures specified in Education Code section 17250.35(b) to select that construction subcontractor. The Design-Builder shall award each construction subcontract on a best value basis

AWARD OF THE WORK. Any award of the Contract will be made within sixty (60) calendar days after opening of the proposals. Unless otherwise indicated, a single award will not be made for less than all the proposal items in an individual proposal schedule.

BEST VALUE SELECTION CRITERIA.

The Contract shall be awarded to the design-build entity whose proposal is determined by the District to be the best value. The best value shall be evaluated based only on the following criteria (each criterion being scored on a 0-100 basis), and the relative weight that has been assigned to each one:

- Price (30%)
- Technical design and construction experience (40%)
- Life-cycle costs over 20 years (10%)
- Subcontractor Procurement Plan (5%)
- Interviews (10%)
- Exceptions to Design Build Contract (5%)

The District reserves the right to request additional information or proposal revisions, or hold discussions and negotiations with responsive proposers, according to the following procedures:

- Within seven (7) calendar days of a request by the District for additional information regarding qualifications or the proposal, the proposer shall submit the requested information, including a certification.
- The District may discuss the Project with a proposer, or discuss or negotiate the proposal submitted by the proposer, at any time. The District may have such discussions or negotiations with more than one proposer at the same time.
- The District may request that a proposer submit within seven (7) calendar days a revised proposal.

When the evaluation is complete, the District shall rank the top three responsive proposers based on determination of value provided by their proposals. The Contract shall be awarded to the responsible design-build entity whose proposal is determined by the District to have offered the best value to the public.

Upon award, the District shall publicly announce its award, identifying the design-build entity to which the award is made, along with a statement regarding the basis of the award. This statement and the District's file regarding the Contract shall provide sufficient information to satisfy an external audit.

EXECUTION OF CONTRACT. The proposer to whom award of the work is made shall execute the Contract on the form of agreement provided herein and, within seven (7) calendar days after award of the Contract, or before the proposer commences performance of the Contract, whichever is earlier, shall submit to the District (a) all insurance required by the Contract, and (b) the performance and payment bonds and the student contact form in the form attached to this RFP. Failure or refusal to execute the Contract, submit the required documents, or to conform to any of the stipulated requirements in connection with it, shall be just cause for the recovery of damages from the proposer, and the award of the Contract to another proposer.

SKILLED AND TRAINED WORKFORCE REQUIREMENTS. The successful design-build entity will have to comply with skilled and trained workforce requirements pursuant to Public Contract Code sections 2600 et seq. and Education Code section 17250.25(c)(1).

EXHIBIT A
LOCATION PLAN

955 Piedmont Road, San Jose, California



EXHIBIT B

SITE PLAN

PIEDMONT MIDDLE SCHOOL

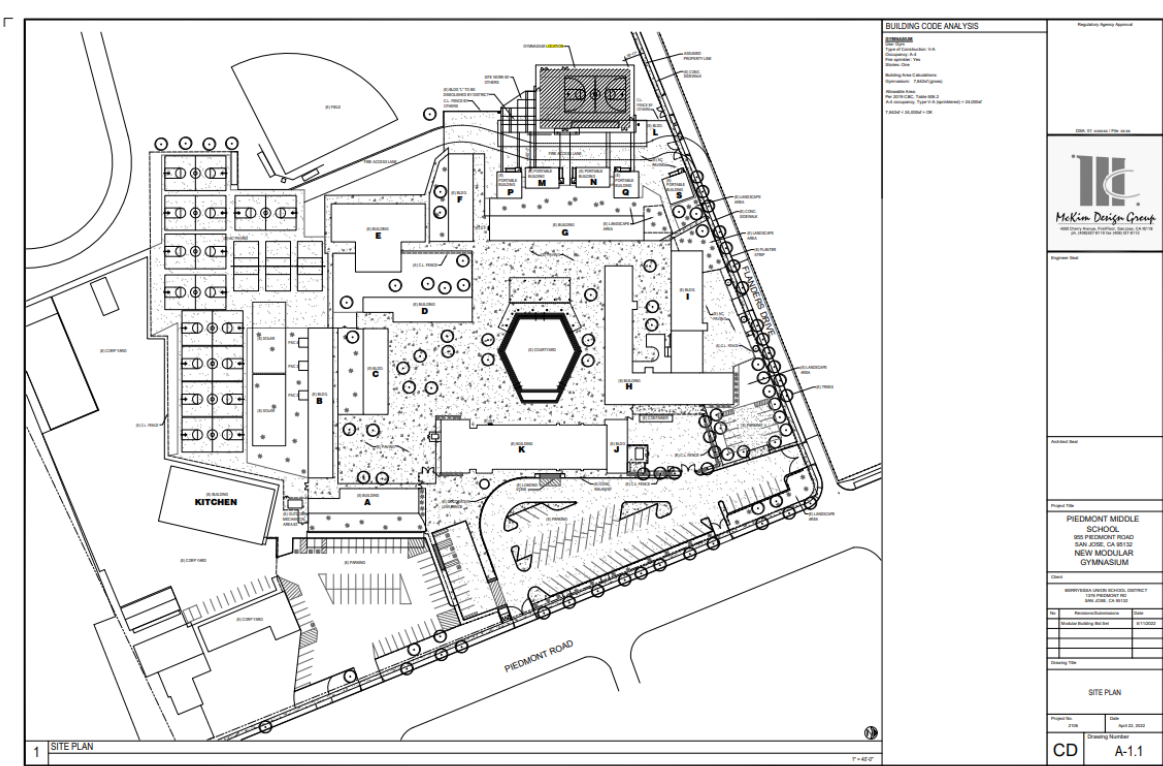


EXHIBIT C

DOCUMENTS TO BE SUBMITTED WITH PROPOSAL

- Proposal form, including confirmation of receipt of all addenda and certification
- Noncollusion declaration
- Designation of subs
- Sufficient funds declaration
- Workers' compensation certification
- Drug-free workplace certification
- Iran Contracting Act certification
- Asbestos and Other Hazardous Material Certification
- Imported Material Certification
- Fingerprinting notice and acknowledgement for other than construction contracts
- Fingerprinting notice and acknowledgement for construction contracts

PROPOSAL FORM

PROPOSAL TO:

BERRYESSA UNION SCHOOL DISTRICT
1376 PIEDMONT ROAD
SAN JOSE, CA 95132
ATTN: Bonny Gregorius – Purchasing and Contracts Manager

PROPOSAL FOR:

The design and construction of the New Modular Gymnasium Building at Piedmont Middle School (“Project”).

PROPOSAL FROM:

Name of Proposer: _____

Address: _____

Phone: _____ Fax: _____

The undersigned proposer hereby proposes to furnish all labor, materials, equipment, tools, and services necessary to perform all design and construction work required for the Project under the proposal schedule, in accordance with the entire Request for Proposals, including the Instructions and all exhibits, and in accordance with all subsequent additions, deletions or revisions to the Request for Proposals issued by the District prior to deadline for the submittal of the proposals for the Project.

The proposer must propose on all items and provide a price for each item, or the proposal may be disqualified. The District will award a contract based on the methodology stated in the Request for Proposals, including the Instructions. The District reserves the right to delete any or all of the proposal items of work from the contract.

The Total Proposal Price shall be deemed to include the cost of doing all work necessary to complete the Project in accordance with the Request for Proposal, including all exhibits.

The undersigned proposer declares that it has read and understands the Contract Documents, including but not limited to the Agreement, the General Conditions, and the Bridging Documents.

The undersigned proposer understands that the quantities of work as shown in the Proposal form are “lump sum” only.

<u>PROPOSAL</u>	<u>TOTAL LUMP SUM PRICE</u>
1. Design Services	\$ _____ . _____
2. Construction Services	\$ _____ . _____
3. Allowance	\$ _____ . _____

BASE PROPOSAL – TOTAL OF ALL PROPOSAL ITEMS (design and construction)

Total Proposal Price (Numerical): \$ _____ . _____

_____ Dollars and _____ Cents

Total Proposal Price (Written)

CONFIRMATION OF ANY ADDENDA. The following addenda were received and considered as part of this proposal package:

Addendum Number	Subject
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Dated: _____, 20__

(Proposer Firm/Company)

(Sign)

(Print)

Its _____ (Title)

CERTIFICATION

A proposal submitted by a corporation must be signed by (1) the chairman of the board, president or any vice president, and then (2) the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name and title of each person signing and the legal name of the corporation (including the state of incorporation) shall also be typed or printed below the signature. Satisfactory evidence of the authority of each officer signing on behalf of a corporation shall be furnished with the proposal.

A proposal submitted by a partnership must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters. The name and title of the person signing and the name of the partnership shall also be typed or printed below the signature.

A proposal submitted by a joint venture must furnish the full name of all members of the joint venture and must be signed by a representative of each member who has authority to bind the member in such matters. The name and title of the person signing and the name of the member shall also be typed or printed below the signature.

Each person signing below makes the following representations under penalty of perjury:

The submitter of the foregoing proposal has read the same and the matters stated therein are true of his or her own personal knowledge. This information is provided for the purpose of a proposal for the Project, and any individual, company or other agency named herein is hereby authorized to supply the District with any information necessary to verify the prospective proposer's proposal. By signing below, the submitter and the design-build entity hereby grant permission to the District to contact any or all of the above listed persons or entities to confirm information in the proposal or otherwise investigate such information.

The submitter understands that any statement which is proven to be false shall be grounds for immediate disqualification from award of the Contract for the Project. The submitter whose signature appears below represents and warrants that he or she has authority to bind the named entity.

I, the undersigned, certify and declare that I have read all the foregoing answers and information in this proposal and know their contents. The matters stated in the proposal are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California, that the foregoing is correct.

Evidence of authority to bind corporation is attached.

Signature

Signature

Name

Name

Title

Title

Entity Name

Entity Name

Date

Date

Signature

Signature

Name

Name

Title

Title

Entity Name

Entity Name

Date

Date

(Add additional signature pages as necessary to comply with the directions above.)

NONCOLLUSION DECLARATION
[Public Contract Code §7106]

Owner: Berryessa Union School District
Contract: New Modular Gymnasium Building at Piedmont Middle School

The undersigned declares:

I am the _____ of _____, the party making the foregoing proposal.

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

Any person executing this declaration on behalf of a proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, 20__, at _____ [city], _____ [state].

Signature

Print Name

DESIGNATION OF SUBCONTRACTORS [Public Contract Code §4104]

Each proposing DBE shall set forth below the name and the location of the place of business of each subcontractor, the portion of the Work which will be performed by each subcontractor, and the California contractor license number and DIR registration of each subcontractor, who will perform the following types of work or labor, or render the following types of service, to the proposing Design Build entity in or about the construction of the Work or improvement:

- Mechanical scope of work;
- Electrical scope of work;
- Plumbing scope of work;
- Fire/Sprinkler scope of work;

If the proposing DBE fails to specify a type of subcontractor listed above, the proposal shall be deemed nonresponsive.

After award of the DBE Contract, other subcontractors may be selected by the Design Build entity for the Work as provided by Education Code section 17250.35(b).

An inadvertent error in listing a California contractor's license number shall not be grounds for filing a protest or for considering the proposal nonresponsive if the proposing Design Build entity submits the corrected contractor's license number to the District within 24 hours after the deadline for submittal of the proposal, or any continuation thereof, so long as the corrected contractor's license number corresponds to the submitted name and location for that subcontractor.

Subletting or subcontracting of any portion of the Work as to which no subcontractor was designated in the original proposal shall only be permitted in cases of public emergency or necessity, and then only after a finding reduced to writing as a public record of the legislative body of the Owner.

For any proposal submitted, and for any contract for public work entered into, an inadvertent error in listing a subcontractor who is not registered under Labor Code section 1725.5 shall not be grounds for filing a protest or grounds for considering the proposal nonresponsive, provided that either the subcontractor is registered prior to the proposal opening; the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5(a)(2)(E), if applicable, within 24 hours after the proposal opening; or the subcontractor is replaced by another registered subcontractor under Public Contract Code section 4107. Failure of a listed subcontractor to be registered shall be grounds under Public Contract Code section 4107 for the Contractor, with the Owner's consent, to substitute a registered subcontractor for the unregistered subcontractor.

Failure to provide this information in a legible manner may result in the rejection of an otherwise acceptable proposal. **NOTE:** *Reproduce the next page of this form if needed for additional listings.*

Portion of Work	Name of Subcontractor & Phone No.	Location of Subcontractor	California Contractor License Number	DIR Registration Number

I am the authorized representative of the proposer submitting this Designation of Subcontractors and I declare that each subcontractor listed holds a valid and current contractor license in good standing in California to perform the portion of work for which the subcontractor is listed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, 20____, at _____ [city], _____ [state].

Signature: _____

Print Name: _____

Title: _____

Company: _____

SUFFICIENT FUNDS DECLARATION
[Labor Code §2810]

Owner: Berryessa Union School District

Contract: New Modular Gymnasium Building at Piedmont Middle School

I, _____, declare that I am the _____ of _____, the entity making and submitting the proposal for the above Contract that accompanies this Declaration, and that such proposal includes sufficient funds to permit _____ [*insert name of entity*] to comply with all local, state or federal labor laws or regulations during the Contract, including payment of prevailing wage, and that _____ [*the entity*] will comply with the provisions of Labor Code section 2810(d) if awarded the Contract.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and executed on _____ 20__, at _____ [*city*], _____ [*state*].

Signature
Print Name: _____
Print Title: _____

WORKERS' COMPENSATION CERTIFICATION
[Labor Code §1861]

Labor Code Section 3700, in relevant part, provides:

“Every employer except the state shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer or as one employer in a group of employers. Said certificate may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees”

I am aware of the provisions of the Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract. I shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days' notice of cancellation.

Name of Contractor

Signature

Print Name

Date

(In accordance with Article 5 (commencing at Section 1860], Chapter 1, Part 7, Division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under the contract.)

DRUG-FREE WORKPLACE CERTIFICATION

The Drug-Free Workplace Act of 1990 (Government Code sections 8350 *et seq.*) requires that every person or organization awarded a contract or grant for the procurement of any property or services from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract awarded by a State agency may be subject to suspension of payments or termination of the contract, or both, and the contractor may be subject to debarment from future contracting if the state agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;
- (b) Establishing a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The person's or organization's policy of maintaining a drug-free workplace;
 - (3) The availability of drug counseling, rehabilitation and employee-assistance programs;
 - (4) The penalties that may be imposed upon employees for drug abuse Violations;
- (c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code Section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program, and (c) requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by Section 8355(a) and requiring that the employee agree to abide by the terms of that statement.

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

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

Name of Contractor

Date

Signature

Print Name

IRAN CONTRACTING ACT CERTIFICATION
[Public Contract Code §2200 et seq.]

As required by Public Contract Code (“PCC”) section 2204 for contracts of \$1,000,000 or more, please insert proposer’s or financial institution’s name and Federal ID Number (if available) and complete **one** of the options below. Please note that California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid or propose on contracts. (PCC §2205.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the proposer/financial institution identified below, and the proposer/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by California Department of General Services (“DGS”) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/proposer, for 45 days or more, if that other person/proposer will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS. (PCC §2204(a).)

<i>Proposer Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in</i>

OPTION #2 – EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a proposer/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services. If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Proposer Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

ASBESTOS AND OTHER HAZARDOUS MATERIALS CERTIFICATION

Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations “New Material Hazardous”, shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.

Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District’s determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with “New Hazardous Material” containing equipment will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: _____

Proper Name of Bidder: _____

Signature: _____

Print Name: _____

Title: _____

IMPORTED MATERIALS CERTIFICATION

Bid B-03-2018-19
Pavement Rehabilitation at Piedmont Middle School

Agreement between Berryessa Union School District (the "District") and _____
_____ (the "Contractor" or the "Bidder") (the "Contract" or the "Project").

This form shall be executed by the Contractor and by all entities that, in any way, provide or deliver and/or supply any soils, aggregate, or related materials ("Fill") to the Project Site. All Fill shall satisfy all requirements of any environmental review of the Project performed pursuant to the statutes and guidelines of the California Environmental Quality Act, section 21000 et seq. of the Public Resources Code ("CEQA"), and all requirements of section 17210 et seq. of the Education Code, including requirements for a Phase I environmental assessment acceptable to the State of California Department of Education and Department of Toxic Substances Control.

To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the District, its agents, representatives, officers, consultants, employees, trustees, and volunteers pursuant to the indemnification provisions in the Contract Documents for, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

- Certification of:
- | | | |
|--|--------------------------------------|---------------------------------------|
| <input type="checkbox"/> Delivery Firm/Transporter | <input type="checkbox"/> Supplier | <input type="checkbox"/> Manufacturer |
| <input type="checkbox"/> Wholesaler | <input type="checkbox"/> Broker | <input type="checkbox"/> Retailer |
| <input type="checkbox"/> Distributor | <input type="checkbox"/> Other _____ | |
- Type of Entity
- | | |
|--|--|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> General Partnership |
| <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Limited Liability Company |
| <input type="checkbox"/> Sole Proprietorship | <input type="checkbox"/> Other _____ |

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

By my signature below, I hereby certify that I am aware of section 25260 of the Health and Safety Code and the sections referenced therein regarding the definition of hazardous material. I further certify on behalf of the Firm that all soils, aggregates, or related materials provided, delivered, and/or supplied or that will be provided, delivered, and/or supplied by this Firm to the Project Site are free of any and all

hazardous material as defined in section 25260 of the Health and Safety Code. I further certify that I am authorized to make this certification on behalf of the Firm.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

;

**FINGERPRINTING NOTICE AND ACKNOWLEDGEMENT
FOR CONTRACTS OTHER THAN CONSTRUCTION CONTRACTS**

(Education Code Section 45125.1)

Other than business entities performing construction, reconstruction, rehabilitation, or repair who have complied with Education Code section 45125.2, business entities entering into contracts with the District must comply with Education Code sections 45125.1. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations. The following information is provided simply to assist such entities with compliance with the law:

1. You (as a business entity) shall ensure that each of your employees who interacts with pupils outside of the immediate supervision and control of the pupil's parent or guardian or a school employee has a valid criminal records summary as described in Education Code section 44237. (Education Code §45125.1(a).) You shall do the same for any other employees as directed by the District. (Education Code §45125.1(c).) When you perform the criminal background check, you shall immediately provide any subsequent arrest and conviction information it receives to the District pursuant to the subsequent arrest service. (Education Code §45125.1(a).)
2. You shall not permit an employee to interact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Education Code section 45122.1. (Education Code §45125.1(e).) See the lists of violent and serious felonies in *Attachment A* to this Notice.
3. Prior to performing any work or services under your contract with the District, and prior to being present on District property or being within the vicinity of District pupils, you shall certify in writing to the District under the penalty of perjury that neither the employer nor any of its employees who are required to submit fingerprints, and who may interact with pupils, have been convicted of a felony as defined in Education Code section 45122.1, and that you are in full compliance with Education Code section 45125.1. (Education Code §45125.1(f).) For this certification, you shall use the form in *Attachment B* to this Notice.
4. If you are providing the above services in an emergency or exceptional situation, you are not required to comply with Education Code section 45125.1, above. An "emergency or exceptional" situation is one in which pupil health or safety is endangered or when repairs are needed to make a facility safe and habitable. The District shall determine whether an emergency or exceptional situation exists. (Education Code §45125.1(b).)
5. If you are an individual operating as a sole proprietor of a business entity, you are considered an employee of that entity for purposes of Education Code section 45125.1, and the District shall prepare and submit your fingerprints to the

Department of Justice as described in Education Code section 45125.1(a).
(Education Code §45125.1(h).)

I, as _____ *[insert "owner" or officer title]* of _____
[insert name of business entity] , have read the foregoing and agree that _____
_____ *[insert name of business entity]* will comply with the requirements of Education
Code §45125.1 as applicable, including submission of the certificate mentioned above.

Dated: _____

Name: _____

Signature: _____

Title: _____

**FINGERPRINTING NOTICE AND ACKNOWLEDGMENT
FOR CONSTRUCTION CONTRACTS**
(Education Code Section 45125.2)

Business entities entering into contracts with the Owner for the construction, reconstruction, rehabilitation or repair of a facility must comply with Education Code section 45125.2, and if such an entity is not compliant with Section 45125.2, then it must comply with Section 45125.1. Such entities are responsible for ensuring full compliance with the law and should therefore review all applicable statutes and regulations. The following information is provided simply to assist you with compliance with the law:

1. The Owner has determined that your employee(s), or you as a sole proprietor, will have more than limited contact with students, therefore the law requires that you must use one or more of the following methods to ensure the safety of pupils (Education Code §45125.2(a)):
 - a. Install a physical barrier at the worksite to limit contact with pupils.
 - b. If you are not a sole proprietorship, have one of your employees, whom the Department of Justice has ascertained has not been convicted of a violent or serious felony (see *Attachment A* to this Notice and Acknowledgement), continually monitor and supervise all of your employees. For the Department of Justice to so ascertain, your employee may submit fingerprints to the Department of Justice pursuant to Education Code section 45125.1(a).
 - c. Arrange, with Owner's approval, for surveillance of your employees by Owner's personnel.

Prior to commencing the Work, you shall submit the Independent Contractor Student Contact Form (see *Attachment B* to this Notice and Acknowledgement) to the Owner, which will indicate which of the above methods you will use.

2. If you are providing services in an emergency or exceptional situation, you are not required to comply with Education Code section 45125.2, above. An "emergency or exceptional" situation is one in which pupil health or safety is endangered or when repairs are needed to make a facility safe and habitable. Owner shall determine whether an emergency or exceptional situation exists. (Education Code §45125.2(d).)
3. If you use one or more of the three methods in Section 1 (above), you are not required to comply with Education Code section 45125.1. (Education Code §45125.2(b).)

I have read the foregoing and agree to comply with the requirements of this notice and Education Code sections 45125.1 and 45125.2 as applicable.

Dated: _____

Name: _____

Signature

Title: _____

EXHIBIT D

PAYMENT BOND FORM, AND PERFORMANCE BOND FORM



PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we _____ as Principal and _____ as Surety, are held and firmly bound unto the Berryessa Union School District, in the County of Santa Clara, State of California, hereinafter called the "Owner," in the sum of _____ Dollars (\$_____) for the payment of which sum well and truly made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, to the Owner for the full performance of a certain contract with the Owner, the terms of which are incorporated herein by reference, dated _____, 20__, for design and construction of:

New Modular Gymnasium Building at Piedmont Middle School
955 Piedmont San Jose, CA 95132

The condition of this obligation is such that, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the Owner, with or without notice to the Surety, and for the period of time specified in the Contract after completion for correction of faulty or improper materials and workmanship and during the life of any guaranty or warranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreement of any and all duly authorized modifications of said Contract that may hereafter be made, then this obligation is to be void, otherwise to remain in full force and virtue.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the Work, or to the specifications.

No further agreement between Surety and Owner shall be required as a prerequisite to the Surety performing its obligations under this bond. In the event that the Surety elects to complete the Work of the Contract after termination of the Contract by Owner, the Surety may not hire Principal, or any of Principal's owners, employees, or subcontractors, to perform the Work without the written consent of Owner, and the Owner may grant or withhold such consent within its sole discretion.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals this _____ day of _____, 20__, hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(To be signed by)
(Principal and Surety,)
(and acknowledged and)
(Notarial Seal attached)

(Affix Corporate Seal)

(Individual Principal)

(Business Address)

(Affix Corporate Seal)

(Corporate Principal)

(Business Address)

(Affix Corporate Seal)

(Corporate Surety)

(Business Address)

By: _____

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

The total amount of premium charged is _____.

The above must be filled in by Corporate Surety.

PAYMENT BOND
(Labor and Material)

KNOW ALL MEN BY THESE PRESENTS:

That WHEREAS, the Berryessa Union School District (the "Owner" of the public works contract described below) and _____, hereinafter designated as the "Principal," have entered into a Contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to design and construct:

The New Modular Gymnasium Building at Piedmont Middle School Project.

Which said agreement dated _____, 20 __, and all of the Contract Documents are hereby referred to and made a part hereof;

and

WHEREAS, the Principal is required, before entering upon the performance of the Contract, to file a good and sufficient bond with the body by whom the Contract is awarded to secure the claims arising under said agreement.

NOW, THEREFORE, THESE PRESENTS WITNESSETH:

That the said Principal and the undersigned _____ ("Surety") are held and firmly bound unto all laborers, material men, and other persons, and bound for all amounts due, referred to in Civil Code section 9554, subdivision (b), in the sum of _____ Dollars (\$ _____) which sum well and truly be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the said Principal or any of its subcontractors, or the heirs, executors, administrators, successors, or assigns of any, all, or either of them, shall fail to pay any of the persons named in Civil Code section 9100, or any of the amounts due as specified in Civil Code section 9554, subdivision (b), that said Surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay costs and reasonable attorney's fees to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

And the said Surety, for value received, thereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of said contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

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

(To be signed by _____)
(Principal and Surety, _____)
(and acknowledged and _____)
(Notarial Seal attached _____)

Principal

Surety

By: _____
Attorney-in-Fact

The above bond is accepted and approved this _____ day of _____, 20__.

EXHIBIT E
DESIGN-BUILD AGREEMENT FORM,
AND
GENERAL CONDITIONS

AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

This agreement is effective _____, 20__ (the "Agreement") by and between the Berryessa Union School District, Santa Clara County, California, hereinafter called the "District" or "Owner," and _____, hereinafter called the "Design-Builder."

WITNESSETH: That the Design-Builder and the Owner for the consideration hereinafter named agree to enter this Agreement for design and construction of the Project pursuant to Education Code sections 17250.10 et seq., as follows:

ARTICLE I. SCOPE OF WORK.

For the Owner's New Modular Gymnasium Building at Piedmont Middle School (the "Project"), the Design-Builder agrees to furnish all labor, equipment, and materials, including tools, implements, and appliances required, and to perform all the Work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers. The Work includes all obligations of the Design-Builder under this Agreement, the Contract, and the Contract Documents (see Article II, below), including all design and construction services necessary to complete the Project.

During the Work, the Design-Builder shall ensure that all Work, including but not limited to Work performed by Subcontractors, is performed in compliance with all applicable legal, contractual, and local government requirements related to the novel coronavirus and COVID-19, including "social distancing," masks, and hygiene as may be ordered by the State or local authorities and as may be directed in the Contract Documents.

A. Design Services

The Design-Builder shall complete the design of the Project within the parameters of the Owner's requirements for design of the Project (the "Design Requirements," or "Bridging Documents") that were included in the Request for Proposals and on which the Design-Builder based its proposal, and within the other requirements of the Contract Documents (including Article VI, below).

The Design-Builder shall prepare a 70% complete design documents for the Owner's review and approval, and then prepare a 100% complete design documents for the Owner's review and approval.

Constructability review of the design and value engineering are the responsibility of the Design-Builder, but Owner may provide its own constructability or value engineering comments when reviewing the 70% or 100% designs.

The design-build entity shall submit to the District a 70% design package within twenty one (21) calendar days from the date of the Notice to Proceed. District will review the 70% design

package for conformance to the Bridging Documents, and provide approval, or provide comments and required revisions, to the design-build entity within seven (7) calendar days of receipt of the 70% design package. If the 70% design package is not approved by the District, the design-build entity shall make all necessary revisions and re-submit to the District for review.

Upon receipt of the District's approval of the 70% design package, the design-build entity may begin issuing equipment and material submittals for District approval.

The design-build entity shall complete and submit the 100% DSA Plans and Specifications within fifty-three (53) calendar days from the date of the Notice to Proceed and submit to DSA.

The District will review the 100% DSA Submittal for conformance of the bridging documents and provide approval or comments and revisions to the design-build entity within seven (7) calendar days of receipt of the Final 100% Plans and Specifications. If the District does not approve the 100% design package, the design-build entity shall make all necessary revisions and re-submit to the District for review. The design-build entity shall make all revisions before back-check with DSA so that the revisions can be approved during the back-check process.

If DSA requires changes in the design, the design-build entity shall obtain District approval of any changes before making the changes and re-submitting to DSA. The design-build entity may not perform any site work until DSA has approved all of the Final Plans and Specifications.

The Design-Builder shall make all changes in the design necessary to obtain DSA approval, but first must obtain Owner approval. If any such changes reduce the scope of construction, then the Owner shall be entitled to a deductive change order. If any such changes are outside the scope of the Design Requirements, then the Design-Builder shall be entitled to a change order to the extent that the change increases the Design-Builder's design or construction costs.

B. Construction Services

The Design-Builder may not commence construction until it delivers to Owner complete DSA approval of the design for the Contract. The Design-Builder shall perform all construction necessary to construct the Work in compliance with its DSA-approved design ("Design") and the Contract Documents, including the General Conditions.

ARTICLE II. CONTRACT DOCUMENTS.

The Design-Builder and the Owner agree that the following documents form the Contract Documents:

- A. The Request for Proposals, including all attachments, appendices, and addenda.
- B. The Design-Builder's proposal in response to the Request for Proposals ("Proposal"), including all attachments, certifications, and declarations required to be submitted with the Proposal.
- C. This Agreement.
- D. The General Conditions.
- E. Any written and Board-approved agreement to modify this Agreement, such as an

amendment or change order.

- F. The payment bond.
- G. The performance bond.
- H. The documents listed in Article 1.1.1 of the General Conditions.

This Agreement incorporates the above Contract Documents by reference, and together they constitute the “Contract.”

After award, the Design-Builder shall timely submit the bonds, fingerprinting certification, and Student Contact Form, as required by the Request for Proposals.

ARTICLE III. TIME TO COMPLETE AND LIQUIDATED DAMAGES.

Time is of the essence in this Contract, and the time of Completion for the Work (the “Contract Time”) shall be three hundred fifty one (351) calendar days which shall start to run on (a) the date of commencement of the Work as established in the Owner’s Notice to Proceed, or (b) if no such date is established in a Notice to Proceed from Owner, the date ten (10) calendar days after award of the Contract.

In addition, the Design-Builder shall meet the following milestone deadlines:

- DSA appointment request submitted August 19, 2022
- 70% CD package due to District September 9, 2022
- 100% DSA Submittal to DSA October 4, 2022
- Final completion of the Project July 29, 2023.

The Design-Builder shall not be entitled to time extensions for lack of access to the site on these dates.

Failure to Complete the Work within the Contract Time, or by the milestone deadlines noted above, in the manner provided for by the Contract Documents shall subject the Design-Builder to liquidated damages. For purposes of liquidated damages, the concept of “substantial completion” shall not constitute Completion and is not part of the Contract Documents. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not Completed within the Contract Time, or by the milestone deadlines noted above, are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer in the event of delay include, but are not limited to, loss of the use of the Work, disruption of activities, costs of administration, supervision, and the incalculable inconvenience and loss suffered by the public.

Accordingly, the parties agree that \$2,000.00 per calendar day of delay shall be the damages which the Owner shall directly incur upon failure of the Design-Builder to Complete the Work within the Contract Time or Complete any specified portion of the Work by a milestone deadline, as described above. Liquidated damages will accrue for failure to meet milestone deadlines even if the Design-Builder Completes the Project within the Contract Time.

If the Design-Builder becomes liable under this section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments and/or progress payments, and to collect the interest thereon, which would otherwise be or become due the Design-Builder until the liability of the Design-Builder under this section has been finally determined. If the retained percentages and withheld progress payments appear insufficient to discharge all liabilities of the Design-Builder incurred under this Article, the Design-Builder and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time for Completion and liquidated damages.

ARTICLE IV. PAYMENT AND RETENTION.

The Owner agrees to pay the Design-Builder in current funds a total of _____ Dollars (\$ _____ .00; the “Contract Price”) for the Work satisfactorily performed after receipt of properly documented and submitted Applications for Payment.

The Owner shall pay _____% of the Contract Price for design of the Project according to the following schedule:

- _____% of the Contract Price upon Owner approval of the 70% design package (see the Request for Proposals).
- _____% of the Contract Price upon full DSA approval of the Final 100% Plans and Specifications (see the Request for Proposals).

The Owner shall pay the other _____% of the Contract Price for construction of the Project by submitting monthly payment applications based upon the progress of the Work, as described in the Contract Documents, including Article 9 of the General Conditions.

Owner may elect to include a special allowance or general contingency allowance (“Allowance”) in the Contract Price, from which the Owner may, in its sole discretion, elect to pay any additional amounts that are owed to the Design-Builder under the Contract Documents, rather than pay the Design-Builder by a Board-approved change order. Any payment from an Allowance is entirely at the discretion, and only with the advanced written approval, of the Owner. To request payment from an Allowance, the Design-Builder must fully comply with the Contract Documents’ requirements related to Notice to Potential Changes, Change Order Requests, and Claims, including but not limited to Articles 4 and 7 of the General Conditions and its provisions regarding waiver of rights for failure to comply. If the Owner approves in writing a payment from an Allowance, no change order approved by Owner’s governing body shall be required, but Design-Builder must sign an Allowance expenditure form, after which the Design-Builder may include a request for such payment in its next progress payment application. Design-Builder’s acceptance of a progress payment that includes such payment shall act as a full

and complete waiver by Design-Builder of all rights to recover additional amounts, or to receive a time extension or other consideration, related to the underlying basis of such payment; and such waiver shall be in addition to any other waiver that applies under the Contract Documents (including Article 4 of the General Conditions). If Design-Builder requests a time extension or other consideration in connection with or related to a requested payment from an Allowance, Design-Builder must comply with the Contract Documents' requirements related to Notice to Potential Changes, Change Order Requests, and Claims, including but not limited to Articles 4, 7, and 8 of the General Conditions and their provisions regarding waiver of rights for failure to comply, and no such time extension or other consideration may be issued until a change order is approved by the Owner's governing body pursuant to the Contract Documents. The amount of an Allowance may only be increased by a change order approved by Owner's governing body. Once an Allowance is fully spent, the Design-Builder must request any additional compensation pursuant to the procedures in the Contract Documents for Notices of Potential Claim, Change Order Requests, and Claims, and payment must be made after a change order approved by the Owner's governing body pursuant to the General Conditions. Upon Completion of the Work, all amounts in an Allowance that remain unspent and unencumbered shall remain the property of the Owner, Design-Builder shall have no claim to such funds, the Owner shall be entitled to a credit for such unused amounts against the above contract price, and the Owner may withhold such credit from any progress payment or release of retention.

The Design-Builder shall be responsible for all of its costs related to the Work, including home office, administration, copies, and travel expenses.

The Design-Builder may not request an increase in the Contract price except as permitted in the Contract Documents; and under no circumstances may the Design-Builder request an increase in the Contract price based on costs caused by Design-Builder's errors in design of the Work or construction of the Work, based on unforeseen site conditions, or based on DSA corrections to the Design-Builder's design of the Work.

ARTICLE V. CHANGES.

Changes in this Agreement or in the Work to be done under this Agreement shall be made as provided in the General Conditions, and shall be in the form of a written amendment or change order to this Agreement approved by the Owner's governing body.

ARTICLE VI. DESIGN RESPONSIBILITIES OF THE DESIGN-BUILDER.

A. Definitions.

1. Design Services. "Design Services" shall mean the Design-Builder's design services, including landscaping architectural services and landscape irrigation design, civil, structural, mechanical, and electrical engineering services, foreseeably required under law, the standard of care, and this Agreement, to complete the design of the Work, obtain DSA approval of the design of the Work, and administer the construction of the Work, as further defined in this Article.

2. Wrongful Acts or Omissions. “Wrongful Acts or Omissions” shall mean Design-Builder’s acts or omissions in breach of this Agreement, the applicable standard of care, or law.

B. Standard of Care.

District retains Design-Builder to perform, and Design-Builder agrees to provide to District, for the consideration and upon the terms and conditions set forth below, the architectural and engineering services specified in this Agreement and related incidental services. The Design-Builder agrees to perform such services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. All services performed by the Design-Builder under or required by this Agreement shall be performed (a) in compliance with this Agreement, and (b) in a manner consistent with the level of care and skill ordinarily exercised by architects in the same discipline, on similar projects in California with similar complexity and with similar agreements, who are specially qualified to provide the services required by the District; and all such services shall be conducted in conformance to, and compliance with, all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act (“ADA”). Design-Builder shall be responsible for the completeness and accuracy of the plans and specifications.

C. Design Services.

1. General.

The Design-Builder shall complete the design for the Project in conformance to the Contract Documents, including the Bridging Documents prepared by the District’s Architect, and applicable law.

The District shall have the right to add or delete from the Design-Builder’s scope of Design Services as it may determine is necessary for the best interests of the Project and/or the District. Design-Builder shall expeditiously and diligently perform all of its work and obligations under this Agreement. Design-Builder may not cease, delay or reduce, or threaten to cease, delay or reduce, its performance based on a payment dispute with District. The Design-Builder acknowledges that its priority is to complete the Project and its Design Services, and that any payment disputes with the District, if not resolved during the Project, must wait for resolution after the Project.

All personnel provided by Design-Builder shall be qualified to perform the services for which they are provided. Design-Builder shall obtain District’s written approval of each employee of Design-Builder who provides services under this Agreement, and written approval of each change of employees who are providing such services. District may, upon Ten (10) days’ written notice, cause Design-Builder to remove a person from the Project if he/she has failed to perform to District’s satisfaction. Should additional employees be required to timely perform all of the services required under this Agreement and/or to avoid delay, Design-Builder shall provide them immediately.

Design-Builder is an agent of District and shall reasonably represent the District at all times in relation to the Project.

Design-Builder shall be fully licensed as required by law at all times when providing services under this Agreement.

2. Consultants.

The Design-Builder shall employ or retain at Design-Builder's own expense, engineers and other consultants necessary to Design-Builder's performance of this Agreement and licensed to practice in their respective professions in the State of California. Engineers and consultants retained or employed by Design-Builder for this Project shall be approved by District prior to their commencement of work. The Design-Builder's consultants shall be employed or retained to provide assistance during all aspects of performance of the Design Services for the Project, including but not limited to review of schedules, shop drawings, samples, submittals, and requests for information. The Design-Builder's consultants shall also conduct periodic inspections of the site to determine conformance with the DSA-approved design and shall participate in the final inspections and development of any "punch list" items. Design-Builder must disclose to District all such consultants employed or retained, and the compensation paid to those retained.

Design-Builder shall confer and cooperate with consultants retained by District as may be requested by District or as reasonably necessary. District may retain an architect or construction manager to assist District in performance of District's duties for the Project.

If not done by the District's architect for the Project ("Architect"), the Design-Builder shall procure a certified survey of the site if required, including grades and lines of streets, alleys, pavements, adjoining properties and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the building site, locations, dimensions and floor elevations of existing buildings, other improvements and trees; and full information as to available utility services and lines, both public and private above and below grade, including inverts and depths. All the information on the survey customarily referenced to a project benchmark shall be referenced to a Project benchmark. The cost of any such survey shall be borne by the District, and the District shall own and, upon termination of this Agreement or Completion of the Project, shall have returned to it by Design-Builder any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the survey.

If not done by the Architect, Design-Builder shall procure chemical, mechanical or other tests required for proper design, tests for hazardous materials and borings or test pits necessary for determining subsoil conditions. The cost of any such tests shall be borne by the District, and the District shall own and, upon termination of this Agreement or completion of the Project, shall have returned to it by Design-Builder any designs, plans, specifications, studies, drawings, estimates or other documents prepared as part of the testing.

3. Schematic Design Phase.

The Design-Builder shall treat the Bridging Documents as the schematic design for the Project. The Design-Builder shall complete the design of the Project in conformance with the Bridging Documents, as described in this Agreement.

4. Design Development Phase.

Design-Builder shall provide all necessary architectural and engineering services to prepare design development documents for the District's governing board's written approval, which fix and describe the size and character of the project and which shall include, but are not limited to, site and floor plans, elevations and other approved drawings and shall outline the specifications of the entire Project as to kind and quality of materials, categories of proposed work such as architectural, structural, mechanical and electrical systems, types of structures and all such other work as may be required. The design development documents shall represent a 70% complete design, and shall conform to the Bridging Documents and other Contract Documents. Design-Builder shall submit the 70% development design to the District for its review and for Board approval. Design-Builder is encouraged to make recommendations to District regarding benefits that could be realized by altering the scope of work or completion deadlines. If District incorporates any recommended changes or otherwise does not approve the submitted design development documents, then Design-Builder shall revise the design development documents as necessary until District's governing board approves them in writing. Design-Builder shall attend, and present at, as many meetings of the District's governing board as may be necessary to obtain the board's approval of the design development documents.

The Design-Builder shall prepare the Storm Water Pollution Prevention Plan if any such plan is required for this Project.

Design-Builder shall prepare necessary documents for and oversee the processing of District's application for and obtaining of required approvals from the DSA, the OPSC (if applicable), the Department of Education, the State Fire Marshall and other agencies exercising jurisdiction over the Project. Design-Builder shall also be responsible for the preparation and submission of any required applications, notices or certificates to public agencies as required by law. Design-Builder shall provide a copy of all such documents to the District.

Design-Builder shall provide at no expense to the District one complete set of preliminary plans for the review and written approval of the District and one set for each public agency having approval authority over such plans for their review and approval at no expense to the District.

5. Completion of Design Phase.

Following the District's written approval of the design development documents, the Design-Builder shall prepare for the written approval of the District, the 100% complete working drawings and specifications setting forth the work to be done in detail sufficient for construction, including but not limited to the materials, workmanship, finishes and equipment required for the architectural, structural, mechanical, electrical system and utility-service-connected equipment and site work. The 100% complete design shall conform to, comply with, and satisfy the Bridging Documents and other Contract Documents, as well as all applicable Federal, State and local laws, including but not limited to statutes, decisions, regulations, building or other codes, ordinances, charters, and the Americans with Disabilities Act ("ADA"). As part of the 100% complete design, Design-Builder shall prepare an accurate set of drawings indicating dimensions and locations of existing buried utility lines, which shall be included in the bid packages.

After the Design Builder submits the 100% DSA submittal to DSA, the District will review the 100% DSA Submittal for conformance of the bridging documents and provide approval or comments and revisions to the design-build entity within seven (7) calendar days of receipt of the Final 100% Plans and Specifications. If the District does not approve the 100% design package, the design-build entity shall make all necessary revisions and re-submit to the District for review. The design-build entity shall make all revisions before back-check with DSA so that the revisions can be approved during the back-check process.

At Design-Builder's expense, Design-Builder shall arrange for the scanning of the DSA-approved design documents and for the return of the originals and an electronic copy to DSA. If the DSA requires any changes in the 100% complete design, Design-Builder shall submit its changes to the District for review and approval before submitting them to DSA for approval.

6. Construction Phase.

The construction phase shall begin on the date that Design-Builder obtains complete DSA approval of the 100% complete design.

The Design-Builder shall be responsible for the preparation and submission of any notifications regarding excavation in areas which are known or suspected to contain subsurface installations under Government Code section 4216, *et seq.* Design-Builder shall provide a copy of all such notifications to the District.

After DSA approval of the design, the Design-Builder may select subcontractors for performance of construction work, and if the scope of a subcontractor's construction work is greater than 0.5% of the total value of the contract price allocable to construction work, then the Design-Builder shall use the procedures specified in Education Code section 17250.35(b) to select that construction subcontractor. The Design-Builder shall award each construction subcontract on a best value basis.

The Design-Builder shall submit to the District and its Architect all schedules, shop drawings, samples and other submissions as set forth in the Contract Documents. The District and its Architect shall take action within fourteen (14) days of receipt of the submittals, unless the critical path of the Project is impacted in which case District and its Architect shall take such action as soon as possible. If District and its Architect are not able to take such action within the required time due to reasons beyond their control, they may take action within a reasonable period of time under the circumstances; however, they shall make such determination within four (4) calendar days of receipt of the submission, and shall notify the Design-Builder immediately after such determination with an explanation as to why they cannot take action within the time required, what they are doing to expedite its response, when they expect to be able to issue a response, and what action, if any, should be taken by the Design-Builder in the meantime to mitigate delays and/or costs. The District and its Architect will have the authority to reject work and materials which do not conform to the Contract Documents, including the Bridging Documents. The approval of a specific item shall not be an approval of an assembly of which the item is a component. Whenever, in the reasonable judgment of the District, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the District and its Architect will have authority to require special inspection or testing of the work or materials in accordance with the Contract Documents whether or not such work or materials be then fabricated, installed or completed. The District and its Architect will also recommend substitution of materials or equipment when, in their reasonable judgment, such action is necessary to the accomplishment of the intent and purpose of the Contract Documents. Such actions as are described in this paragraph shall be taken with reasonable promptness.

The Design-Builder shall make such regular reports as shall be required by agencies having jurisdiction over the Project and keep the District informed in writing of the progress of the Project.

The Design-Builder will, consistent with standards of due care, make reasonable professional efforts to exclude hazardous materials from new construction. In the event the District or Design-Builder is or becomes aware of the presence of, or exposure of persons to, asbestos, polychlorinated biphenyl (PCB) or any other toxic or hazardous contaminants, materials, air pollutants or water pollutants at the Project site ("Hazardous Substances"), or the substantial risk thereof, each shall have a duty immediately to notify the other in writing. The parties recognize, however, that neither Design-Builder nor the District is trained or licensed in the recognition or remediation of Hazardous Substances.

Design-Builder shall prepare an accurate set of as-built record drawings indicating dimensions and locations of all work, including but not limited to buried utility lines and mechanical, electrical and plumbing layouts, which shall be forwarded to the District upon Completion of the Project. Design-Builder shall also assemble and deliver to District all written guarantees, instruction books, operation and maintenance manuals, diagrams, charts and other documents required under the Contract Documents.

When construction is properly completed, Design-Builder shall provide such certification as to Hazardous Substances as is required of architects for such projects by the OPSC.

Notwithstanding any other provision of this Agreement, the Design-Builder will not be entitled to a change order or additional payment if the underlying issue was caused by a Wrongful Act or Omission. At its own expense, the Design-Builder shall perform all Work caused or necessitated by the Wrongful Act or Omissions. Design-Builder is responsible to ensure that the 100% complete design, and the finished Project based on that design, comply with all standards imposed by the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, disability access requirements of the State Building Code and any other laws applicable to disability access. If a court, administrative agency or other trier of fact later determines that Design-Builder has violated any of the above-referenced laws, or District, because of Design-Builder's Wrongful Acts or Omissions, has violated any of the above-referenced laws, Design-Builder shall remedy the violation at its own cost. **Design-Builder shall indemnify, defend and hold the District harmless under Section VI.G of this Agreement for any breach of this paragraph due to Design-Builder's negligence, recklessness or willful misconduct.** In the event that the Design-Builder is or becomes aware of possible non-compliance with the foregoing standards, Design-Builder shall have a duty immediately to notify the District in writing of the possible non-compliance.

7. Use of Previously Prepared Materials. In the event that there exist previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Design-Builder, whether supplied by District or by others, which are relied upon, altered or otherwise utilized by Design-Builder, Design-Builder shall be responsible for giving appropriate recognition to such other design professionals in any materials prepared by Design-Builder under this Agreement.

D. Errors and Omissions Insurance.

Prior to the commencement of services under this Agreement, the Design-Builder shall furnish to the District satisfactory proof that the Design-Builder has, for the period covered by this Agreement, errors and omissions insurance on an occurrence basis, with limits of at least Two Million Dollars (\$2,000,000.00). and with a deductible in an amount not to exceed the sum of Ten Thousand Dollars (\$10,000). If errors and omissions insurance is not reasonably available on an occurrence basis, Design-Builder shall provide errors and omissions insurance on a claims-made basis.

Each of Design-Builder's professional sub-consultants (including consultants of Design-Builder) shall comply with this section, and Design-Builder shall include such provisions in its contracts with them.

Said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the Declarations Page and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured

shall not operate to increase the insurer's limits of liability.

Should any of the required insurance be provided under a claims-made form, Design-Builder shall maintain coverage continuously throughout the term of this Agreement, and without lapse, for a period of at least ten (10) years beyond the Agreement expiration or the completion of construction (whichever is later), to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policy. Nothing herein shall in any way limit or diminish Design-Builder's obligations to the District under any provision, including any duty to indemnify and defend the District.

Design-Builder shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the District for approval. Thereafter Design-Builder shall produce a certified copy of any insurance policy required under this Article upon written request of the District.

At the time of making application for any extension of time, Design-Builder shall submit evidence that all required insurance policies will be in effect during the requested additional period of time.

If the Design-Builder fails to maintain such insurance, the District may, but shall not be required to, take out such insurance, and may deduct and retain the amount of the premiums from any sums due the Design-Builder under this Agreement.

Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to which the Design-Builder may be held responsible for the payment of damages resulting from the Design-Builder's operations.

Each of Design-Builder's consultants shall comply with this Article, and Design-Builder shall include such provisions in its contracts with them.

Insurance companies providing the above policies shall be legally authorized, licensed and admitted through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All such insurance companies shall have no lower than an "A-, VIII" in Best's Rating Guide and shall be satisfactory to the District.

Any failure to maintain any item of the required insurance may, at District's sole option, be sufficient cause for termination of this Agreement.

E. Compliance with Laws.

Design-Builder shall be familiar with, and Design-Builder and Design-Builder's design shall comply with, all State and Federal laws and regulations applicable to the Project or lawfully imposed upon the Project by agencies having jurisdiction over the Project, including but not

limited to statutes, decisions, regulations, building or other codes, ordinances, charters, prevailing wage law, and the Americans with Disabilities Act (“ADA”).

F. Ownership of Documents; Licensing of Intellectual Property.

All designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Design-Builder under this Agreement shall be and shall remain the property of the District for all purposes, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to any other project, provided that any invalidity of such ownership in relation to any other project shall not affect the validity of such ownership in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316.

The Design-Builder will provide the District with a complete set of reproducible designs, plans, specifications, studies, drawings, estimates and other documents or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Design-Builder under this Agreement, and will retain, on the District's behalf, the original documents or reproducible copies of all such original documents, however stored, in the Design-Builder's files for a period of no less than fifteen (15) years. Design-Builder shall promptly make available to District any original documents it has retained under this Agreement upon request by the District.

This Agreement creates a non-exclusive and perpetual license for the District to copy, use, modify, reuse or sublicense any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates and other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings prepared or caused to be prepared by the Design-Builder under this Agreement, not only as they relate or may relate to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) but as they relate or may relate to other projects, provided that any invalidity of such license in relation to such other projects shall not affect the validity of such license in relation to this Project (including but not limited to any repair, maintenance, renovation, modernization or other alterations or revisions to this Project) under Education Code Section 17316. The Design-Builder shall require any and all subcontractors and consultants to agree in writing that the District is granted a similar non-exclusive and perpetual license for the work of such subcontractors or consultants performed under this Agreement.

The compensation for this Project includes compensation not only for any use in connection with this Project and use or re-use for repair, maintenance, renovation, modernization

or other alterations or revisions to this Project, but also for any re-use by the District in relation to other projects. The only other term or condition of such re-use shall be that if the District reuses the plans prepared by the Design-Builder and retains another certified architect or structural engineer for the preparation of those plans for the re-use, the District shall indemnify and hold harmless the Design-Builder and its consultants, agents, and employees from and against any claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from, in whole or in part, the re-use to the extent required by Education Code section 17316, subdivision (c).

Design-Builder represents and warrants that Design-Builder has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Design-Builder or its consultants prepares or causes to be prepared under this Agreement. **Design-Builder shall indemnify, defend and hold the District harmless under Section VI.G of this Agreement for any breach of this section due to Design-Builder's negligence, recklessness or willful misconduct.** The Design-Builder makes no such representation and warranty in regard to previously prepared designs, plans, specifications, studies, drawings, estimates or other documents, or any other works of authorship fixed in any tangible medium of expression, including but not limited to physical drawings, data magnetically or otherwise recorded on computer disks, or other writings, that were prepared by design professionals other than Design-Builder and provided to Design-Builder by the District.

G. Indemnity Regarding Design.

Design-Builder Indemnification – To the fullest extent permitted by law, including California Civil Code section 2782.8, the Design-Builder shall defend, indemnify, and hold harmless the District, the governing Board of the District, each member of the Board, and their officers, agents and employees (“District Indemnitees”) against claims arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Design-Builder, the Design-Builder's officers, employees, or consultants in performing or failing to perform any design work, services, or functions provided for, referred to, or in any way connected with any design work, services, or functions to be performed under this Agreement.

For purposes of this Section VI.G only, (a) “claims” means all claims, demands, actions and suits brought by third parties against the District Indemnitees for any and all losses, liabilities, costs, expenses, damages and obligations, and (b) the Design-Builder's defense obligation shall include but not be limited to (i) provision of a full and complete defense of the District Indemnitees by an attorney chosen or approved by the District, and (ii) payment of the District's attorneys' fees, experts' fees, and all other litigation costs incurred in the District's defense (“Defense Costs”) within thirty (30) days of Design-Builder's receipt of each invoice for such Defense Costs. After

conclusion of the action against the District Indemnitees (including all appeals), the District shall reimburse Design-Builder for the portion of the Defense Costs proportionate to the percentage of fault of parties other than the Design-Builder (“Other Parties”) for the amounts paid or owed to the third party by the District Indemnitees, but this duty of reimbursement shall only be owed by the District if there are specific findings in a settlement agreement, arbitration award, or verdict as to the Other Parties’ percentage of fault, and the Design-Builder’s percentage of fault, for those amounts paid or owed to the third party.

If one or more defendants is/are unable to pay its/their share of Defense Costs due to bankruptcy or dissolution of the business, the Design-Builder shall meet and confer with other parties regarding unpaid Defense Costs.

This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Design-Builder.

District Indemnification for Use of Third Party Materials – The District shall defend, indemnify, and hold harmless the Design-Builder and its employees against any and all copyright infringement claims by any design professional formerly retained by the District arising out of Design-Builder's completion, use or re-use of that former design professional's designs or contract documents in performing this Agreement. Design-Builder shall be entitled to such indemnification only if each of the following conditions are met: (a) Design-Builder actually re-draws or completes such other designs or contract documents; (b) Design-Builder complies with the provisions of this Agreement regarding use of materials prepared by other design professionals; (c) District has supplied Design-Builder with the previously prepared documents or materials; and (d) District expressly requests that the Design-Builder utilize the designs or contract documents in question. By providing this or any other indemnification in this Agreement, District does not waive any immunities.

ARTICLE VII. TERMINATION.

The Owner or Design-Builder may terminate the Contract as provided in the General Conditions.

ARTICLE VIII. PREVAILING WAGES.

The Project is a public work, the Work shall be performed as a public work and pursuant to the provisions of Section 1770 et seq. of the Labor Code of the State of California, which are

hereby incorporated by reference and made a part hereof, the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute this Contract. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Design-Builder and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

The Design-Builder and any subcontractor under the Design-Builder as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Design-Builder.

The Design-Builder and each Subcontractor shall keep or cause to be kept an accurate record for Work on this Contract showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Contract or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations. The Design-Builder and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner at least monthly.

Public works projects shall be subject to compliance monitoring and enforcement by the Department of Industrial Relations. A contractor or subcontractor shall not be qualified to submit a bid or to be listed in a bid proposal subject to the requirements of Public Contract Code section 4104 unless currently registered and qualified under Labor Code section 1725.5 to perform public work as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code. A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work.

ARTICLE IX. WORKING HOURS.

In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of

service of any worker employed by the Design-Builder or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to eight hours during any one calendar day and forty hours during any one calendar week, provided, that work may be performed by such employee in excess of said eight hours per day or forty hours per week provided that compensation for all hours worked in excess of eight hours per day, and forty hours per week, is paid at a rate not less than one and one-half (1½) times the basic rate of pay. The Design-Builder and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The records shall be kept open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Standards Enforcement. The Design-Builder shall as a penalty to the Owner forfeit Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Agreement by the Design-Builder or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day, and forty hours in any one calendar week, except as herein provided.

ARTICLE X. APPRENTICES.

The Design-Builder agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for each five hours of work performed by a journeyman (unless an exemption is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Design-Builder for all apprenticeable occupations.

ARTICLE XI. DSA OVERSIGHT PROCESS.

The Design-Builder must comply with the applicable requirements of the Division of State Architect (“DSA”) Construction Oversight Process (“DSA Oversight Process”), including but not limited to (a) notifying the Owner’s Inspector of Record/Project Inspector (“IOR”) upon commencement and completion of each aspect of the Work as required under DSA Form 156; (b) coordinating the Work with the IOR’s inspection duties and requirements; (c) submitting verified reports under DSA Form 6-C; and (d) coordinating with the Owner, Owner’s Architect, any Construction Manager, any laboratories, and the IOR to meet the DSA Oversight Process requirements without delay or added costs to the Work or Project.

Design-Builder shall be responsible for any additional DSA fees related to review of proposed changes to the DSA-approved construction documents, to the extent the proposed changes were caused by Design-Builder’s Wrongful Act or Omission. If inspected Work is

found to be in non-compliance with the DSA-approved construction documents or the DSA-approved testing and inspection program, then it must be removed and corrected. Any construction that covers unapproved or uninspected Work is subject to removal and correction, at Design-Builder's expense, in order to permit inspection and approval of the covered work in accordance with the DSA Oversight Process.

ARTICLE XII. INDEMNIFICATION AND INSURANCE.

The Design-Builder will defend, indemnify and hold harmless the Owner, its governing board, officers, agents, trustees, employees and others as provided in the Contract Documents, including the General Conditions.

By this statement the Design-Builder represents that it has secured the payment of Workers' Compensation in compliance with the provisions of the Labor Code of the State of California and during the performance of the work contemplated herein will continue so to comply with said provisions of said Code. The Design-Builder shall supply the Owner with certificates of insurance evidencing that Workers' Compensation Insurance is in effect and providing that the Owner will receive thirty (30) days' notice of cancellation.

Design-Builder shall provide the insurance set forth in the General Conditions. The amount of general liability insurance shall be \$5,000,000 per occurrence for bodily injury, personal injury and property damage and the amount of automobile liability insurance shall be \$5,000,000 per accident for bodily injury and property damage combined single limit.

ARTICLE XIII. ENTIRE AGREEMENT.

The Contract constitutes the entire agreement between the parties relating to the Work, and supersedes any prior or contemporaneous agreement between the parties, oral or written, including the Owner's award of the Contract to Design-Builder, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the parties' agreement pursuant to Code of Civil Procedure section 1856.

ARTICLE XIV. EXECUTION OF OTHER DOCUMENTS.

The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

ARTICLE XV. EXECUTION IN COUNTERPARTS.

This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

ARTICLE XVI. BINDING EFFECT.

Design-Builder, by execution of this Agreement, acknowledges that Design-Builder has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Design-Builder and the Owner and their respective successors and assigns.

ARTICLE XVII. SEVERABILITY; GOVERNING LAW; CHOICE OF FORUM.

If any provision of the Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The Contract shall be governed by the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Santa Clara, subject to transfer of venue under applicable State law, provided that nothing in this Agreement shall constitute a waiver of immunity to suit by Owner.

ARTICLE XVIII. AMENDMENTS.

The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement, including a change order, signed by the parties and approved or ratified by the Governing Board.

ARTICLE XIX. ASSIGNMENT OF CONTRACT.

The Design-Builder shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond and the Owner.

ARTICLE XX. WRITTEN NOTICE.

Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address

known to the person who gives the notice.

ARTICLE XX. SANCTIONS IN RESPONSE TO RUSSIAN AGGRESSION.

Owner requires Design-Builder to comply with the Governor’s March 4, 2022, Executive Order N-6-22 (“Order”) relating to any existing sanctions imposed by the United States government and the State of California in response to Russia’s actions in Ukraine, including additional requirements for contracts of \$5 million or more. Failure to comply may result in the termination of the Contract.

DESIGN-BUILDER:

OWNER:

a California corporation

Berryessa Union School District

BY: _____
President, Vice President, or Chairman

BY: _____ TITLE:
TITLE: Superintendent

BY: _____
TITLE: Secretary, Assistant Secretary, CFO,
or Assistant Treasurer

CALIFORNIA ARCHITECT LICENSE NO.

LICENSE EXPIRATION DATE

CALIFORNIA CONTRACTOR'S LICENSE NO.

LICENSE EXPIRATION DATE

NOTE: Design-Builder must give the full business address of the Design-Builder and sign with Design-Builder’s usual signature. Partnerships must furnish the full name of all partners and the Agreement must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature. Corporations must sign with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of the officer signing on behalf of a corporation shall be furnished.

EXHIBIT A

SKILLED AND TRAINED WORKFORCE COMPLIANCE REPORT

(Education Code §17407.5 and Public Contract Code §§2600-2602)

Owner: Berryessa Union School District

Contract: New Modular Gymnasium Building Piedmont Middle School
Piedmont Middle School
955 Piedmont Road
San Jose, CA 95132

The undersigned declares:

I am the _____ of _____, the “Design-Builder” on the Contract identified above (also referred to as “Contractor” in this report). I hereby certify that during the month of _____, 20__, Contractor and its subcontractors employed a total of _____ workers on the Contract in the apprenticeable occupations designated under Public Contract Code sections 2600 et seq., and these workers performed a total of _____ hours of work within the apprenticeable occupations. I certify that all of these workers in the apprenticeable occupations are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Department of Industrial Relations (DIR), and that all of these hours performed in the apprenticeable occupations were performed by such skilled journeypersons and apprentices.

I. CONTRACTOR’S WORKFORCE

For the workers in the apprenticeable occupations employed by Contractor during the aforementioned month, I certify as follows *[check the applicable box]*:

A. Exemption

The Contractor’s workers in the apprenticeable occupations performed fewer than ten (10) hours of work on the Contract, and thus are exempt from the percentage compliance requirements of Public Contract Code section 2601(d)(2).

B. Percentage Compliance by Number of Workers

[If Contractor meets or exceeds the required percentage of skilled journeypersons that are apprenticeship graduates (see Public Contract Code section 2601(d)(2)-(4)), fill out Paragraphs 1.1-1.4 and 2.1-2.4.]

1.0 Apprenticeable occupations of acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems

installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, and tile layer, setter, or finisher:

1.1. Number of Contractor's skilled journeypersons in these apprenticeable occupations = _____

1.2. Number of Contractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

1.3 For apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____
[may not exceed 15% of 1.1, above]

1.4. Contractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 1.2 and 1.3, and divide that sum by 1.1; the result must meet or exceed 30% (see Public Contract Code §2601(d)(2)(A))]*

2.0 All apprenticeable occupations other than teamsters and those listed in 1.0 above:

2.1. Number of Contractor's skilled journeypersons in these apprenticeable occupations = _____

2.2. Number of Contractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

2.3 For apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____
[this number may not exceed 30% of 2.1, above]

2.4. Contractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 2.2 and 2.3, and divide that sum by 2.1; this percentage must be at least 60% (see Public Contract Code §2601(d)(2)(D))]*

C. Percentage Compliance by Number of Hours

[If Contractor meets or exceeds the required percentage of hours performed by apprenticeship graduates (see Public Contract Code section 2601(d)(2)-(4)), fill out Paragraphs 1.1-1.4 and 2.1-2.4.]

1.0 Apprenticeable occupations of acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor,

terrazzo worker or finisher, and tile layer, setter, or finisher:

1.1. Number of hours of work performed by Contractor's skilled journeypersons in these apprenticeable occupations = _____

1.2. Number of hours of work performed by Contractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

1.3 For any of these apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of hours of work performed by subcontractor's skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____ *[may not exceed 15% of 1.1, above; see Public Contract Code §2601(d)(2)(A) and (d)(3)]*

1.4. Contractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 1.2 and 1.3, and divide that sum by 1.1; the result must meet or exceed 30% (see Public Contract Code §2601(d)(2)(A))]*

2.0 All apprenticeable occupations other than teamsters and those listed in 1.0 above:

2.1. Number of hours of work performed by Contractor's skilled journeypersons in these apprenticeable occupations = _____

2.2. Number of hours of work performed by Contractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

2.3 For any of these apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of hours of work performed by subcontractor's skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____ *[this number may not exceed 30% of 2.1, above; see Public Contract Code §2601(d)(2)(C), (d)(2)(D), and (d)(3)]*

2.4. Contractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 2.2 and 2.3, and divide that sum by 2.1; this percentage must be at least 60% (see Public Contract Code §2601(d)(2)(D))]*

D. Failure of Contractor to Demonstrate Compliance

This Skilled and Trained Workforce Compliance Report does not demonstrate compliance with the graduate percentage requirement due to the failure of Contractor to (1) qualify for exemption under I.A, above, or (2) meet the percentage requirements under I.B or I.C, above.

The total value of the monthly billing for the Contractor is \$ _____. I have attached sufficient information to document to value of the monthly billing and understand that the District will withhold 150 percent of the aforementioned amount until a plan to achieve substantial compliance is approved by the District consistent with Public Contract Code section 2602(c).

II. SUBCONTRACTORS' WORKFORCES

I certify that each subcontractor of every tier who performed work during the aforementioned month has provided to Contractor a Skilled and Trained Workforce Compliance Report that is signed under the penalty of perjury, and that provides sufficient detail to allow Contractor to fully and accurately prepare Section II of this form. I certify that Contractor will retain these forms and will provide copies of them to Owner within seven (7) days of Owner's written request. Following review of all of the subcontractors' Skilled and Trained Workforce Compliance Reports, I also certify as follows *[check applicable box(es)]*:

A. Exemption from Percentage Compliance (PCC §2601(d)(5) and (6))

The following subcontractors are exempt from the percentage compliance requirements of Public Contract Code section 2601(d)(2) because they employed skilled journeypersons to perform fewer than ten (10) hours of work in the apprenticeable occupations on the Contract: _____ (___ hours), _____ (___ hours), _____ (___ hours), _____ (___ hours), and _____ (___ hours). *[insert names of the subcontractors on the Contract that are exempt for this reason, and the number of hours performed by skilled journeypersons for each one]*

The following subcontractors are exempt from the percentage compliance requirements of Public Contract Code section 2601(d)(2) because they were not a listed subcontractor under Public Contract Code section 4104 or a substitute for a listed subcontractor, and the subcontract does not exceed 0.5% of the price of the prime contract: _____, _____, _____, _____, and _____. *[insert names of the subcontractors on the Contract that are exempt for this reason]*

B. Percentage Compliance by Number of Workers

*[For **each** subcontractor that meets or exceeds the required percentage of skilled journeypersons that are apprenticeship graduates (see Public Contract Code section 2601(d)(2)-(4)), fill out Paragraphs 1.1-1.4 and 2.1-2.4.]*

_____ *[insert name of subcontractor]* :

1.0 Apprenticeable occupations of acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, and tile layer, setter, or finisher:

1.1. Number of subcontractor's skilled journeypersons in these apprenticeable occupations = _____

1.2. Number of subcontractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

1.3 For apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____ *[may not exceed 15% of 1.1, above]*

1.4. Subcontractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 1.2 and 1.3, and divide that sum by 1.1; the result must meet or exceed 30% (see Public Contract Code §2601(d)(2)(A))]*

2.0 All apprenticeable occupations other than teamsters and those listed in 1.0 above:

2.1. Number of subcontractor's skilled journeypersons in these apprenticeable occupations = _____

2.2. Number of subcontractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

2.3 For apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____ *[this number may not exceed 30% of 2.1, above]*

2.4. Subcontractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 2.2 and 2.3, and divide that sum by 2.1; this percentage must be at least 60% (see Public Contract Code §2601(d)(2)(D))]*

C. Percentage Compliance by Number of Hours

*[For **each** subcontractor that meets or exceeds the required percentage of hours performed by apprenticeship graduates (see Public Contract Code section 2601(d)(2)-(4)), fill out Paragraphs 1.1-1.4 and 2.1-2.4.]*

_____ *[insert name of subcontractor]* :

1.0 Apprenticeable occupations of acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, terrazzo worker or finisher, and tile layer, setter, or finisher:

1.1. Number of hours of work performed by subcontractor's skilled journeypersons in these apprenticeable occupations = _____

1.2. Number of hours of work performed by subcontractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

1.3 For any of these apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of hours of work performed by subcontractor's skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____
[may not exceed 15% of 1.1, above; see Public Contract Code §2601(d)(2)(A) and (d)(3)]

1.4. Subcontractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 1.2 and 1.3, and divide that sum by 1.1; the result must meet or exceed 30% (see Public Contract Code §2601(d)(2)(A)]*

2.0 All apprenticeable occupations other than teamsters and those listed in 1.0 above:

2.1. Number of hours of work performed by subcontractor's skilled journeypersons in these apprenticeable occupations = _____

2.2. Number of hours of work performed by subcontractor's skilled journeypersons in these apprenticeable occupations who are graduates of an apprenticeship program for the applicable occupation = _____

2.3 For any of these apprenticeable occupations where no apprenticeship program had been approved by the Chief before January 1, 1995, the number of hours of work performed by subcontractor's skilled journeypersons who commenced working in these apprenticeable occupations before the Chief's approval of an apprenticeship program for each occupation in the county of this Project = _____
[this number may not exceed 30% of 2.1, above; see Public Contract Code §2601(d)(2)(C), (d)(2)(D), and (d)(3)]

2.4. Subcontractor's apprenticeship graduation percentage for these apprenticeable occupations = _____% *[add 2.2 and 2.3, and divide that sum by*

2.1; this percentage must be at least 60% (see Public Contract Code §2601(d)(2)(D))]

D. Failure of a Subcontractor to Demonstrate Compliance

This Skilled and Trained Workforce Compliance Report does not demonstrate compliance with the graduate percentage requirement due to the failure of the following subcontractor(s) to qualify for exemption under II.A, above, or meet the percentage requirements under II.B or II.C, above: _____, _____, _____, _____, and _____.
[insert names of subcontractors]

The total value of the monthly billing for the subcontractor(s) listed in the previous paragraph is \$ _____. I have attached sufficient information to document to value of the monthly billing and understand that the District will withhold 150 percent of the aforementioned amount until a plan to achieve substantial compliance is approved by the District consistent with Public Contract Code section 2602(c).

I certify that each subcontractor listed above will be substituted off the Contract pursuant to Public Contract Code section 4100 *et seq.*, unless it provides a plan to achieve compliance consistent with Public Contract Code section 2602(c)(1).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____, 20__, at _____ [city], California.

Name

GENERAL CONDITIONS
for
DESIGN-BUILD CONSTRUCTION

RFP-01-2022-23
NEW MODULAR GYMNASIUM BUILDING
PIEDMONT MIDDLE SCHOOL

BERRYESSA UNION SCHOOL DISTRICT

June 17, 2022

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ARTICLE 1

GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The “Contract Documents” consist of the Agreement between Owner and Design-Builder (hereinafter the Agreement), all attachments and exhibits to the Agreement, Conditions of the Contract (General, Supplementary, and any other Conditions), the Request for Proposal including all design requirements (i.e., “Bridging Documents”), Design-Builder’s proposal, Payment Bond, Performance Bond, required insurance certificates, additional insured endorsement and declarations page, Designation of Subcontractors, Noncollusion Declaration, Roof Project Certification (where applicable), Sufficient Funds Declaration (Labor Code section 2810), Workers’ Compensation Certification, Drug-Free Workplace Certification, Iran Contracting Act Certification, the Fingerprinting Notice and Acknowledgment for Design Services, Fingerprinting Notice and Acknowledgement for Construction Services, other documents referred to in the Agreement, and Modifications issued after execution of the Agreement. A Modification is a written amendment to the Contract signed by both parties, a Change Order, a Construction Change Directive, or a written order for a minor change in the Work issued by the Owner. The Contract Documents are complementary, and each obligation of the Design-Builder, Subcontractors, material or equipment suppliers in any one shall be binding as if specified in all.

1.1.2 THE CONTRACT

The Contract Documents form the Contract. The “Contract” represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Design-Builder, between the Owner and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the Owner and the Design-Builder. The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Owner’s governing board.

1.1.3 THE WORK

The “Work” shall include all labor, materials, services and equipment necessary for the Design-Builder to fulfill all of its obligations pursuant to the Contract Documents, including but not limited to preparation of the 100% complete DSA-approved design of the Project (the “Design”), performance of all construction work, including punch list items, and submission of documents to Owner. It shall include the initial obligation of any Design-Builder or Subcontractor, who performs any portion of the Work, to visit the Site of the proposed Work with Owner’s

representatives, a continuing obligation after the commencement of the Work to fully acquaint and familiarize itself with the conditions as they exist and the character of the operations to be carried on under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Design-Builder or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated bid documents. The “Site” refers to the grounds of the Project as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.

1.1.4 THE PROJECT

The “Project” is the total design and construction of the Work performed in accordance with the Contract Documents, but “Project” may also include construction by the Owner or by separate contractors of improvements related to, but not included in, the Work. The Project shall constitute a “work of improvement” under Civil Code section 8050 and Public Contract Code section 7107.

1.1.5 THE DRAWINGS

The “Drawings” are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect.

1.1.6 THE SPECIFICATIONS

The “Specifications” are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

1.1.7 THE PROJECT MANUAL

The “Project Manual” is the volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Agreement, Conditions of the Contract, and Specifications.

1.1.8 OR

“Or” shall include “and/or.”

1.1.9 COMPLETION AND COMPLETE

Statutory definitions of “Completion” and “Complete” shall apply for those statutory purposes. For all other purposes, including accrual of liquidated damages, Claims, and warranties, “Completion” and “Complete” mean the point in the Work where (1) Design-Builder has fully and correctly performed all Work in all parts and requirements, including design, construction,

and corrective and punch list work, and (2) Owner’s representatives have conducted a final inspection that confirmed this performance. Substantial, or any other form of partial or non-compliant, performance shall not constitute “Completion” or “Complete” under the Contract Documents, except to the extent that substantial completion is required for a milestone deadline.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 CORRELATION AND INTENT

1.2.1.1 ***Documents Complementary and Inclusive.*** The Contract Documents are complementary and are intended to include all items required for the proper execution and Completion of the Work.

1.2.1.2 ***Coverage of the Contract Documents.*** The Contract Documents generally describe the work to be performed by Design-Builder. It is not intended to mention every item of Work. All materials or labor for Work, which are required by the Contract Documents or the Design (or is reasonably inferable therefrom as being necessary to Complete the Work), shall be provided by the Design-Builder whether or not the Work is expressly covered in the Contract Documents. It is intended that the Work be of sound, quality construction, and the Design-Builder shall be responsible for the inclusion of adequate amounts to cover installation of all items indicated, described, or implied in the portion of the Work to be performed by Design-Builder.

1.2.1.3 ***Conflicts.*** Without limiting Design-Builder’s obligation to identify conflicts for resolution by the Owner, in the event of a conflict between provisions of the Contract Documents, it is intended that the more stringent, higher quality, and greater quantity of Work shall apply; except that in the event of a conflict between a Division 01 specification and a Contract provision not within the Division 01 specifications, the provision not within Division 01 shall control.

1.2.1.4 ***Conformance With Laws.*** Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Contract shall be amended in writing to make such insertion or correction.

Before commencing any portion of the Work, Design-Builder shall check and review the Contract Documents for conformance and compliance with all laws, ordinances, codes, rules and regulations of all governmental authorities and public utilities affecting the construction and operation of the physical plant of the Project, all quasi-governmental and other regulations affecting the construction and operation of the physical plant of the Project, and other special requirements, if any, designated in the Contract Documents. In the event Design-Builder observes any violation of any law, ordinance, code, rule or regulation, or inconsistency with any such restrictions or special requirements of the Contract Documents, Design-Builder shall promptly notify Owner in writing of same and shall ensure that any such violation or inconsistency shall be corrected in the manner provided hereunder prior to the construction of

that portion of the Work. Where requirements of the Contract Documents exceed those of the applicable building codes and ordinances, the Contract Documents shall govern. Design-Builder shall comply with all applicable Federal, State and local laws.

If, as, and to the extent that Public Contract Code section 1104 is deemed to apply after the award of the Contract, Design-Builder shall not be required to assume responsibility for the completeness and accuracy of the Contract Documents, notwithstanding any other provision in the Contract Documents, except to the extent that Design-Builder discovered or should have discovered and reported any errors and omissions to the Owner, including but not limited to as the result of any review of the plans and specifications by Design-Builder required by the Instructions to Bidders or other Contract Documents, whether or not actually performed by Design-Builder.

1.2.1.5 **Ambiguity.** Before commencing any portion of the Work, Design-Builder shall carefully examine all Contract Documents and other information given to Design-Builder as to materials and methods of construction and other Project requirements. Design-Builder shall immediately notify Architect and Owner in writing of any perceived or alleged error, inconsistency, ambiguity, or lack of detail or explanation in the Contract Documents in the manner provided herein. If the Design-Builder or its Subcontractors, material or equipment suppliers, or any of their officers, agents, and employees performs, permits, or causes the performance of any Work under the Contract Documents, which it knows or should have known to be in error, inconsistent, or ambiguous, or not sufficiently detailed or explained, Design-Builder shall bear any and all costs arising therefrom including, without limitation, the cost of correction thereof without increase or adjustment to the Contract Sum or the time for performance. If Design-Builder performs, permits, or causes the performance of any Work under the Contract Documents prepared by or on behalf of Design-Builder which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Design-Builder shall bear any and all resulting costs, including, without limitation, the cost of correction, without increase to or adjustment in the Contract Sum or the time for performance. In no case shall any Subcontractor proceed with the Work if uncertain without the Design-Builder's written direction and/or approval.

1.2.1.6 **Execution.** Execution of the Agreement Between Owner and Design-Builder by the Design-Builder is a representation that the Design-Builder has visited the site, become familiar with the local conditions under which the Work is to be performed and has correlated personal observations with the requirements of the Contract Documents.

1.2.2 ADDENDA AND DEFERRED APPROVALS

1.2.2.1 **Addenda.** Subsequent addenda issued shall govern over prior addenda only to the extent specified. In accordance with Title 24, California Code of Regulations, addenda shall be approved by the Division of the State Architect ("DSA").

1.2.2.2 **Deferred Approvals.** The requirements approved by the DSA on any item submitted as a deferred approval in accordance with Title 24, California Code of Regulations, shall take precedence over any previously issued addenda, drawing or specification.

1.2.3 INTERPRETATION

1.2.3.1 **Titles.** Organization of the Contract Documents into divisions, sections and articles shall not control the Design-Builder in dividing the Work among Subcontractors or in establishing the extent of work to be performed.

1.2.3.2 **As Shown, Etc.** Where “as shown,” “as indicated,” “as detailed,” or words of similar import are used, reference is made to the Contract Documents unless otherwise stated. Where “as directed,” “as required,” “as permitted,” “as authorized,” “as accepted,” “as selected,” or words of similar import are used, the direction, requirement, permission, authorization, approval, acceptance, or selection by Architect is intended unless otherwise stated.

1.2.3.3 **Provide.** “Provide” means “provided complete in place,” that is, furnished, installed, tested, and ready for operation and use.

1.2.3.4 **General Conditions.** The General Conditions and any Supplementary or other Conditions are a part of each and every section of the Contract Documents.

1.2.3.5 **Abbreviations.** In the interest of brevity, the Contract Documents may be written in an abbreviated form and may not include complete sentences. Omission of words or phrases such as “Design-Builder shall,” “shall be,” etc., are intentional. Nevertheless, the requirements of the Contract Documents are mandatory. Omitted words or phrases shall be supplied by inference.

1.2.3.6 **Plural.** Words in the singular shall include the plural whenever applicable or the context so indicates.

1.2.3.7 **Metric.** The Contract Documents may indicate metric units of measurement as a supplement to U.S. customary units. When indicated thus: 1” (25 mm), the U. S. customary unit is specific, and the metric unit is nonspecific. When not shown with parentheses, the unit is specific. The metric units correspond to the “International System of Units” (SI) and generally follow ASTM E 380, “Standard for Metric Practice.”

1.2.3.8 **Standard Specifications.** Any reference to standard specifications of any society, institute, association, or governmental authority is a reference to the organization’s standard specifications, which are in effect as of the date the Notice to Bidders is first published. If applicable specifications are revised prior to Completion of any part of the Work, the Design-Builder may, if acceptable to Owner and Architect, perform such Work in accordance with the revised specifications. The standard specifications, except as modified in the Contract Documents, shall have full force and effect as though printed in the Contract Documents. Architect will furnish, upon request, information as to how copies of the standard specifications referred to may be obtained.

1.2.3.9 **Absence of Modifiers.** In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but

the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.3 OWNERSHIP AND USE OF ARCHITECT’S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

The Contract Documents prepared on behalf of the Owner are instruments of the services of the Architect and its consultants and are the property of the Owner. The Design-Builder may retain one contract record set. Neither the Design-Builder nor any Subcontractor, Sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Contract Documents prepared by the Architect, and unless otherwise indicated the Architect shall be deemed the author of them. All copies of them, except the Design-Builder’s record set, shall be returned or suitably accounted for to the Owner, upon request upon Completion of the Work. The Contract Documents prepared by the Architect, and copies thereof furnished to the Design-Builder, are for use solely with respect to this Contract. They are not to be used by the Design-Builder or any Subcontractor, Sub-subcontractor, or material or equipment supplier on other contracts or for additions to this Contract outside the scope of the Work without the specific written consent of the Owner and the Architect. The Design-Builder, Subcontractors, Sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Contract Documents prepared by the Architect appropriate to and for use in the execution of their Work under the Contract Documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner’s property interest or other reserved right. All copies made under this license shall bear appropriate attribution and the statutory copyright notice, if any, shown on the Contract Documents prepared by the Architect.

ARTICLE 2

OWNER

2.1 DEFINITION

The term “Owner” means the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Owner” means the Owner and/or the Owner’s authorized representatives, including but not limited to architects and construction managers. To the extent the Contract Documents indicate that Owner has assigned duties to particular representatives of the Owner (such as the Architect, or Construction Manager), Owner reserves the right at all times to reassign such duties to different Owner representatives.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 INTENTIONALLY LEFT BLANK

2.2.2 SITE SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, a legal description or a land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the Site. Surveys to determine locations of construction, grading, and site work shall be provided by the Design-Builder.

2.2.3 SOILS

2.2.3.1 *Owner Furnished Services.* When required by the scope of the Project, the Owner will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required or as required by local or state codes. Such services with reports and appropriate professional recommendations shall include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

2.2.3.2 *Design-Builder Reliance.* Test borings and soils reports for the Project have been made for the Owner to indicate the subsurface materials that might be encountered at particular locations on the Project. The Owner has made these documents available to the Design-Builder and the Design-Builder has studied the results of such test borings and information that it has as to the subsurface conditions and Site geology as set forth in the test borings and soils reports. The Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the Site of the Project, or any part thereof, or that unforeseen developments may not occur. At the Owner's request, the Design-Builder shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Design-Builder of any of its agents. Nothing herein contained shall be deemed a waiver by the Design-Builder to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the Design-Builder.

2.2.4 UTILITY SURVEY

When required by the scope of the Project, the Owner will furnish, at its expense, all information regarding known existing utilities on or adjacent to the Site, including location, size, inverts, and depths.

2.2.5 INFORMATION

Upon the request of the Design-Builder, Owner will make available such existing information regarding utility services and Site features, including existing construction, related to the Project as is available from Owner's records. The Design-Builder may not rely upon the accuracy of any such information, other than that provided under Sections 2.2.2 and 2.2.4 (except that the Design-Builder may not rely upon, and must question in writing to the Owner and the Architect, any information which appears incorrect based upon Design-Builder's Site inspection, knowledge of the Work, and prior experience with similar projects), unless specifically stated in writing that the Design-Builder may rely upon the designated information.

2.2.6 EXISTING UTILITY LINES; REMOVAL, RELOCATION

2.2.6.1 *Removal, Relocation.* Pursuant to Government Code section 4215, the Owner assumes the responsibility for removal, relocation, and protection of utilities located on the Site at the time of commencement of construction under this Contract with respect to any such utility facilities which are not identified in the drawings and specifications made part of the invitation to bid. The Design-Builder shall not be assessed for liquidated damages for delay in Completion of the Work caused by failure of the Owner to provide for removal or relocation of such utility facilities. Owner shall compensate the Design-Builder for the costs of locating, repairing damage not due to the failure of the Design-Builder to exercise reasonable care, removing or relocating such utility facilities, and for equipment necessarily idle during such work.

2.2.6.2 *Assessment.* These subparagraphs shall not be construed to preclude assessment against the Design-Builder for any other delays in Completion of the Work. Nothing in these subparagraphs shall be deemed to require the Owner 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, or meter junction boxes on or adjacent to the Site.

2.2.6.3 *Notification.* If the Design-Builder, while performing work under this Contract, discovers utility facilities not identified by the Owner in the Contract plans or specifications, Design-Builder shall immediately notify the Owner and the utility in writing.

2.2.6.4 *Underground Utility Clearance.* It shall be Design-Builder's sole responsibility to timely notify all public and private utilities serving the Site prior to commencing work. The Design-Builder shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code section 4216, et seq. Design-Builder shall promptly provide a copy of all such notifications to the Owner.

2.2.7 EASEMENTS

Owner shall secure and pay for easements for permanent structures or permanent changes in existing facilities, if any, unless otherwise specified in the Contract or Contract Documents.

2.2.8 REASONABLE PROMPTNESS

Information or services under Owner's control will be furnished by the Owner with reasonable promptness. The Owner shall not be liable for any delays caused by factors beyond the Owner's control including but not limited to DSA's or any other local, State or federal agency's review of bids, change order requests, RFI's or any other documents.

2.2.9 COPIES FURNISHED

The Design-Builder will be furnished such copies of Drawings and Project Manuals as are stated in the Contract Documents.

2.2.10 DUTIES CUMULATIVE

The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein, and especially those in Article 6 (Construction by Owner or by Separate Design-Builders), Article 9 (Payments and Completion), and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Contract Documents or the Design, or persistently fails to carry out Work in accordance with the Contract Documents or the Design, the Owner may order the Design-Builder to stop the Work or any portion thereof, until the Design-Builder corrects the deficiencies. Design-Builder shall not be entitled to a time extension for any delays caused by such order. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Article 6.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Design-Builder fails or refuses to carry out the Work in accordance with the Contract Documents or the Design, Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have, including but not limited to having another contractor perform some or all of the Work without terminating the Contract with Design-Builder. Owner may exercise this right at any time during the Design-Builder's Work.

Owner shall first provide written notice to Design-Builder of Design-Builder's failure or refusal to perform. The notice will provide the time period within which Design-Builder must begin correction of the failure or refusal to perform. If the Design-Builder fails to begin correction within the stated time, or fails to continue correction, the Owner may proceed to correct the deficiencies. In the event the Owner bids the work, Design-Builder shall not be eligible for the award of the contract. The Design-Builder may be invoiced the cost to Owner of the work, including compensation for additional professional and internally generated services and expenses made necessary by Design-Builder's failure or refusal to perform. Owner may

withhold that amount from the retention, or progress payments due the Design-Builder, pursuant to Section 9.5. If retention and payments withheld then or thereafter due the Design-Builder are not sufficient to cover that amount, the Design-Builder shall pay the difference to the Owner.

ARTICLE 3

THE DESIGN-BUILDER

3.1 DEFINITION

The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative. To the extent that any portion of the Work is provided with the Design-Builder’s own forces, any reference to Subcontractors shall be equally applicable to the Design-Builder.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 DESIGN-BUILDER

The Design-Builder shall supervise and direct the Work using the Design-Builder’s best skill and attention, which shall meet or exceed the standards in the industry. The Design-Builder shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

Owner shall schedule and coordinate the activities of Design-Builder with the other contractors and Owner. Design-Builder agrees to accept the Owner’s construction schedules, schedule updates, overall sequence and coordination of construction for the Project.

Design-Builder realizes that work by other contractors or Owner may occur simultaneously with Design-Builder’s Work in any given area. Design-Builder is responsible for its own sequences that may occur within a given activity or set of activities. Design-Builder shall not commit or permit any act which will adversely affect the work of any other contractor or Owner. Design-Builder shall provide layout of its Work at the request of any other contractor or Owner.

Specific duties of the Design-Builder shall be in accordance with Title 24 of the California Code of Regulations. Design-Builder shall fully comply with any and all reporting requirements of Education Code sections 17309 and 81141 in the manner prescribed by Title 24.

3.2.2 DESIGN-BUILDER RESPONSIBILITY

The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Design-Builder or any of its Subcontractors.

3.2.3 OBLIGATIONS NOT CHANGED BY OTHER'S ACTIONS

The Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by the activities or duties of the Owner's representatives, including but not limited to any construction manager and the Architect, or the Inspector of Record; or by tests, inspections, or approvals required or performed by persons other than the Design-Builder.

3.2.4 DESIGN-BUILDER RESPONSIBILITY FOR READINESS FOR WORK

The Design-Builder shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work.

3.2.5 PROJECT MEETINGS

During its Work, Design-Builder shall attend Owner's Project meetings as scheduled by the Contract Documents, or as otherwise instructed by Owner, to discuss the current status of the Work and the Project, and the future progress of the Work and the Project. Design-Builder shall have five (5) days after receipt of Owner's Project meeting minutes to provide written objections and suggested corrections. Either party may audio record any meeting related to the Contract.

3.3 SUPERINTENDENT

3.3.1 FULL TIME SUPERINTENDENT

The Design-Builder shall provide a competent superintendent and assistants as necessary, all of whom shall be reasonably proficient in speaking, reading and writing English and, who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Design-Builder, and communications given to the superintendent shall be as binding as if given to the Design-Builder.

3.3.2 STAFF

The Design-Builder and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to Complete the Work in accordance with all requirements of the Contract Documents.

3.3.3 RIGHT TO REMOVE

Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Design-Builder, Subcontractor, material or equipment supplier, etc., for cause.

3.4 LABOR AND MATERIALS

3.4.1 DESIGN-BUILDER TO PROVIDE

Unless otherwise provided in the Contract Documents, the Design-Builder shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Completion of the Work whether temporary or permanent, and such facilities, labor, equipment, material, and services are included in the Work. Owner shall not be liable for, and Design-Builder shall bear the burden of, any post-proposal escalation in the cost of materials; but Design-Builder will retain the benefit of any post-proposal material cost decreases. Owner shall have no responsibility for security of, or repair or replacement costs of, such facilities, labor, equipment, material, and services provided by Contractor pursuant to this subsection.

3.4.2 QUALITY

Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of such quality as required to satisfy the standards of the Contract Documents and the Design. The Design-Builder shall, if requested, promptly furnish satisfactory evidence as to kind and quality of all materials and equipment. All labor shall be performed by workers skilled in their respective trades, and the quality of their work shall meet whichever is the higher standard for their work: the standard in the industry or the standard in the Contract Documents.

3.4.3 REPLACEMENT

Any work, materials, or equipment, which does not conform to these standards may be disapproved and rejected by the Owner, in which case, they shall be removed and replaced by the Design-Builder at no cost to the Owner.

3.4.4 DISCIPLINE

The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Contract in accordance with paragraph 5.5.1 including, but not limited to, Subcontractors, and material or equipment suppliers retained for the Project.

3.5 WARRANTY

For the period of one (1) year after Completion of the Work (see Sections 9.7.1, 12.2.5, and 12.2.6), the Design-Builder warrants to the Owner that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents and the Design, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents and the Design. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty does not cover damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

Design-Builder will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. Owner is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

3.7 PERMITS, FEES AND NOTICES

3.7.1 PAYMENT

The Design-Builder shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and Completion of the Work which are customarily secured after execution of the Contract and are legally required by any authority having jurisdiction over the Project, except those required by the Division of the State Architect (DSA). Owner shall be responsible for all testing and inspection as required by the DSA on-Site or within the distance limitations set forth in paragraph 13.5.2, unless a different mileage range is specified in the Contract Documents.

3.7.2 COMPLIANCE

The Design-Builder shall comply with and give notices required by any law, ordinance, rule, regulation, and lawful order of public authorities bearing on performance of the Work.

3.7.3 CONTRACT DOCUMENTS

It is not the Design-Builder's responsibility to ascertain that the Contract Documents are in accordance with any applicable law, statute, ordinance, building codes, rule, or regulation. However, if the Design-Builder knew, or should have known, or observes that portions of the Contract Document are at variance therewith, the Design-Builder shall promptly notify the Architect, any construction manager, and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

3.7.4 RESPONSIBILITY

If the Design-Builder performs Work that it knows, or should have known, is contrary to any law, statute, ordinance, building code, rule or regulation, the Design-Builder shall assume full responsibility for such Work, and shall bear the attributable cost of correction and delay to the Work, other contractor's work, and the Project.

3.8 ALLOWANCES

3.8.1 CONTRACT

The Design-Builder shall include in the Contract Sum all allowances, including any general contingency allowance, stated in the Contract Documents. Items covered by specific allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities against whom the Design-Builder makes reasonable and timely objection.

3.8.2 SCOPE

3.8.2.1 *Prompt Selection.* Materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay to the Work.

3.8.2.2 *Cost.* Allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the Site and all required taxes, less applicable trade discounts, etc., as delineated in paragraph 7.7.4.

3.8.2.3 *Cost Included in Contract Sum.* Design-Builder's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances.

3.8.2.4 *Contract Sum Adjustment.* Whenever Design-Builder seeks payment from an allowance and the requested costs are approved by Owner as compliant with the Contract Documents (including Sections 3.8.2.2 and 3.8.2.3, above), Owner may elect to pay the approved costs from the allowance, or pay the costs via Change Order. Any such allowance payment shall conform to the requirements of the Agreement and other Contract Documents.

3.9 DESIGN-BUILDER'S CONSTRUCTION SCHEDULES

3.9.1 REQUIREMENTS

Before the Design-Builder's commencement of Work or within two (2) weeks of DSA approval of the Design, whichever is earlier, Design-Builder shall prepare and submit for the Owner's, and any construction manager's, information the baseline construction schedule for the Work, which shall conform to the Contract Documents' requirements.

Design-Builder shall submit an updated schedule by the first day of every month, and whenever else requested by the Owner. Each schedule update must include an accurate as-built schedule and the current as-planned schedule, both of which shall conform to the Contract Documents' requirements. Design-Builder shall submit its daily logs for the prior month with the updated schedule.

The original schedule and all updates shall conform, at a minimum, to industry standards for (a) critical path scheduling and (b) facilitation of Owner's Project management and evaluation of Design-Builder Claims for additional money or time.

The original schedule and all updates shall not exceed time limits (including milestone deadlines) under the Contract Documents and shall comply with the Contract Documents scheduling requirements and with any scheduling requirements the Owner provides to the Design-Builder at the beginning of the Work. The original schedule and all updates shall accurately reflect Work performed to date; reasonable dates for future Work; all construction activities (including procurement); the critical path schedule for Completion of the remainder of the Work; the logic, sequencing, and relationship between the construction activities, including each activity's predecessor and successor activities; and the percentage of the Work completed. The original schedule and all updates shall include a reasonable number of days for weather that is usual or common for each month, as time extensions are not available for such days (see Sections 4.5.5.3.2 and 8.4.1, below); and any failure by Design-Builder to include a reasonable number of such days, or by Owner to require Design-Builder to include a reasonable number of such days, shall not affect the reasonable number of such days to be used when determining time extensions under Sections 4.5.5.3.2 and 8.4.1, below.

The construction schedule shall be in the form of either a tabulation, chart, or graph, unless otherwise stated in the Contract Documents, and shall be in sufficient detail to show the chronological relationship of all activities of the Project including, but not limited to, estimated starting and Completion dates of various activities, (including early and late dates

and reasonable float for each activity), procurement of materials, the critical path, and scheduling of equipment. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall be apportioned for the benefit of the Project. Whenever in the Contract Documents Design-Builder is required to provide a schedule and/or schedule updates, the Design-Builder shall provide the schedule and updates in electronic format as well as hard copy. Design-Builder shall be solely responsible for the accuracy, utility and reasonableness of all of its schedules. Owner's acceptance, approval or non-rejection of Design-Builder's schedules shall not affect Design-Builder's responsibility for its schedules.

The Design-Builder and Owner shall use any float on a "first come, first served" basis. The original schedule and updates shall reflect Design-Builder's and Owner's use of float. Float is not for the exclusive use or benefit of either Owner or Design-Builder, but it is a jointly owned expiring Project resource available to both parties as needed to meet schedule milestones. For the original schedule and updates, Design-Builder shall use a critical path network format with the critical paths clearly indicated. Design-Builder shall use an MS Project, Primavera, or an equivalent or better program. Design-Builder shall include reports that sort and list the activities in order of increasing float and by early and late start dates. Design-Builder shall endeavor to label ten to thirty percent (10-30%) of the tasks as critical, but shall not label less than five (5%) or more than fifty (50%) as critical. Design-Builder shall use calendar days.

If any change in Design-Builder's method of operations will cause a change in the construction schedule, Design-Builder shall submit to Owner, Architect, and any construction manager, a revised construction schedule within seven (7) days of the change.

If, in the Owner's opinion, the Design-Builder is not prosecuting the Work at a rate sufficient to meet the Work schedule or a contractual milestone, or to Complete the Work within the Contract Time as adjusted by change orders, or if the Design-Builder's actual progress falls behind the Work schedule or it is apparent to Owner that Design-Builder will not meet contractual milestones or Complete the Work within the Contract Time as adjusted by change orders, the Owner may require that the Design-Builder prepare and submit a recovery plan. Design-Builder must submit a recovery plan within seven (7) days of a demand for the plan. At a minimum, the recovery plan must include a proposed schedule that shows Completion of the Work by the contractual milestones and within the Contract Time, as adjusted by change orders, or Completion by other dates Owner specifies in the demand for a recovery plan. The

recovery plan shall state the corrective actions Design-Builder will undertake to implement it. The recovery plan shall also list any additional money that Design-Builder believes it should receive if Owner orders Design-Builder to fully or partially implement the recovery plan. If the Owner orders Design-Builder to implement the recovery plan, Design-Builder shall do so, but the order shall not act constitute an admission by Owner that Design-Builder is entitled to additional money. To recover additional money, Design-Builder must comply with General Conditions Articles 4.5, 7 and 8.

All schedules Design-Builder submits shall be certified as true and correct, as follows:

I, _____ [name of declarant], declare the following:

_____ [Design-Builder company name] has contracted with _____ [public entity name] for the _____ [name of project] Project. _____ [Design-Builder company name] authorized me to prepare schedules for _____ [public entity name] for this Project, and I prepared the attached schedule. I am the most knowledgeable person at _____ [Design-Builder company name] regarding the scheduling of this Project.

The attached schedule does not breach the Contract between _____ [Design-Builder company name] and _____ [public entity name] for this Project, does not violate any applicable law, satisfies all provisions of the Contract applicable to submission of the Claim, only contains truthful and accurate as-built and as-planned dates of work on the Project (including supporting data), and is not a false claim.

The attached schedule is submitted in compliance with all laws applicable to submission of a Claim, including but not limited to California Penal Code section 72 (Fraudulent Claims), Government Code sections 12650 et seq. (False Claims Act; for example, Government Code section 12651(a)(7)), and Business and Professions Code sections 17200 et seq. (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other Claims that violate law or the Contract, may lead to fines, imprisonment, and/or other serious legal consequences for myself and/or _____ [Design-Builder company name].

While preparing this declaration and schedule I consulted with others (including attorneys, consultants, or others who work for _____ [Design-Builder company name]) when necessary to ensure that the statements were true and correct.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed _____, 20____, at _____, California.

_____ [name of declarant]

3.9.2 DSA OVERSIGHT PROCESS

In connection with the DSA Construction Oversight Process which includes inspection cards and review of changes to the DSA-approved construction documents, the Design-Builder must (a) include specific tasks in its baseline schedule to take into account these procedures since they are critical path issues; and (b) include a reasonable amount of float in the baseline schedule to accommodate the additional time required by these DSA procedures.

3.9.3 FAILURE TO MEET REQUIREMENTS

Failure of the Design-Builder to provide proper schedules may, at the sole discretion of Owner, constitute either grounds to withhold, in whole or in part, progress payments to the Design-Builder, or a breach of contract allowing Owner to terminate the Contract.

3.10 DOCUMENTS AND SAMPLES AT THE SITE

The Design-Builder shall maintain at the Site for the Owner one applicable copy of Titles 19 and 24 and record copy of the Design, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Design-Builder shall maintain at the Site approved Shop Drawings, Product Data, Samples, and similar required submittals. These documents shall be available to the Owner and shall be delivered to the Owner, or the Architect for delivery to the Owner, upon Completion of the Work.

3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.11.1 SUBMITTALS DEFINED

3.11.1.1 *Shop Drawings.* The term “shop drawings” as used herein means drawings, diagrams, schedules, and other data, which are prepared by Design-Builder, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer’s standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents. The Design-Builder shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. “Product data” as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Design-Builder to illustrate a material, product, or system for some portion of the Work. As used herein, the term “manufactured” applies to standard units usually mass-produced, and “fabricated” means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall: establish the actual detail of all

manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

3.11.1.2 **Samples.** The term “samples” as used herein are physical examples furnished by Design-Builder to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Owner to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Design-Builder conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.

3.11.1.3 **Design-Builder’s Responsibility.** Design-Builder shall obtain and shall submit to Architect all required shop drawings and samples in accordance with Design-Builder’s “Schedule for Submission of Shop Drawings and Samples” provisions in the Contract Documents and in accordance with the Design-Builder’s original and updated schedules, and with such promptness as to cause no delay in its own Work or in that of any other contractor, Owner or subcontractor but in no event later than ninety (90) days after the execution of the Agreement. Design-Builder may be assessed \$100 a day for each day it is late in submitting a shop drawing or sample. No extensions of time will be granted to Design-Builder or any Subcontractor because of its failure to have shop drawings and samples submitted in accordance with the Schedule. Each Subcontractor shall submit all shop drawings, samples, and manufacturer’s descriptive data for the review of the Owner, the Design-Builder, and the Architect through the Design-Builder. By submitting shop drawings, product data, and samples, the Design-Builder or submitting party (if other than Design-Builder) represents that it has determined and verified all materials, field measurements, field conditions, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. At the time of submission, any deviation in the shop drawings, product data, or samples from the requirements of the Contract Documents shall be narratively described in a transmittal accompanying the submittal. However, submittals shall not be used as a means of requesting a substitution, the procedure for which is defined in paragraph 3.11.4, “Substitutions.” Review by Owner and Architect shall not relieve the Design-Builder or any Subcontractor from its responsibility in preparing and submitting proper shop drawings in accordance with the Contract Documents. Design-Builder shall stamp, sign, and date each submittal indicating its representation that the submittal meets all of the requirements of the Contract Documents. Any submission, which in Owner’s or Architect’s opinion is incomplete, contains numerous errors, or has been checked only superficially by Design-Builder will be returned unreviewed for resubmission by the Design-Builder.

3.11.1.4 **Extent of Review.** In reviewing shop drawings, the Owner will not verify dimensions and field conditions. The Architect will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Architect’s review shall neither be

construed as a complete check nor relieve the Design-Builder, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Design-Builder has, in writing, called the Architect's attention to the deviations at the time of submission and the Architect has given specific written approval. The Architect's review shall not relieve the Design-Builder or Subcontractors from responsibility for errors of any sort in shop drawings or schedules, for proper fitting of the Work, or from the necessity of furnishing any Work required by the Contract Documents, which may not be indicated on shop drawings when reviewed. Design-Builder and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the shop drawings.

3.11.2 DRAWING SUBMISSION PROCEDURE

3.11.2.1 **Transmittal Letter and Other Requirements.** All shop drawings must be properly identified with the name of the Contract and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Contract and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents, if any. Shop drawings, for each section of the Work, shall be numbered consecutively, and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Design-Builder. Each drawing shall have a clear space for the stamps of Architect and Design-Builder. Only shop drawings required to be submitted by the Contract Documents shall be reviewed.

3.11.2.2 **Copies Required.** Each submittal shall include one (1) legible, reproducible sepia and five (5) legible prints of each drawing, including fabrication, erection, layout and setting drawings, and such other drawings as required under the various sections of the Specifications until final acceptance thereof is obtained. Subcontractor shall submit copies, in an amount as requested by the Design-Builder, of: manufacturers' descriptive data for materials, equipment, and fixtures, including catalog sheets showing dimensions, performance, characteristics, and capacities; wiring diagrams and controls; schedules; all seismic calculations and other calculations; and other pertinent information as required.

3.11.2.3 **Corrections.** The Design-Builder shall make any corrections required by Architect and shall resubmit as required by Architect the required number of corrected copies of shop drawings or new samples until approved. Design-Builder shall direct specific attention in writing or on resubmitted shop drawings to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required submittals of shop drawings, product data, or samples are subject to charge to the Design-Builder pursuant to paragraph 4.4.

3.11.2.4 **Approval Prior to Commencement of Work.** No portion of the Work requiring a shop drawing or sample submission shall be commenced until the submission has been reviewed by Owner and approved by Architect unless specifically directed in writing by the Owner. All such portions of the Work shall be in accordance with approved shop drawings and samples.

3.11.3 SAMPLE SUBMISSIONS PROCEDURE

3.11.3.1 ***Samples Required.*** In case a considerable range of color, graining, texture, or other characteristics may be anticipated in finished products, a sufficient number of samples of the specified materials shall be furnished by the Design-Builder to indicate the full range of characteristics, which will be present in the finished products; and products delivered or erected without submittal and approval of full range samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate. All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Contract, the purpose for which the samples are submitted, and the date and shall be accompanied by a letter of transmittal containing similar information, together with identification of each item. Each tag or sticker shall have clear space for the review stamps of Design-Builder and Architect.

3.11.3.2 ***Labels and Instructions.*** Samples of materials, which are generally furnished in containers bearing the manufacturers' descriptive labels and printed application instructions, shall, if not submitted in standard containers, be supplied with such labels and application instructions.

3.11.3.3 ***Architect's Review.*** The Architect will review and, if appropriate, approve submissions and will return them to the Design-Builder with the Architect's stamp and signature applied thereto, indicating the appropriate action in compliance with the Architect's standard procedures.

3.11.3.4 ***Record Drawings and Annotated Specifications.*** The Design-Builder will prepare and maintain on a current basis an accurate and complete set of Record Drawings showing clearly all changes, revisions, and substitutions during construction, including, without limitation, field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features, and Annotated Specifications showing clearly all changes, revisions, and substitutions during construction. A copy of such Record Drawings and Annotated Specifications will be delivered to Owner in accordance with the schedule prepared by Design-Builder. In the event of a specification that allows Design-Builder to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Design-Builder has furnished. The Design-Builder will update the Record Drawings and Annotated Specifications as often as necessary to keep them current but no less often than weekly. The Record Drawings and Annotated Specifications shall be kept at the Site and available for inspection by the Owner, Inspector of Record and the Architect. On Completion of the Design-Builder's Work and prior to Application for Final Progress Payment, the Design-Builder will provide one complete set of Record Drawings and Annotated Specifications to the Owner, certifying them to be a complete and accurate reflection of the actual construction conditions of the Work.

3.11.3.5 ***Equipment Manuals.*** Design-Builder shall obtain and furnish to the Owner three (3) complete sets of manuals containing the manufacturers' instructions for maintenance and operation of each item of equipment and apparatus furnished under the Contract Documents

and any additional data specifically requested for each division of the Work. The manuals shall be arranged in proper order, indexed, and placed in three-ring binders. At the Completion of its Work, the Design-Builder shall certify, by endorsement thereon, that each of the manuals is complete, accurate, and covers all of its Work. Prior to submittal of Design-Builder's Application for Final Progress Payment, and as a further condition to its approval by the Architect, each Subcontractor shall deliver the manuals, arranged in proper order, indexed, endorsed, and placed in three-ring binders, to the Design-Builder, who shall assemble these manuals for all divisions of the Work, review them for completeness, and submit them to the Owner through the Architect.

3.11.3.6 **Owner's Property.** All shop drawings and samples submitted shall become the Owner's property.

3.11.4 SUBSTITUTIONS

3.11.4.1 **One Product Specified.** Unless the Contract Documents state that no substitution is permitted, whenever in the Contract Documents any specific article, device, equipment, product, material, fixture, patented process, form, method, or type of construction is indicated or specified by name, make, trade name, or catalog number, with or without the words "or equal," such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Design-Builder may, unless otherwise stated, offer any material, process, or article, which shall be substantially equal or better in every respect to that so indicated or specified and will completely accomplish the purpose of the Contract Documents.

3.11.4.2 **Two or More Products Specified.** When two or more acceptable products are specified for an item of the Work, the choice will be up to the Design-Builder. Design-Builder shall utilize the same product throughout the Project. If a timely substitution request as set forth in Section 3.11.4.3 is not provided and an "or equal" substitution is requested, the Owner may consider the substitution if the product specified is no longer commercially available. If the Owner allows the substitution to be proposed pursuant to such an untimely request, the Design-Builder will be responsible for the professional fees incurred by the Architect or Architect's consultants in reviewing the proposed substitution which fees may be withheld from progress payments and/or retention.

3.11.4.3 **Substitution Request Form.** Requests for substitutions of products, materials, or processes other than those specified must be made on the Substitution Request form available from the Owner. Any Requests submitted after the deadline specified in the Requests for Proposals will not be considered, except as noted in paragraph 3.11.4.2. A Substitution Request must be accompanied by evidence as to whether or not the proposed substitution: is equal in quality and serviceability to the specified item; will entail no changes in detail and construction of related work; will be acceptable in consideration of the required design and artistic effect; will provide no cost disadvantage to Owner; and will require no excessive or more expensive maintenance, including adequacy and availability of replacement parts. The burden of proof of these facts shall be upon the Design-Builder. The Design-Builder shall furnish with its request sufficient information to determine whether the proposed substitution is equivalent including but

not limited to all drawings, specifications, samples, performance data, calculations, and other information as may be required to assist the Architect and the Owner in determining whether the proposed substitution is acceptable. The final decision shall be the Owner's. The written approval of the Owner, consistent with the procedure for Change Orders, shall be required for the use of a proposed substitute material. Owner may condition its approval of the substitution upon delivery to Owner of an extended warranty or other assurances of adequate performance of the substitution. All risks of delay due to the Division of the State Architect's approval, or the approval of any other governmental agency having jurisdiction, of a requested substitution shall be on the requesting party.

3.11.4.4 **List of Manufacturers and Products Required.** The Subcontractor shall prepare and submit to the Design-Builder within thirty (30) days of execution of the Subcontract comprehensive lists, in quadruplicate, of the manufacturers and products proposed for the Project, including information on materials, equipment, and fixtures required by the Contract Documents, as may be required for Design-Builder's or Architect's preliminary approval. Approval of such lists of products shall not be construed as a substitute for the shop drawings, manufacturer's descriptive data, and samples, which are required by the Contract Documents, but rather as a base from which more detailed submittals shall be developed for the final review of the Design-Builder and the Architect.

3.11.5 DEFERRED APPROVALS

Deferred approvals shall be submitted and processed pursuant to the requirements of Contract Documents. All risks of delay due to the Division of the State Architect's, or any other governmental agency having jurisdiction, approval of a deferred approval shall be on the requesting party.

3.12 CUTTING AND PATCHING

3.12.1 SCOPE

The Design-Builder shall be responsible for cutting, fitting, or patching required to Complete the Work or to make its parts fit together properly.

3.12.2 CONSENT

The Design-Builder shall not damage or endanger a portion of the Work or fully or partially Completed construction of the Owner or a separate contractor by cutting, patching, or otherwise altering such construction, or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work. All cutting shall be done promptly, and all repairs shall be made as necessary.

3.12.3 STRUCTURAL MEMBERS

New or existing structural members and elements, including reinforcing bars and seismic bracing, shall not be cut, bored, or drilled except by written authority of the Architect. Work done contrary to such authority is at the Design-Builder's risk, subject to replacement at its own expense and without reimbursement under the Contract. Agency approvals shall be obtained by the Architect, not by the Design-Builder.

3.12.4 SUBSEQUENT REMOVAL

Permission to patch any areas or items of the Work shall not constitute a waiver of the Owner's or the Architect's right to require complete removal and replacement of the areas or items of the Work if, in the opinion of the Architect or the Owner, the patching does not satisfactorily restore quality and appearance of the Work or does not otherwise conform to the Contract Documents. Any costs caused by defective or ill-timed cutting or patching shall be borne by the person or entity responsible.

3.13 CLEANING UP

3.13.1 DESIGN-BUILDER'S RESPONSIBILITY

The Design-Builder shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. The Site shall be maintained in a neat and orderly condition. All crates, cartons, paper, and other flammable waste materials shall be removed from Work areas and properly disposed of at the end of each day. The Design-Builder shall continuously remove from and about the Site the waste materials, rubbish, tools, construction equipment, machinery, and materials no longer required for the Work.

3.13.2 FAILURE TO CLEANUP

If the Design-Builder fails to clean up as provided in the Contract Documents, the Owner may do so, without prior notice to the Design-Builder and the cost thereof shall be invoiced to the Design-Builder and withheld from progress payments and/or retention. Each Subcontractor shall have the responsibility for the cleanup of its own Work. If the Subcontractor fails to clean up, the Design-Builder must do so.

3.13.3 CONSTRUCTION BUILDINGS

When directed by the Owner or the Architect, Design-Builder and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Design-Builder or Subcontractor. If the Design-Builder does not remove the tools, equipment, machinery, and materials within fifteen (15) days after Completion of its Work, then they shall be deemed abandoned, and the Owner can dispose of them for its own benefit in whatever way it deems appropriate. Design-Builder shall pay for any costs to dispose of the items.

3.14 ACCESS TO WORK

The Design-Builder shall provide the Owner, the Architect, and the Inspector of Record, access to the Work in preparation and progress wherever located.

3.15 ROYALTIES AND PATENTS

3.15.1 PAYMENT AND INDEMNITY

The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims of infringement of patent rights and shall hold the Owner and the Architect harmless and indemnify them, to the extent not caused by the Owner's active negligence, sole negligence or willful misconduct, from loss on account thereof but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer is required by the Contract Documents. However, if the Design-Builder has reason to believe the required design, process, or product is an infringement of a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner and Architect.

3.15.2 REVIEW

The review by the Owner or Architect of any method of construction, invention, appliance, process, article, device, or material of any kind shall be for its adequacy for the Work and shall not be an approval for the use by the Design-Builder in violation of any patent or other rights of any person or entity.

3.16 INDEMNIFICATION

3.16.1 SCOPE: DESIGN-BUILDER

To the fullest extent permitted by law, the Design-Builder shall defend, indemnify, and hold harmless the Owner, the Construction Manager, Architect, Architect's consultants, the Inspector of Record, the State of California, and their respective agents, employees, officers, volunteers, Boards of Trustees, members of the Boards of Trustees, and directors ("Indemnitees"), from and against claims, actions, damages, liabilities, losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Design-Builder's, its Subcontractors', or its suppliers' performance of the Work, including but not limited to the Design-Builder's or its Subcontractors' use of the Site; the Design-Builder's or its Subcontractors' construction of the Project, or failure to construct the Project, or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Design-Builder or its Subcontractors or their respective agents, employees, material or equipment suppliers, invitees,

or licensees but only to the extent caused in whole or in part by the acts or omissions of the Design-Builder, its Subcontractors, its suppliers, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. The obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Design-Builder shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Design-Builder.

3.16.2 SCOPE: SUBCONTRACTORS

3.16.2.1 **Indemnity.** The Subcontractors shall defend, indemnify, and hold harmless the Indemnitees from and against claims, actions, damages, liabilities, and losses (including but not limited to injury or death of persons, property damage, and compensation owed to other parties), and expenses (including but not limited to attorneys' fees and costs including fees of consultants) alleged by third parties against Indemnitees arising out of or resulting from the following: Subcontractors' performance of the Work, including but not limited to the Subcontractors' use of the Site; the Subcontractors' construction of the Project or failure to construct the Project or any portion thereof; the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including, but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or any act, omission, negligence, or willful misconduct of the Subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees but only to the extent caused in whole or in part by the acts or omissions of the Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph. This obligation to defend, indemnify and hold harmless includes any claims or actions by third parties arising out of or resulting from Labor Code section 2810. Subcontractors shall have no obligation to defend or indemnify the Indemnitees against claims, actions, damages, liabilities, losses, and expenses caused by the active negligence, sole negligence or willful misconduct of Indemnitees. This indemnification shall apply to all liability, as provided for above, regardless of whether any insurance policies are applicable, and insurance policy limits do not act as a limitation upon the amount of the indemnification to be provided by the Subcontractors.

3.16.2.2 **Joint and Several Liability.** In the event more than one Subcontractor is connected with an accident or occurrence covered by this indemnification, then all such Subcontractors shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among such indemnifying Subcontractors for the

loss and expense of any such indemnification shall be resolved without jeopardy to any Indemnatee. The provisions of the indemnity provided for herein shall not be construed to indemnify any Indemnatee for its own negligence if not permitted by law or to eliminate or reduce any other indemnification or right which any Indemnatee has by law or equity.

3.16.3 NO LIMITATION

The Design-Builder's and the Subcontractor's obligation to indemnify and defend the Indemnitees hereunder shall include, without limitation, any and all claims, damages, and costs: for injury to persons and property (including loss of use), and sickness, disease or death of any person; for breach of any warranty, express or implied; for failure of the Design-Builder or the Subcontractor to comply with any applicable governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Work.

3.17 OWNER AS INTENDED BENEFICIARY

The Owner is an intended beneficiary of any architectural or engineering work secured by, or performed by, the Design-Builder to fulfill its obligations under the Contract. Design-Builder shall state in its contracts with architectural or engineering consultants that their work is for the intended benefit of the Owner.

3.18 NOTICE OF EXCUSE FOR NONPERFORMANCE

If Design-Builder believes that acts or omissions of Owner (including but not limited to Owner caused delay) have prevented Design-Builder from performing the Work as required by the Contract Documents and Design-Builder intends to rely on Owner's acts or omissions and Civil Code section 1511(1) as reasons to excuse Design-Builder's nonperformance or to support, among other things, Design-Builder's requests for time extensions under Section 4.5, below, Design-Builder shall provide written notice of the excuse within five (5) days of the Owner's acts or omissions. If Design-Builder fails to timely submit the written notice, Design-Builder shall have waived any right to later rely on the acts or omissions as a defense to Design-Builder's nonperformance or as the basis for a time extension, regardless of the merits of the defense or time extension. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies. Design-Builder acknowledges that these written notices are of critical importance to the Owner's management of the Work and Project and the mitigation of costs and delays to the Work and Project.

3.19 RECOVERY OF COSTS, DAMAGES, OR TIME EXTENSIONS FROM OWNER

Notwithstanding any other provisions of the Contract Documents, Design-Builder expressly waives its right to recover any special, consequential, or indirect damages from Owner in relation to this Contract or the Project. Design-Builder may only recover general (also known as direct) damages from Owner to the extent allowed by the Contract Documents.

A Notice of Potential Change, Change Order Request and, if necessary, a Claim (see Sections 4.5, 7.2, and 7.6, below) are the exclusive means for Design-Builder to preserve its rights to recover any costs, damages, or time extensions related to the Contract or the Project from Owner, including but not limited to alleged breaches of contract based on extra work, delay, wrongful withholding, or wrongful termination. Design-Builder's failure to comply with the Contract Documents' procedures for a COR, CO, and Claim (including but not limited to Sections 4.5, 7.2, 7.6, and 7.7, below) may completely waive Design-Builder's rights to recovery any such costs or damages.

3.20 USE OF FEDERAL FUNDS

If federal funds are being used either in whole or in part for this Project (see the Instructions to Bidders), then the Project is subject to, and Design-Builder must comply with, all applicable federal laws including but not limited to the federal regulations set forth in CFR Title 2, Part 200. Accordingly, Design-Builder agrees to comply with all such federal requirements, including but not limited to the following:

A. **EQUAL EMPLOYMENT OPPORTUNITY.** Design-Builder agrees to comply with and be bound by Title 14, CFR, Section 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" ([30 FR 12319](#), [12935](#), [3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal

Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” the terms of which are incorporated by reference as though set forth in full herein.

B. DAVIS-BACON ACT. If the Contract Price exceeds \$2,000, Design-Builder agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Davis-Bacon Act, as applicable. (40 U.S.C. §§ 3141-3144; 3146-3148 as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).) Design-Builder is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, Design-Builder is required to pay wages not less than once a week. Furthermore, pursuant to the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), Design-Builder is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. If the Contract Price exceeds \$100,000 that involve the employment of mechanics or laborers, Design-Builder agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Contract Work Hours and Safety Standards Act, as applicable. (40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).) Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT AGREEMENT. For all contracts that meet the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Design-Builder agrees to comply with and be bound by, and assist Owner in ensuring compliance with, 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” the provisions of which are incorporated herein by this reference, and any implementing regulations issued by the awarding agency, as applicable.

E. CLEAN AIR AND FEDERAL WATER POLLUTION ACT CONTROL. If the Contract Price exceeds \$150,000, Design-Builder agrees to comply with and be bound by, and assist

Owner in ensuring compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Any violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

F. DEBARMENT AND SUSPENSION. Design-Builder represents and warrants that it is not listed on the government-wide exclusions in the System for Award Management (SAM), and Contractor agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

G. BYRD ANTI-LOBBYING AMENDMENT. If the Contract Price exceeds \$100,000, Design-Builder agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Design-Builder shall file the declaration and certification required by 31 U.S.C. § 1352(b).

H. PROCUREMENT OF RECOVERED MATERIALS. Design-Builder agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.323, as applicable.

I. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. Design-Builder agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.216, as applicable.

J. DOMESTIC PREFERENCES FOR PROCUREMENT. Design-Builder agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.322, as applicable. 2 CFR Section 200.322 requires Design-Builder to provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products), to the greatest extent practicable.

K. CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS. Design-Builder agrees to comply with, and be bound by, and assist Owner in ensuring compliance with, 2 CFR Section 200.321, as applicable. 2 CFR Section 200.321 requires Design-Builder to take the affirmative steps listed in 2 CFR Section 200.321 paragraphs (b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

L. SAFETY AND HEALTH STANDARDS. As required by 34 CFR 75.609, Design-Builder agrees to comply with and be bound by, and assist Owner in ensuring compliance with, the standards under the Federal Occupational Safety and Health Act of 1970 (29 U.S.C.A., Section 651 et seq.) and State and local codes to the extent that they are more stringent.

M. **ENERGY CONSERVATION.** As required by 34 CFR 75.616, Design-Builder agrees to construct facilities to maximize the efficient use of energy and to comply with and be bound by, and assist OWNER in ensuring compliance with, the following standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) set forth in 34 CFR 75.616. Design-Builder shall also comply with and be bound by, and assist Owner in ensuring compliance with, the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871).

N. If any provision is required by federal law, or by the federal grant program funding such project, to be included in the Contract Documents, such provisions shall be deemed by the parties to have been included.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 DEFINITION

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Architect” means the Architect or the Architect’s authorized representative for the project who, among other things, prepared the bridging documents, and shall also refer to all consultants under the Architect’s direction and control.

4.1.2 MODIFICATION

To the extent the Contract Documents indicate that Owner has assigned duties or responsibilities to the Architect, Owner reserves the right at all times to reassign such duties or responsibilities to different Owner representatives.

4.1.3 TERMINATION

In the case of the termination of the Architect, the Owner may appoint an architect or another construction professional or may perform such functions with its own licensed professional personnel. The status of the replacement Architect under the Contract Documents shall be that of the former architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 STATUS

The Architect will provide administration of the Contract and may be one of several Owner's representatives during construction, through release of all retention, and during the one (1) year period following the commencement of any warranties. The Architect will advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent set forth in the Owner/Architect agreement. The Architect will have all responsibilities and power established by law, including California Code of Regulations, Title 24, to the extent set forth in the Owner/Architect agreement.

4.2.2 SITE VISITS

The Architect will visit the Site at intervals necessary in the judgment of the Architect or as otherwise agreed by the Owner and the Architect in writing to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when Completed, will be in accordance with the Contract Documents.

4.2.3 LIMITATIONS OF CONSTRUCTION RESPONSIBILITY

The Design-Builder shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract Documents, or by tests, inspections, or approvals required or performed by persons other than the Design-Builder.

4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Owner and the Design-Builder shall communicate through the Architect, unless there is a construction manager for the Project or the Owner directs otherwise. Communications between Owner and Subcontractors or material or equipment suppliers shall be through the Design-Builder.

4.2.5 PAYMENT APPLICATIONS

The Design-Builder shall submit payment applications to the Architect, unless there is a construction manager for the Project or the Owner directs otherwise.

4.2.6 REJECTION OF WORK

The Architect, Inspector of Record, any construction manager and others may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents or that the Owner require additional inspection or testing of the Work in accordance with paragraph 13.5.5, whether or not the Work is fabricated, installed, or completed. However, no recommendation shall create a duty or responsibility to the Design-Builder, Subcontractors,

material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

4.2.7 CHANGE ORDERS

The Architect may prepare change orders and construction change directives and may authorize minor changes in the Work.

4.2.8 WARRANTIES UPON COMPLETION

The Architect in conjunction with the Inspector of Record, or as otherwise directed by Owner, will conduct field reviews of the Work to determine the date of Completion, shall receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Design-Builder. The handling by the Architect of such warranties, maintenance manuals, or similar documents shall not diminish or transfer to the Architect any responsibilities or liabilities required by the Contract Documents of the Design-Builder or other entities, parties, or persons performing or supplying the Work.

Except as may be otherwise directed by Owner, the Architect will conduct a field review of the Design-Builder's comprehensive list of items to be completed or corrected for development of a punch list and one (1) follow-up field review if required. The cost incurred by the Owner for further field reviews or the preparation of further punch lists by the Architect shall be invoiced to the Design-Builder and withheld from payment and/or retention.

4.2.9 INTERPRETATION

The Architect, Inspector of Record, any construction manager, the Owner or any independent consultant of Owner, as Owner deems appropriate, will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Design-Builder. The Owner's response to such requests will be made with reasonable promptness, while allowing sufficient time to permit adequate review and evaluation of the request.

4.2.10 ADDITIONAL INSTRUCTIONS

4.2.10.1 *Architect's Interpretations and Decisions.* Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations of and decisions regarding the Contract Documents, the Architect will endeavor to secure faithful performance under the Contract Documents by both the Owner and the Design-Builder and will not show partiality to either. The Work shall be executed in conformity with, and the Design-Builder shall do no work without, approved drawings, Architect's clarifying instructions, and/or submittals.

4.2.10.2 *Typical Parts and Sections.* Whenever typical parts or sections of the Work are completely detailed on the Drawings, and other parts or sections which are essentially of the

same construction are shown in outline only, the complete details shall apply to the Work which is shown in outline.

4.2.10.3 **Dimensions.** Dimensions of Work shall not be determined by scale or rule. Figured dimensions shall be followed at all times. If figured dimensions are lacking on Drawings, Architect shall supply them on request. The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the Contract Documents.

4.3 INSPECTOR OF RECORD

4.3.1 GENERAL

One or more Project inspectors ("Inspector of Record") employed by the Owner and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector of Record's duties will be as specifically defined in Title 24.

4.3.2 INSPECTOR OF RECORD'S DUTIES

All Work shall be under the observation of or with the knowledge of the Inspector of Record. The Inspector of Record shall have free access to any or all parts of the Work at any time. The Design-Builder shall furnish the Inspector of Record such information as may be necessary to keep the Inspector of Record fully informed regarding progress and manner of work and character of materials. Such observations shall not, in any way, relieve the Design-Builder from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Design-Builder's responsibility for providing efficient and capable superintendence. The Inspector of Record is not authorized to make changes in the drawings or specifications nor shall the Inspector of Record's approval of the Work and methods relieve the Design-Builder of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.

4.3.3 INSPECTOR OF RECORD'S AUTHORITY TO REJECT OR STOP WORK

The Inspector of Record shall have the authority to reject work that does not comply with the provisions of the Contract Documents. In addition, the Inspector of Record may stop any work which poses a probable risk of harm to persons or property. The Design-Builder shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work order or rejection of any portion of the Work shall not relieve the Design-Builder from any of its obligations pursuant to the Contract Documents.

4.3.4 INSPECTOR OF RECORD'S FACILITIES

Within seven (7) days after notice to proceed, the Design-Builder shall provide the Inspector of Record with temporary facilities.

4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE

OWNER FOR PROFESSIONAL SERVICES

If at any time prior to the Completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act or omission of the Design-Builder, the Design-Builder shall be invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be withheld from the progress payments and/or retention. Such invoicing shall be independent from any other Owner remedies, including but not limited to liquidated damages; *except that* to the extent that such additional services constitute Owner's delay damages under Public Contract Code section 7203, Owner may not recover them or invoice Design-Builder for them. If payments then or thereafter due to the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. Additional services shall include, but shall not be limited to, the following:

- A. Services made necessary by the default of the Design-Builder.
- B. Services made necessary due to the defects or deficiencies in the Work of the Design-Builder.
- C. Services required by failure of the Design-Builder to perform according to any provision of the Contract Documents.
- D. Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors proposed by the Design-Builder, and making subsequent revisions to drawings, specifications, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available).
- E. Services for evaluating and processing Claims submitted by the Design-Builder in connection with the Work outside the established Change Order process.
- F. Services required by the failure of the Design-Builder to prosecute the Work in a timely manner in compliance within the specified time for Completion.
- G. Services in conjunction with the testing, adjusting, balancing and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- H. Services in conjunction with more than one (1) re-review of required submittals of shop drawings, product data, and samples.

4.5 NOTICES OF POTENTIAL CHANGE, CHANGE ORDER REQUESTS, AND CLAIMS

If the Design-Builder identifies the potential for extra work, delay in the critical path schedule, or the need for additional money or time, or if the Design-Builder requests additional money or

time on any grounds (including but not limited to an alleged breach of an implied warranty of the correctness of the plans and specifications [*Souza & McCue Construction Co. v. Superior Court* (1962) 57 Cal.2d 508]), or if the Design-Builder believes that Owner has failed to pay amounts due or otherwise breached the Contract, or otherwise believes that it is entitled to a modification of the Contract terms and conditions, then Design-Builder shall follow the procedures in this Section 4.5 and Article 7, otherwise Design-Builder shall have waived its rights to pursue those issues and any later attempts to recover money or obtain a modification shall be barred. Design-Builder specifically acknowledges the Owner's and public's interest in, and need to know of, potential changes and disputes as early as possible so Owner can investigate, mitigate and resolve adverse cost and time impacts, if any. It is Design-Builder's obligation to know and comply with the requirements of the Contract Documents, including but not limited to Section 4.5 and Articles 7 and 8, and Owner has no obligation to notify Design-Builder of any failure to comply with those requirements.

4.5.1 NOTICE OF POTENTIAL CHANGE

Design-Builder shall submit a written Notice of Potential Change for extra work, critical path delay, or additional money or time. Design-Builder shall submit written Notices of Potential Change to Owner within five (5) days of the earlier of (a) Design-Builder becoming aware of the issue creating a potential change, or (ii) the date by which Design-Builder should have become aware of the issue creating a potential change; unless the issues are, or may soon be, adversely affecting the costs or critical path of the Work, in which case the Design-Builder must submit the written notice without delay so the Owner may take immediate action to mitigate cost and schedule impacts of the change, if any. The written notice shall explain the nature of the potential change so the Owner may take action to mitigate costs and schedule impacts, if necessary.

When submitting a written Notice of Potential Change based on extra work, Design-Builder shall not perform the extra work until directed in writing to do so by Owner. When submitting a written Notice of Potential Change for an issue of critical path delay, Design-Builder shall proactively mitigate the effects of the alleged delay as much as reasonably possible so as to minimize any impact to the schedule, until otherwise directed by Owner. If Design-Builder intends to rely on Owner's acts or omissions in support of a request for a time extension, then Design-Builder must also provide the notice set forth in section 3.18, above.

Failure to timely submit a written Notice of Potential Change shall constitute a complete waiver by Design-Builder of any right to later submit a change order request or pursue a Claim on that issue, or to later pursue any additional money or time extensions in any manner related to that issue, regardless of the merits. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies. Design-Builder acknowledges that these written notices are of critical importance to the Owner's Work and Project management and the mitigation of Work and Project costs and delays.

4.5.2 CHANGE ORDERS REQUESTS

If, after submitting a written Notice of Potential Change pursuant to Section 4.5.1, Design-

Builder continues to believe that it is entitled to additional money or time (including but not limited to grant of a time extension; payment of money or damages arising from work done by, or on behalf of, the Design-Builder, payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to; or an amount the payment of which is disputed by the Owner) based on an issue, then Design-Builder shall submit a Change Order Request (“COR”; see Section 7.6.1) to Owner within twenty (20) days of the earlier of (i) Design-Builder becoming aware of the issue creating a potential change, or (ii) the date by which Design-Builder should have become aware of the issue creating a potential change. A rejection at any time or a lack of a rejection by Owner of a Notice of Potential Change does not affect the timeline for submitting a COR.

Failure to timely submit a COR related to an issue, or failure to comply with any of the COR requirements in the Contract, shall constitute a complete waiver by Design-Builder of any right to later submit a COR or Claim on that issue, or to later pursue any additional money or time in any manner related to that issue, regardless of the merits. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies.

The COR shall state the grounds for the additional money or time requested and the amount of money or time requested, and Design-Builder shall include all information and documentation supporting the COR, including but not limited to calculations and analysis that demonstrate that the requested money or time is allowed by the applicable contract provisions and law. For any money or time other than the money and time specifically requested in the COR, Design-Builder will have completely waived its rights to recover such additional money or time (Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies). If the COR requests money, then the COR must explain how the requested amounts were calculated. If the COR requests time, then the COR must identify the number of days of time being requested, establish that the days of delay are excusable (see Section 8.4.1), and include some critical path schedule analysis to support the number of days requested. Design-Builder may not reserve its rights, whether in a COR or other document, to submit a COR at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a COR shall be grounds for rejection of the COR.

In the event that costs or delay are continuing to accrue at the time that a COR is required to be submitted, Design-Builder must still timely submit the COR with all available information and documentation supporting the COR as described above, and Design-Builder shall identify the costs or delay that are continuing. For continuing costs, the COR must include an estimate of when the extra work is expected to conclude and the total costs that will be incurred by the time that the extra work is expected to conclude. For continuing delay, the COR must include a schedule and delay analysis of when Design-Builder estimates that the delay will cease, what the final time extension request is estimated to be, and an estimate of the total of delay damages, if any, that will be requested. When the continuing cost or delay ends, within ten (10) days Design-Builder shall submit an updated COR that states the final dollar amount and/or time extension requested and that includes all required information and documentation. Failure to submit such final COR shall act as a waiver as described above.

Design-Builder shall certify each COR that it submits, including the initial COR and final COR for a continuing cost or delay, using the form set forth in Section 4.5.5.1, except that every reference to “Claim” shall be changed to “COR.” If a COR is submitted without certification, a certification can still be submitted within the timelines set forth in the first paragraph of Section 4.5.2. If the COR is not timely certified, Design-Builder will have completely waived its rights to any money or time for that issue. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies. A certification of an initial COR for a continuing cost or delay shall include a statement that “Any estimates in the attached initial COR for a continuing cost or delay are based on true and correct facts and reasonable assumptions, as explained in the initial COR.”

The Owner may accept the entire COR, accept part of the COR and reject the remainder, reject the entire COR, or request additional information. If the Owner does not respond within thirty (30) days of submission of the COR by accepting the entire COR, accepting part of the COR and rejecting the remainder, or requesting additional information, the entire COR shall be deemed rejected as of the thirtieth (30th) day. In the case of continuing costs or delay, the 30-day deadline in the previous sentence shall not apply to the initial COR; it will only apply to the final COR (see above). If the Owner requests additional information within thirty (30) days of submission, then the Design-Builder shall submit the information within fifteen (15) days of the date of the request and the Owner shall have fifteen (15) days after the receipt of the additional information to accept or reject (in whole or in part) the COR. If the Design-Builder fails to submit the information within fifteen (15) days, then the COR shall be deemed rejected. If the Owner fails to respond within fifteen (15) days after the submission of additional information, the entire COR shall be deemed rejected as of the fifteenth (15th) day.

4.5.3 DEFINITION OF CLAIM

A “Claim” is a separate demand by the Design-Builder sent by registered mail or certified mail for (a) a time extension, including, without limitation, a request for relief from damages or penalties for delay assessed by Owner under the Contract Documents, (b) payment by Owner of money or damages arising from work done by, or on behalf of, the Design-Builder pursuant to the Contract Documents, and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to (including but not limited to a claim for damages based on misleading or incomplete plans or specifications), or (c) an amount the payment of which is disputed by the Owner. A claim includes any claim within the scope of Public Contract Code sections 9204 or 20104 et seq., and any alleged violation of a prompt payment statute. Resubmittal in any manner of a COR which was previously rejected under Section 4.5.2 constitutes a Claim, whether the COR was rejected in whole or in part, and whether the COR was rejected expressly or deemed rejected by Owner inaction. A Claim includes any dispute Design-Builder may have with the Owner, including one which does not require a Notice of Potential Change or COR under Sections 4.5.1 and 4.5.2, and including any alleged breach of contract or violation of law by the Owner (such as wrongful withholding of a payment by the Owner or wrongful termination by the Owner). A Claim under this Article 4.5 shall also constitute a claim for purposes of the California False Claims Act. In the event of a conflict between a Claims provision in Division 1 of the Specifications and Section 4.5, Section 4.5 shall

take precedence.

The Notice of Potential Change and COR procedures above are less formal procedures which precede the more formal Claim. A Notice of Potential Change does not constitute a Claim. A COR does not constitute a Claim; **except that** if insufficient time remains before the Claim deadline (see Article 4.5.4) for Design-Builder to submit a COR and for Owner to process and reject the COR under Article 4.5.2, then either (1) Design-Builder may submit a COR which Owner shall treat as a Claim, but only if the COR complies with all requirements in this Article 4.5 and Article 7 for COR's and Claims, or (2) a COR is not required so long as a Claim complying with this Article 4.5 is timely submitted.

A Claim does not include vouchers, invoices, progress payment applications, or other routine or authorized forms of requests for progress payments on the Contract; however, those documents remain "claims" for purposes of the California False Claims Act. A Claim does not include a Government Code Claim. ("Government Code Claim" means a claim under Government Code sections 900 et seq. and 910 et seq.)

4.5.4 TIME FOR SUBMITTING CLAIM; WAIVER

Design-Builder shall submit a Claim to the Owner's construction manager (or in the absence of a construction manager, to Architect) and Owner within the earlier of (a) fifteen (15) days after Owner's rejection of a COR in whole or in part, or (b) fifteen (15) days after a COR being deemed rejected, pursuant to Section 4.5.2 above. If the Claim is not based on an issue for which a COR would be required (such as wrongful withholding by the Owner), then Design-Builder shall submit the Claim within fifteen (15) days after the date on which Design-Builder knew, or should have known, about the issue on which the Claim is based. If a Claim has not been submitted as of the date that the Design-Builder Completes the Work and submittal of the Claim was not yet required under the Contract Documents, then the Claim shall be submitted within seven (7) days of Completion of the Work; and such Claim shall not be barred due to lack of a Notice of Potential Change or COR if the deadline for the Notice of Potential Change or COR was after Completion of the Work.

In addition, within seven (7) days of Completion of the Work, Design-Builder shall submit to Owner, in writing, a summary of all Claims for money or time extensions under or arising out of this Contract which were timely filed and which were fully compliant with the Contract's requirements for Claims. The submission of an Application for Payment for the Final Progress Payment shall constitute a complete waiver of all Claims against Owner under or arising out of this Contract, except those identified in the above summary, as Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies. This Claim summary requirement shall not extend the time for submitting a Claim.

Failure to timely submit a Claim, failure to include a Claim in the Claim summary, or failure to comply with any of the Claim requirements in the Contract, including but not limited to this Article 4, will act as a complete waiver of Design-Builder's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim for the money or time (see Section 4.5.6.4), and (c) initiate any action, proceeding or litigation for the

money or time, regardless of the merits. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies. Owner does not have an obligation to reject the Claim for a failure to comply with any of the Claim requirements in the Contract, including the lack of certification, and any failure by Owner to reject, or any delay in rejecting, a Claim on that basis does not waive the Owner's right to reject the Claim on that basis at a later time. In no event may the Design-Builder reserve its rights to assert a Claim for a time extension or additional money beyond the timelines set forth in this provision unless the Owner agrees in writing to allow the reservation.

4.5.5 CONTENT OF CLAIM

4.5.5.1 *Claim Format; Waiver*

Every Claim shall be in writing. All money or time extensions sought must be stated and itemized in the Claim at the time submitted. The responsibility to substantiate Claims shall rest with the Design-Builder, and the Design-Builder shall furnish reasonable documentation to support each Claim.

In addition, the Design-Builder shall include a certification with each and every Claim at the time of submission, as follows:

In addition, the Design-Builder shall include a certification with each and every Claim at the time of submission, as follows:

I, _____ [name of declarant], declare the following:

_____ [Design-Builder company name] has contracted with _____ [public entity name] for the _____ [name of Contract] Contract. _____ [Design-Builder company name] authorized me to prepare the attached Claim for money and/or time extension for _____ [public entity name] regarding this Contract (dated _____, 20____, entitled _____, and requesting \$_____ and/or _____ additional days), and I prepared the attached Claim. I am the most knowledgeable person at _____ [Design-Builder company name] regarding this Claim.

The attached Claim complies with all laws applicable to submission of a Claim, including but not limited to California Penal Code section 72, Government Code sections 12650 et seq. (False Claims Act), and Business and Professions Code sections 17200 et seq. (Unfair Business Practices Act). I am aware that submission or certification of false claims, or other claims that violate law or the Contract, may lead to fines, imprisonment, and/or other serious legal consequences for myself or _____ [Design-Builder company name].

The attached Claim does not breach the Contract, is not a false claim, does not violate any applicable law, satisfies all provisions of the Contract applicable to submission of the Claim, only contains truthful and accurate supporting data, and only requests money and/or time extensions that accurately reflect the adjustments to money and time for which I believe that [public entity name] is responsible under its Contract with _____ [Design-Builder company name].

While preparing this declaration and Claim I consulted with others (including attorneys, consultants, or others who work for _____ [Design-Builder company name]) when necessary to ensure that the statements were true and correct.

Design-Builder understands and agrees that any Claim submitted without this certification does not meet the terms of the Contract Documents; that Owner, or Owner's representatives, may reject the Claim on that basis; and that unless Design-Builder properly and timely files the Claim with the certification, Design-Builder cannot further pursue the Claim in any forum and all rights to additional money or time for the issues covered by the Claim are waived due to a condition precedent not having been satisfied.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed _____, 2____, at _____, California.

_____ [name of declarant]

Design-Builder's failure to timely submit a certification will constitute a complete waiver of Design-Builder's rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6.4) for the money or time, and (c) initiate any action, proceeding or litigation for the money or time. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies.

4.5.5.2 *Claims for Additional Money*

Each Claim for additional money (including but not limited to those described in (b) and (c) of the first paragraph of Section 4.5.3) must include all facts supporting the Claim, including but not limited to all supporting documentation plus a written analysis as to (a) why the claimed cost was incurred, (b) why Design-Builder could not mitigate its costs, (c) why the claimed cost is the responsibility of the Owner, and (d) why the claimed cost is a reasonable amount. In no event will the Design-Builder be allowed to reserve its rights, whether in a Claim or other document, to assert a Claim for money at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a Claim shall be grounds for rejection of

the Claim. Any costs, direct or indirect, not timely asserted in a certified Claim shall be waived. A Claim may not include any costs incurred in preparation of the Claim or in preparation of any underlying COR, including but not limited to costs of delay analysis.

4.5.5.3 *Claims for Additional Time*

4.5.5.3.1 *Notice of Extent of Claim*

If the Design-Builder wishes to make a Claim for an increase in the Contract Time (including but not limited to Section 4.5.3(a)), the Claim shall include, but not be limited to, all facts supporting the Claim, all documentation of such facts, all information required by the Contract Documents, all information establishing entitlement to a time extension pursuant to Section 8.4.1 below, a current and certified schedule (see Section 3.9.1, above), and a delay analysis explaining (a) the nature of the delay, (b) the Owner's responsibility for the claimed delay, (c) the claimed delay's impact on the critical path, (d) the claimed delay's impact on the date of Completion (including an analysis of any float still remaining and whether the alleged delay in work exceeds such remaining float), and (e) why Design-Builder could not mitigate the delay impacts. Failure to include an updated and certified schedule, or a delay analysis, in a Claim seeking a time extension will act as a complete waiver of Design-Builder's rights to (i) recover money or time based on the issues addressed by the Claim, (ii) submit a Government Code Claim for the requested money or time (see Section 4.5.6.4), and (iii) initiate any action, proceeding or litigation for the requested money or time, regardless of the merits; Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies.

In no event will the Design-Builder be allowed to reserve its rights, whether in a Claim or other document, to assert a Claim for a time extension at a later time or in a manner other than as required by the Contract Documents. Any inclusion of a reservation of rights in a Claim shall be grounds for rejection of the Claim. Any time extension not timely asserted in a certified Claim shall be waived.

4.5.5.3.2 *Unusual and Uncommon Weather Claims*

If unusual and uncommon weather is the basis for a Claim for additional time, Design-Builder's delay analysis (see Section 4.5.5.3.1, above) must also provide Owner data and facts showing that the weather conditions were unusual and uncommon for the period of time, could not have been reasonably anticipated or mitigated, had an adverse effect on the critical path of the scheduled construction, and meet all other Contract requirements for a time extension (including but not limited to Section 8.4.1, below).

4.5.5.4 *Subcontractor Requests for Money or Time*

A Subcontractor or supplier to Design-Builder may not submit a request for additional time or money directly to the Owner due to its lack of contractual privity with Owner. If a Subcontractor or supplier submits to Design-Builder a request for additional money or time based on an alleged breach of the subcontract or supplier contract by Design-Builder, Design-Builder may elect to seek money or time from Owner based on that request of the Subcontractor or supplier.

For any such request to Owner by Design-Builder, Design-Builder must comply with the requirements and prerequisites in the Contract Documents for requests to the Owner for money or time (including but not limited to Section 4.5 of the General Conditions regarding Notices of Potential Change, Change Order Requests [“CORs”], Claims, and certifications) and with Public Contract Code section 9204(d)(5). Any such COR or Claim by Design-Builder must include Design-Builder’s certification (see General Conditions §§4.5.2 and 4.5.5.1), a complete copy of the Subcontractor’s or supplier’s request for money or time (including all documents submitted by the Subcontractor or supplier), and any other necessary supporting documentation. Any such COR or Claim by Design-Builder must include (a) Design-Builder’s detailed analysis of the merit of Subcontractor’s or supplier’s request to the Design-Builder, including (i) analysis of Design-Builder’s alleged breaches of the subcontract or supplier contract that allegedly caused the Subcontractor or supplier to incur damages or delay, and (ii) analysis of all of Design-Builder’s defenses to the request for money or time by the Subcontractor or supplier; and (b) Design-Builder’s detailed analysis of the Owner’s liability to Design-Builder for any money or time that Design-Builder owes, or may later be determined to owe, to Subcontractor or supplier (including but not limited to how Owner’s alleged breaches of the Contract Documents caused Design-Builder to breach the subcontract or supplier contract). In any such COR or Claim, Design-Builder may deny that it is liable to the Subcontractor or supplier for some or all of the requested money or time, or it may assert that it is merely submitting the COR or Claim to Owner on behalf of the Subcontractor or supplier; but doing one or the other would not excuse Design-Builder from complying with the above requirements for its request to the Owner.

Any failure by Contractor to timely comply with this Section 4.5.5.4 (including a failure to timely submit a Notice of Potential Change, COR, Claim, certifications, or detailed analysis) shall act as a complete waiver of Design-Builder’s rights to (a) recover money or time from Owner based on any money or time that Design-Builder owes, or may later be determined to owe, to the Subcontractor or supplier, (b) submit a Government Code Claim to Owner for the money or time requested by the Subcontractor or supplier (see Section 4.5.6.3), and (c) initiate any action, proceeding or litigation against Owner for any money or time that Design-Builder owes, or may later be determined to owe, to the Subcontractor or supplier. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies.

4.5.6 PROCEDURES FOR CLAIMS (PUBLIC CONTRACT CODE SECTION 9204)

Claims are subject to this section 4.5.6 and Public Contract Code section 9204, as well as the separate procedures and substantive provisions of Sections 4.5.1 through 4.5.5 and the rest of the Contract Documents. Claims of \$375,000 or less are also subject to Public Contract Code sections 20104 et seq., but to the extent that one of the procedures in Sections 20104 et seq.

conflicts with the procedures in Section 9204, the requirements of Section 9204 shall control.

4.5.6.1 *Claims*

The Owner shall conduct a reasonable review of the Claim and shall respond in writing to any written Claim within 45 days of receipt of the Claim. During that 45-day period, plus any extension, Owner may request, in writing, additional documentation supporting the Claim or relating to defenses to the Claim the Owner may have against the Design-Builder. Owner shall review any additional documentation Design-Builder supplies in response to that request within the 45 day, plus any extension, timeline.

After receipt of a Claim, the 45-day period may be extended by Owner and Design-Builder. The written response shall identify which portion of the Claim is disputed and what portion is undisputed. If Owner needs approval from its governing board to provide the written response, and the governing board does not meet within the 45 days or any extended period of time, then the Owner shall have up to three days after the next publicly noticed meeting of the governing board to provide the written response. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Owner issues the written response. Owner's failure to respond to a Claim within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

4.5.6.2 *Meet and Confer*

If the Design-Builder disputes the Owner's written response, or the Owner fails to respond within the time prescribed, the Design-Builder may so notify the Owner, in writing, either within 15 days of receipt of the Owner's response or within 15 days of the Owner's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a written demand sent by registered or certified mail return receipt requested, the Owner shall schedule a meet and confer conference for settlement of the dispute, which shall take place within 30 days of the demand. Upon written agreement of the Owner and Design-Builder, the conference may take place during regularly scheduled Project meetings. The informal conference is not a mediation since there is no neutral person facilitating communication to assist the parties to reach agreement; therefore, the provisions of Evidence Code sections 1115-1128 shall not apply to any portion of the informal conference (including but not limited to any documents provided or shown, or statements of fact or opinion made, by a party) unless the parties expressly agree in writing to their application. Any offer of compromise at an informal conference shall not be admissible to prove liability, as provided in Evidence Code section 1152, but this statute's prohibition of admissibility shall not apply to other statements before or at the informal conference, or in any document prepared for or exchanged at the informal conference.

If Design-Builder fails to timely notify the Owner that it wishes to meet and confer pursuant to the previous paragraph, then Design-Builder will have waived all rights to (a) recover money or time on the issues for which a Claim was required, (b) submit a Government Code Claim (see Section 4.5.6) for such money or time, and (c) initiate any action, proceeding or litigation for

such money or time. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies.

Within ten (10) business days after the conclusion of the meet and confer conference, the Owner shall give a written statement to the Design-Builder identifying the portion of the Claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the Claim shall be processed and made within sixty (60) days after the Owner issues the written statement. Within ten (10) business days of issuance of Owner's written statement, Design-Builder shall identify in writing the disputed portion of the Claim that shall be submitted to non-binding mediation (which may consist of any nonbinding process, including but not limited to neutral evaluation or a dispute review board), with the Owner and Design-Builder sharing the costs equally. The Owner and Design-Builder shall mutually agree to a mediator within ten (10) business days after the Design-Builder has identified in writing the disputed portion of the Claim. If they cannot agree upon a mediator, then each shall select a mediator and those two mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim. (Each party shall bear the fees and costs its respective mediator charged in connection with the selection of the neutral mediator). The parties may mutually waive in writing the requirement for mediation. If Design-Builder fails to timely notify the Owner in writing that it wishes to mediate pursuant to this paragraph, Design-Builder will have waived all right to further pursue the Claim pursuant to section 4.5.4. The parties shall reasonably cooperate to schedule and attend a mediation as soon as reasonably possible. Owner's failure to respond to the Claim within the above time periods or to otherwise meet the above time requirements shall result in the Claim being deemed rejected in its entirety.

4.5.6.3 *Government Code Claim*

If the Claim or any portion remains in dispute after the mediation and Design-Builder wishes to pursue it, the Contractor **must** file a timely and proper Government Code Claim. The filing of a Government Code Claim is specifically required in addition to all contractual procedures described in Sections 4.5 through 4.5.6.2. The above contractual procedures do not act as a substitute for the Government Code Claim process, and the two sets of procedures shall be sequential with the contractual procedures coming first.

Failure to timely file a Government Code Claim shall act as complete waiver of Design-Builder's rights to (a) recover money or time on the issues for which a Government Code Claim was required, and (b) initiate any action, proceeding or litigation for such money or time. Design-Builder will not have satisfied a condition precedent or exhausted administrative remedies.

Owner and Design-Builder shall proceed with the Government Code Claim according to Government Code, Section 900 et seq., and as otherwise permitted by law. For purposes of the applicable Government Code provisions, and as provided in Public Contract Code section 20104.2(e), the running of the time period within which a Contractor must file a Government Code Claim shall be tolled from the time the Design-Builder submits a written Claim under Article 4.5 until the time that the Claim is denied, in whole or in part, as a result of the meet and confer process in Section 4.5.6.2, including any period of time utilized by the meet and confer process.

4.5.7 CONTINUING CONTRACT PERFORMANCE

Despite Design-Builder's submission of, or Owner's rejection of, a Notice of Potential Change, COR, Claim, or Government Code Claim based on alleged breaches of the Contract by Owner, the Design-Builder shall proceed diligently with performance of the Contract as directed by Owner, and the Owner shall continue to make any undisputed payments in accordance with the Contract. Design-Builder acknowledges that Completion of the Work is a high priority for both Owner and Design-Builder as failure to Complete the Work would most likely cause each of them to incur much greater costs and damages than would be incurred if the Work were Completed. If Design-Builder believes that Owner has breached the Contract and that such breach is preventing or delaying Contractor's performance as directed by Owner, then Design-Builder must submit notice as required by Section 3.18, above.

4.5.8 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS

4.5.8.1 *Trenches or Excavations Less Than Four Feet Below the Surface*

If Design-Builder encounters conditions at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Design-Builder shall give notice to the Owner promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. If Design-Builder believes that such conditions differ materially and will cause an increase in the Design-Builder's cost of, time required for, or performance of any part of the Work, Design-Builder must comply with the provisions above for Notice of Potential Change, Change Order Request, and Claims (beginning with Section 4.5.1).

4.5.8.2 *Trenches or Excavations Greater Than Four Feet Below the Surface*

Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:

4.5.8.2.1 The Design-Builder shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

(1) Material that the 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 the provisions of existing law.

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

4.5.8.2.2 The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Design-Builder's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract.

4.5.8.2.3 In the event that a dispute arises between the public entity and the Design-Builder whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Design-Builder's cost of, or time required for, performance of any part of the Work, the Design-Builder shall not be excused from any deadline for Completion provided for by the Contract, but shall proceed with all Work to be performed under the Contract. The Design-Builder shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.5.9 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, any of the other party's employees or agents, or others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. For a Notice of Potential Change, COR and Claim for additional cost or time related to this injury or damage, Design-Builder shall follow Section 4.5.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 SUBCONTRACTOR

A Subcontractor is a person or entity, who has a contract with the Design-Builder to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. To the extent that the term Trade Design-Builder is utilized in the Contract Documents, it shall have the same meaning as the term "Subcontractor."

5.1.2 SUB-SUBCONTRACTOR

A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.1.3 SPECIALTY CONTRACTORS

If a Subcontractor is designated as a “Specialty Contractor” as defined in section 7058 of the Business and Professions Code, all of the Work outside of that Subcontractor’s specialty shall be performed in compliance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code sections 4100, et seq.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 ASSIGNMENT OR SUBSTITUTION - CONSENT OF OWNER

In accordance with Public Contract Code sections 4107 and 4107.5, no Design-Builder whose bid is accepted shall, without the written consent of the Owner: substitute any person or entity as a Subcontractor in place of the Subcontractor designated in the original bid; permit any such Subcontract to be assigned or transferred, or allow it to be performed by any person or entity other than the original Subcontractor listed in the original bid; sublet or subcontract any portion of the Work in excess of one-half of one percent (0.5%) of the Design-Builder’s total bid as to which its original bid did not designate a Subcontractor. Any assignment or substitution made without the prior written consent of the awarding authority shall be void, and the assignees shall acquire no rights in the Contract. Any consent, if given, shall not relieve Design-Builder or its Subcontractors from their obligations under the terms of the Contract Documents.

5.2.2 GROUNDS FOR SUBSTITUTION

Pursuant to Public Contract Code section 4107 and the procedure set forth therein, no Design-Builder whose bid is accepted may request to substitute any person or entity as a Subcontractor in place of a Subcontractor listed in the original bid except in the following instances:

- A. When the Subcontractor listed in the bid after having a reasonable opportunity to do so, fails or refuses to execute a written contract for the scope of work specified in the subcontractor’s bid and at the price specified in the subcontractor’s bid, when that written contract, based upon the general terms, conditions, plans and specifications for the Project involved or the terms of that Subcontractor’s written bid, is presented to the Subcontractor by the Design-Builder;
- B. When the listed Subcontractor becomes insolvent or the subject of an order for relief in bankruptcy;

- C. When the listed Subcontractor fails or refuses to perform his or her Subcontract;
- D. When the listed Subcontractor fails or refuses to meet the bond requirements of the Design-Builder set forth in Public Contract Code section 4108.
- E. When the Design-Builder demonstrates to the awarding authority, or its duly authorized officer, subject to the further provisions of Public Contract Code section 4107.5, that the name of the Subcontractor was listed as the result of inadvertent clerical error;
- F. When the listed Subcontractor is not licensed pursuant to the Contractors License Law; or
- G. When the awarding authority, or its duly authorized officer, determines that the Work being performed by the listed Subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or the Subcontractor is substantially delaying or disrupting the progress of the Work.
- H. When the listed Subcontractor is ineligible to work on a public works project pursuant to Section 1777.1 of the Labor Code.
- I. When the awarding authority determines that a listed Subcontractor is not a responsible contractor.

5.2.2.1 **No Change in Contract.** Any substitutions of Subcontractors shall not result in any increase in the Contract Sum or result in the granting of any extension of time for the Completion of the Work.

5.2.2.2 **Substitution Due to Clerical Error.** The Design-Builder, as a condition of asserting a claim of inadvertent clerical error in the listing of a Subcontractor, shall, pursuant to Public Contract Code section 4107.5, within two (2) working days after the time of the prime bid opening by the awarding authority, give written notice to the awarding authority and copies of such notice to both the Subcontractor it claims to have listed in error, and the intended Subcontractor who had bid to the Design-Builder prior to bid opening. Any listed Subcontractor who has been notified by the Design-Builder in accordance with the provisions of this section as to an inadvertent clerical error, shall be allowed six (6) working days from the time of the prime bid opening within which to submit to the awarding authority and to the Design-Builder written objection to the Design-Builder's claim of inadvertent clerical error.

In all other cases, the Design-Builder must make a request in writing to the awarding authority for the substitution of a subcontractor, giving reasons therefore. The awarding authority shall mail a written notice to the listed Subcontractor giving reasons for the proposed substitution. The listed Subcontractor shall have five (5) working days from the date of such notice within which to file with the awarding authority written objections to the substitution.

Failure to file written objections pursuant to the provisions of this section within the times specified herein shall constitute a complete waiver of objection to the substitution by the listed Subcontractor and, where the ground for substitution is an inadvertent clerical error, an agreement by the listed Subcontractor that an inadvertent clerical error was made.

If written objections are filed, the awarding authority shall give five (5) days notice to the Design-Builder and to the listed Subcontractor of a hearing by the awarding authority on the Design-Builder's request for substitution as provided in Public Contract Code section 4107. The determination by the awarding authority shall be final.

5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Design-Builder shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Design-Builder by terms of the Contract Documents, and to assume toward the Design-Builder all obligations and responsibilities, which the Design-Builder, by the Contract Documents, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Design-Builder that the Design-Builder, by the Contract Documents, has against the Owner. Where appropriate, the Design-Builder shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Design-Builder shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Upon written request of the Subcontractor, the Design-Builder shall identify to the Subcontractor the terms and conditions of the proposed subcontract agreement, which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Each subcontract agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- A. Assignment is effective only after termination of the Contract with the Design-Builder by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- B. Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

5.5 SUBCONTRACTOR'S RESPONSIBILITIES

Every Subcontractor is bound to the following provisions, unless specifically noted to the

contrary in the Subcontractor's contract subject to the limitations of section 5.3.

5.5.1 SUPERVISION BY SUBCONTRACTORS

Subcontractors shall efficiently supervise their Work, using their best skill and attention. Each of them shall carefully study and compare all Drawings, Specifications, and other instructions, shall at once report to Design-Builder any error or omission which any of them may discover, and shall subsequently proceed with the Work in accordance with instructions from the Design-Builder concerning such error or omission. Each Subcontractor shall be fully responsible for and shall bear the full risk of loss of all of its property.

5.5.2 DISCIPLINE AND ORDER

Each Subcontractor shall at all times enforce strict discipline and good order among its Subcontractors, material or equipment suppliers, or their agents, employees, and invitees, and shall establish and maintain surveillance over the activities of each of the foregoing to minimize any disturbance, damage, pollution, or unsightly conditions relative to property areas adjacent to or in the vicinity of the Site. The Design-Builder shall have the right to remove from the Work any employee of a Subcontractor for any reason including, without limitation, incompetence or carelessness.

5.5.3 DEFECTS DISCOVERED

Should the proper and accurate performance of the Work depend upon the proper and accurate performance of other work not included in its Contract, each Subcontractor shall use all necessary means to discover any defect in such other work and shall allow the Design-Builder, the Owner and Architect, or other Subcontractors as Design-Builder elects, a reasonable amount of time to remedy such defects. If the Subcontractor should proceed with its Work, it shall be considered to have accepted such other work, unless the Subcontractor shall have proceeded pursuant to instructions in writing by the Design-Builder over its written objection.

5.5.4 SUBCONTRACTOR INFORMATION

Each Subcontractor shall submit to the Owner, the Design-Builder, or the Architect, as the case may be, promptly when requested by any of the foregoing, information with respect to the names, responsibilities, and titles of the principal members of its staff, the adequacy of the Subcontractor's equipment and the availability of necessary materials and supplies. Subcontractor shall fully cooperate with Design-Builder in its periodic review of the adequacy of Subcontractor's supervision, personnel, and equipment, and the availability of necessary materials and supplies and shall promptly comply with the requirements of the Design-Builder with respect thereto.

5.5.5 TEMPORARY STRUCTURES

Each Subcontractor shall furnish at its expense its own temporary facilities and storage except those specifically agreed to be furnished to it by the Design-Builder in the Subcontract

Agreement. Subcontractor's material storage rooms and field offices, etc., will be placed in locations designated by the Design-Builder. When it becomes necessary due to the progress of the Work for the Subcontractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost to Design-Builder or Owner. The construction of material storage rooms and field offices, etc., will be of fire resistive material only, such as concrete or gypsum block, rated drywall, or sheet metal.

5.5.6 CHARGES TO SUBCONTRACTOR

Each Subcontractor may be subject to the Design-Builder's reasonable charges for hoisting, repair to other work caused by the fault or negligence of Subcontractor, removal of Subcontractor's rubbish, and clean-up occasioned by Subcontractor.

5.5.7 FINES IMPOSED

Subcontractor shall comply with and pay any fines or penalties imposed for violation of any applicable law, ordinance, rule, regulation, Environmental Impact Report mitigation requirement, and lawful order of any public authority, including, without limitation, all OSHA and California OSHA requirements and those of other authorities having jurisdiction of the safety of persons or property.

5.5.8 PROJECT SIGNS

Each Subcontractor shall not display on or about the Project any sign, trademark, or other advertisement. The Owner will permit a single Project sign, which shall be subject to the Owner's prior and sole discretion and approval, as to all matters including, without limitation, size, location, material, colors, style and size of printing, logos and trademarks (if any), text, and selection of names to be displayed.

5.5.9 REMEDIES FOR FAILURE TO PERFORM

Without limitation of any other right or remedy available to Design-Builder under the Contract Documents or at law, should: the Subcontractor fail to perform its portion of the Work in a skilled and expeditious manner in accordance with the terms of the Contract Documents with sufficient labor, materials, equipment, and facilities; delays the progress of the job or otherwise fail in any of its obligations; or either a receiver is appointed for the Subcontractor or the Subcontractor is declared to be bankrupt or insolvent, and such appointment, bankruptcy, or insolvency proceedings or declaration is not set aside within thirty (30) days, then the Design-Builder, upon three (3) days notice to the Subcontractor (subject to the requirements of Pub. Contracts Code, § 4107), may provide such labor, materials, or perform such work and recover the cost plus profit and overhead from monies due or to become due thereafter to the Subcontractor. The Design-Builder may terminate the employment of the Subcontractor, taking possession of its tools, materials, and equipment related to the Work and cause the entire portion of the Subcontractor's Work to be finished either by another Subcontractor or through the Design-Builder's own forces.

5.5.10 DISPUTES NOT TO AFFECT WORK

In the event of any dispute as to whether or not any portion of the Work is within the scope of the Work to be performed by a Subcontractor, or any dispute as to whether or not the Subcontractor is entitled to a Change Order for any Work requested of it or entitled to payment, the Subcontractor shall continue to proceed diligently with the performance of the Work. Regardless of the size or nature of the dispute, the Subcontractor shall not under any circumstances cease or delay performance of its portion of the Work during the existence of the dispute. The Design-Builder shall continue to pay the undisputed amounts called for under the Subcontract Agreement during the existence of the dispute. Any party stopping or delaying the progress of the Work because of a dispute shall be responsible in damages to the Owner, the Architect, and the Design-Builder for any losses suffered as a result of the delay.

5.5.11 APPLICATION FOR PAYMENT

Design-Builder agrees to advise the Subcontractor if any documentation in connection with the Subcontractor's application for payment has not been accepted or is in any way unsatisfactory.

5.5.12 COMPLIANCE WITH PROCEDURES

Each Subcontractor shall comply with all procedures established by the Design-Builder for coordination among the Owner, the Owner's consultants, Architect, Design-Builder, and the various Subcontractors for coordination of the Work with all local municipal authorities, government agencies, utility companies, and any other agencies with jurisdiction over all or any portion of the Work. The Subcontractor shall cooperate fully with all of the foregoing parties and authorities.

5.5.13 ON-SITE RECORD KEEPING

Subcontractor shall comply with all on-Site record keeping systems established by the Design-Builder and shall, upon the request of the Design-Builder, provide the Design-Builder with such information and reports as the Design-Builder may deem appropriate. Without limitation of the foregoing, the Subcontractor shall assemble all required permits and certificates so that they are readily accessible at the Site.

5.5.14 NON-EXCLUSIVE OBLIGATIONS

The specific requirements of Article 5 are not intended to exclude the obligation of the Subcontractor to comply with any of the other provisions of the General Conditions and the other Contract Documents which are relevant to the proper performance of its portion of the Work.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE DESIGN-BUILDERS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD

SEPARATE CONTRACTS

6.1.1 OWNER’S RIGHTS

The Owner reserves the right to perform Project work related to the Contract with the Owner’s own forces, or to award separate contracts in connection with such other work or other construction or operations on the Site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance. Upon the election to perform such work with its own forces or by separate contracts, the Owner shall notify the Design-Builder. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall proceed pursuant to Section 4.5 in the Contract Documents.

6.1.2 DESIGNATION AS DESIGN-BUILDER

When separate contracts are awarded for different portions of the Project or other construction or operations on the Site, the term “Design-Builder” in the Contract Documents in each of those contracts shall mean the contractor who executes each separate Owner/Design-Builder Agreement.

6.1.3 DESIGN-BUILDER DUTIES

Although the Owner shall have overall responsibility for coordination and scheduling of the activities of the Owner’s own forces and of each separate contractor with the Work of the Design-Builder, Design-Builder shall cooperate with Owner. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder until subsequently revised.

6.1.4 OWNER OBLIGATIONS

Unless otherwise provided in the Contract Documents, when the Owner performs work related to the Project with the Owner’s own forces, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, which apply to the Design-Builder under the General Conditions, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 DELIVERY AND STORAGE

The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for delivery and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the separate contractors' construction and operations with theirs as required by the Contract Documents.

6.2.2 NOTICE BY DESIGN-BUILDER

If part of the Design-Builder's Work depends upon proper execution or results from work by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner patent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder to so report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

6.2.3 COSTS INCURRED

Costs, expenses, and damages caused by delays, improperly timed activities, defective construction, or damages to another's work/Work or property shall be borne by the party responsible. Should Design-Builder cause damage to the work/Work or property of any other contractor on the Project, or to the Project or property of a third party, or cause any delay to any such contractor or third party, the Design-Builder shall defend, indemnify and hold Owner harmless for such damage or delay under Section 3.16, below, and the Design-Builder shall be liable to Owner for any damages suffered by Owner, including liquidated damages for delay. Owner may withhold from progress payments and/or retention the cost of delay or damage to another contractor's work or damage to another contractor's property, and Owner's damages, caused by Design-Builder.

6.2.4 CORRECTION OF DAMAGE

The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Design-Builder, separate contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Section 3.13, the Owner may clean up and allocate the cost among those responsible as the Owner determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

7.1.1 NO CHANGES WITHOUT AUTHORIZATION

The Owner reserves the right to change the Work by making such alterations, deviations, additions to, or deletions from the plans and specifications, as may be deemed by the Owner to be necessary or advisable for the proper Completion or construction of the Work contemplated, and Owner reserves the right to require Design-Builder to perform such work. No adjustment will be made in the Contract unit price of any Contract item regardless of the quantity ultimately required.

Owner shall compensate Design-Builder with additional money or additional time, or both, as warranted under the Contract Documents for any extra work ordered by the Owner to be performed by Design-Builder; but such “extra work” shall not include any work or expense (a) that was known by, should have been known by, or was reasonably foreseeable to Design-Builder at the time of proposing, or (b) for which Design-Builder is responsible under the Contract Documents. Design-Builder shall follow the provisions of the Contract Documents, including General Conditions sections 4.5, 7.6, 7.7, and 8.4, when requesting additional money or additional time for such extra work. Design-Builder shall expeditiously perform all extra work upon direction, even if no agreement has been reached on extra time or money. For all such changes resulting in a credit to Owner, Design-Builder shall follow Sections 7.5 and 7.7 in providing the credit to Owner. Design-Builder shall bring all potential credits to the Owner’s attention.

There shall be no change whatsoever in the drawings, specifications, or in the Work or payments under the Contract Documents without an executed Change Order, Construction Change Directive, or order by the Owner pursuant to Section 7.1.2. Owner shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been properly requested under Section 4.5 and authorized by, and the cost thereof approved in writing by, Change Order or Construction Change Directive. Owner shall not be liable for, and Design-Builder shall bear the burden of, any post-proposal escalation in the costs of construction, whether foreseeable or not; but Design-Builder will retain the benefit of any post-proposal cost decreases, whether foreseeable or not, and retain the right to request additional compensation for cost increases incurred due to Owner delay. No extension of time for performance of the Work shall be allowed hereunder unless request for such extension is properly made under Section 4.5 and such time is thereof approved in writing by Change Order or Construction Change Directive. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.

7.1.2 AUTHORITY TO ORDER MINOR CHANGES

The Owner has authority to order minor changes in the Work not involving any adjustment in the Contract Sum, an extension of the Contract Time, or a change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Construction Change Directive and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

7.2 CHANGE ORDERS (“CO”)

A CO is a written instrument signed by the Owner and the Design-Builder, stamped (or sealed) and signed by Architect, and approved by the Owner’s Governing Board and DSA, stating the agreement of Owner and Design-Builder upon all of the following:

- A. A 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.

Unless expressly stated otherwise in the CO, any CO executed by Owner and Design-Builder constitutes and includes full and complete money and time (including but not limited to, adjustments to money and time) for all costs and effects caused by any of the changes described within it. Unless expressly stated otherwise in the CO, in consideration for the money received for the changes described in the CO, Design-Builder waives all Claims for all costs and effects caused by any of the changes, including but not limited to labor, equipment, materials, delay, extra work, overhead (home and field), profit, direct costs, indirect costs, acceleration, disruption, impaired productivity, time extensions, and any the costs and effects on Subcontractors and suppliers of any tier.

7.3 CONSTRUCTION CHANGE DIRECTIVES (“CCD”)

7.3.1 DEFINITION

A CCD is a written unilateral order signed by the Owner directing performance of the Work or a change in the Work. The CCD may state an adjustment in the Contract Sum, Contract Time, or Milestone Deadline. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions pursuant to Section 7.1.1.

7.3.2 USE TO DIRECT CHANGE

A CCD shall be used in the absence of agreement on the terms of a CO. If Design-Builder disagrees with the terms of a CCD, it shall nevertheless perform the work directed by the CCD, but it may pursue the Notice of Potential Change, COR and Claim procedures of Section 4.5 if Design-Builder believes it is entitled to changes in the Contract Sum or Contract Time.

7.4 REQUEST FOR INFORMATION (“RFI”)

7.4.1 DEFINITION

An RFI is a written request prepared by the Design-Builder asking the Owner to provide additional information necessary to clarify an item which the Design-Builder feels is not clearly shown or called for in the Contract Documents, or to address problems which have arisen under field conditions.

7.4.2 SCOPE

The RFI shall reference all portions of the applicable Contract Documents. The Design-Builder shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Sum, Contract Time, or the Contract Documents.

7.4.3 RESPONSE TIME

Unless Owner expressly directs otherwise in writing, Design-Builder shall submit RFI’s directly to the Architect, with copies forwarded to the Owner. Design-Builder shall submit a revised and updated priority schedule with each RFI. The Architect shall endeavor to follow the Design-Builder’s requested order of priorities. The Owner and Design-Builder agree that an adequate time period for the Architect (or other designated recipient of the RFI) to respond to an RFI is generally fourteen (14) calendar days after the Architect’s receipt of an RFI, unless the Owner and Design-Builder agree otherwise in writing. However, in all cases, the Architect shall take such time, whether more or less than 14 days, as is necessary in the Architect’s professional judgment to permit adequate review and evaluation of the RFI. If Design-Builder informs the Architect that it needs a response to an RFI expedited to avoid delay to the critical path, the Architect shall provide a response as quickly as reasonably possible. The total time required for the Architect to respond is subject to the complexity of the RFI, the number of RFI’s submitted concurrently and the reprioritization of pending RFI’s submitted by the Design-Builder, among other things. If Design-Builder believes that the Architect’s response results in a change in the Work that warrants additional money or time, or that Architect’s response was unreasonably delayed and caused delay to the Work’s critical path, Design-Builder shall follow the procedures for additional money or time under Section 4.5. No presumption shall arise as to the timeliness of the response if the response is more than fourteen (14) days after the Architect’s receipt of the RFI. Design-Builder shall review the Contract Documents before submitting an RFI to ensure that the information is not already in the Contract Documents. To compensate the Owner for time and costs incurred for each time the information was already in the Contract Documents, Owner may withhold \$100 from progress payments or retention in addition to any other remedies

which Owner may have the right to pursue.

7.4.4 COSTS INCURRED

The Design-Builder shall be invoiced by the Owner for any costs incurred for professional services, which shall be withheld from progress payments or retention, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request.

7.5 REQUEST FOR PROPOSAL (“RFP”)

7.5.1 DEFINITION

An RFP is Owner’s written request asking the Design-Builder to submit to the Owner an estimate of the effect, including credits, of a proposed change on the Contract Sum and the Contract Time.

7.5.2 SCOPE

An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Design-Builder to provide the cost breakdowns required by section 7.7. The Design-Builder shall not be entitled to any additional money for preparing a response to an RFP, whether ultimately accepted or not.

7.6 CHANGE ORDER REQUEST (“COR”)

7.6.1 DEFINITION

A COR is any written request prepared by the Design-Builder asking the Owner for additional money or time, including a “proposed change order” or “PCO.” However, a Claim (see Sections 4.5.3-4.5.6) is not a COR. See Section 4.5.2 for additional COR requirements. The COR shall include all information necessary to establish the Design-Builder’s entitlement to additional money or time.

7.6.2 CHANGES IN PRICE

A COR shall include breakdowns per section 7.7 to validate any proposed change in Contract Sum.

7.6.3 CHANGES IN TIME

Where a change in Contract Time is requested, a COR shall also include delay analysis to validate any proposed change to the Contract Time, and shall meet all requirements in these General Conditions, including but not limited to Section 8.4. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Work schedule as defined in section 3.9 and Division 1 of the Specifications.

7.7 PRICE OF CHANGE ORDERS

7.7.1 SCOPE

Any COR shall provide in writing to the Owner, the Architect and any construction manager, the effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Contract Time of such CO.

7.7.2 DETERMINATION OF COST

The amount of the increase or decrease in the Contract Sum resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation:

- A. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- B. Unit prices stated in the Design-Builder's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Design-Builder;
- C. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- D. By cost of material and labor and percentage of overhead and profit. If the value is determined by this method the following requirements shall apply:

1. **Daily Reports by Design-Builder.**

a) General: At the close of each working day, the Design-Builder shall submit a daily report to the Inspector of Record and any construction manager, on forms approved by the Owner, together with applicable delivery tickets, listing all labor, materials, and equipment involved for that day, the location of the work, and for other services and expenditures when authorized concerning extra work items. An attempt shall be made to reconcile the report daily, and it shall be signed by the Inspector of Record and the Design-Builder. In the event of disagreement, pertinent notes shall be entered by each party to explain points which cannot be resolved immediately. Each party shall retain a signed

copy of the report. Reports by Subcontractors or others shall be submitted through the Design-Builder.

- b) Labor: Show names of workers, classifications, and hours worked.
- c) Materials: Describe and list quantities of materials used.
- d) Equipment: Show type of equipment, size, identification number, and hours of operation, including, if applicable, loading and transportation.
- e) Other Services and Expenditures: Describe in such detail as the Owner may require.

2. **Basis for Establishing Costs.**

a) Labor will be the actual cost for wages prevailing locally for each craft or type of workers at the time the extra work is done, plus employer payments of payroll taxes and insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of a labor classification, which would increase the extra work cost, will not be permitted unless the Design-Builder establishes the necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice for equipment rental.

b) Materials shall be at invoice or lowest current price at which such materials are locally available and delivered to the Site in the quantities involved, plus sales tax, freight, and delivery.

The Owner reserves the right to approve materials and sources of supply or to supply materials to the Design-Builder if necessary for the progress of the Work. No markup shall be applied to any material provided by the Owner.

c) Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$100 or less.

Regardless of ownership, the rates to be used in determining equipment rental costs shall not exceed listed rates prevailing locally at equipment rental agencies or distributors at the time the work is performed.

The rental rates paid shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.

Necessary loading and transportation costs for equipment used on the extra work shall be included. If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the Owner than holding it at the work Site, it shall be returned unless the Design-Builder elects to keep it at the work Site at no expense to the Owner.

All equipment shall be acceptable to the Inspector of Record, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and modifications shall be used to classify equipment, and equipment shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

d) Other Items. The Owner may authorize other items which may be required on the extra work. Such items include labor, services, material, and equipment which are different in their nature from those required by the Work, and which are of a type not ordinarily available from the Design-Builder or any of the Subcontractors. Invoices covering all such items in detail shall be submitted with the Application for Payment.

e) Invoices. Vendors' invoices for material, equipment rental, and other expenditures shall be submitted with the COR. If the Application for Payment is not substantiated by invoices or other documentation, the Owner may establish the cost of the item involved at the lowest price which was current at the time of the Daily Report.

f) Overhead, premiums and profit. For overhead, including direct and indirect costs, submit with the COR and include: home office overhead, off-Site supervision, CO preparation/negotiation/research for Owner initiated changes, time delays, project interference and disruption, additional guaranty and warranty durations, on-Site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs.

7.7.3 FORMAT FOR PROPOSED COST CHANGE

The following format shall be used as applicable by the Owner and the Design-Builder to communicate proposed additions and deductions to the Contract.

	<u>EXTRA</u>	<u>CREDIT</u>
A. Material (attach itemized quantity and unit cost plus sales tax, invoices, receipts, truck tags, etc., for force account work)	_____	_____
B. Labor (attach itemized hours and rates, daily logs, certified payroll, etc.)	_____	_____

C.	Equipment (attach any invoices)	_____	_____
D.	Subtotal	_____	_____
E.	If Subcontractor performed Work, add Subcontractor’s overhead and profit to portions performed by Subcontractor, not to exceed fifteen percent (15%) of item D.	_____	_____
F.	Liability and Property Damage Insurance, Worker’s Compensation Insurance, Social Security, and Unemployment Taxes, not to exceed twenty-five percent (25%) of Item B.	_____	_____
G.	Subtotal	_____	_____
H.	General Design-Builder’s Overhead and Profit, not to exceed fifteen percent (15%) of Item G; and for work performed by subcontractors, not to exceed five percent (5%).	_____	_____
I.	Subtotal	_____	_____
J.	Bond not to exceed one percent (1%) of Item I.	_____	_____
K.	TOTAL	_____	_____

For any claimed overhead costs (whether field overhead (i.e., general conditions costs) or home office overhead) pursuant to Section 8.4.2 below, Design-Builder may not recover any mark ups for overhead or profit.

It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes (1) any and all of the Design-Builder’s costs and expenses, both direct and indirect, resulting from additional time required on the project or resulting from delay to the project, and (2) any costs of preparing a COR, including but not limited to delay analysis. Any costs or expenses not included are deemed waived.

7.7.4 DISCOUNTS, REBATES, AND REFUNDS

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Design-Builder, and the Design-Builder shall

make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Design-Builder's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided herein.

7.7.5 ACCOUNTING RECORDS

With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Design-Builder shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Design-Builder is required to maintain under the Contract Documents.

7.7.6 NOTICE REQUIRED

Design-Builder shall submit a written Notice of Potential Change for additional money or time pursuant to section 4.5.1.

7.7.7 APPLICABILITY TO SUBCONTRACTORS

Any requirements under this Article 7 shall be equally applicable to COs or CCDs issued to Subcontractors by the Design-Builder to the same extent required of the Design-Builder.

7.8 WAIVER OF RIGHT TO CLAIM MONEY OR TIME

Failure to demand money based on costs, or time extensions, as part of a COR constitutes a complete waiver of Design-Builder's right to claim the omitted money or time. All money or time for an issue must be included in the COR at the time submitted.

ARTICLE 8

TIME

8.1 DEFINITIONS

8.1.1 CONTRACT TIME

Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work.

8.1.2 NOTICE TO PROCEED

Design-Builder shall not commence the Work until it receives a Notice to Proceed from Owner. The date of commencement of the Work is the date established in the Notice to Proceed. The date of commencement shall not be postponed by the failure to act of the Design-Builder or of persons or entities for whom the Design-Builder is responsible.

8.1.3 **DAYS**

The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 **HOURS OF WORK**

8.2.1 **SUFFICIENT FORCES**

Design-Builders and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work, including Work directed pursuant to a CCD (see Section 7.3, above), in accordance with the Construction Schedule.

8.2.2 **PERFORMANCE DURING WORKING HOURS**

Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the Work in accordance with job progress, work may be performed outside of regular working hours with the advance written consent of the Owner.

8.2.3 **LABOR CODE APPLICATION**

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

Design-Builder or subcontractor shall pay to the Owner a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Design-Builder, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Design-Builder is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

8.2.4 COSTS FOR AFTER HOURS INSPECTIONS

If the work done after hours is required by the Contract Documents to be done outside the Design-Builder's or the Inspector of Record's regular working hours, the costs of any inspections, if required to be done outside normal working hours, shall be borne by the Owner.

If the Owner allows the Design-Builder to do work outside regular working hours for the Design-Builder's own convenience, the costs of any inspections required outside regular working hours, among other remedies, shall be invoiced to the Design-Builder by the Owner and withheld from progress payments and/or retention. Design-Builder shall give Owner at least 48 hours notice prior to working outside regular working hours.

If the Design-Builder elects to perform work outside the Inspector of Record's regular working hours, costs of any inspections required outside regular working hours, among other remedies, may be invoiced to the Design-Builder by the Owner and withheld from progress payments and/or retention.

8.2.5 TIME FOR COMMENCEMENT BY SUBCONTRACTORS

Unless otherwise provided in the Contract Documents, all Subcontractors shall commence their Work within two (2) consecutive business days after notice to them by the Design-Builder and shall prosecute their Work in accordance with the progress of the Work.

8.3 PROGRESS AND COMPLETION

8.3.1 TIME OF THE ESSENCE

Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

8.3.2 NO COMMENCEMENT WITHOUT INSURANCE

The Design-Builder shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Design-Builder. The date of commencement of the Work shall not be changed by the effective date of such insurance.

8.3.3 EXPEDITIOUS COMPLETION

The Design-Builder shall proceed expeditiously to perform the Work, including Work directed pursuant to a CCD (see Section 7.3, above), with adequate forces, labor, materials, equipment, services and management, shall achieve all milestone deadlines, and shall achieve Completion within the Contract Time.

8.4 EXTENSIONS OF TIME - LIQUIDATED DAMAGES

Design-Builder waives all rights and remedies as to any delay experienced during the Work (including any right to rescind the Contract and any right to refuse to perform the Contract) except for the rights and remedies expressly allowed by the Contract (including but not limited to time extensions and delay damages pursuant to this Section 8.4.1 and Section 8.4.2 below, and termination pursuant to Section 14.1 below).

8.4.1 CONDITIONS ALLOWING FOR EXTENSIONS OF TIME TO COMPLETE THE WORK, ONLY (EXCUSABLE DELAY)

The Design-Builder shall be granted a reasonable time extension under the Contract Documents, including but not limited to Sections 3.18 and 4.5 and Article 7, for excusable delays, which are those delays that meet each and every of the following conditions:

- (a) The delay was beyond the control of Design-Builder and its subcontractors and material suppliers;
- (b) The delay was caused by events that were not reasonably foreseeable to Design-Builder at the time of its proposal;
- (c) All float in the schedule had been used, and the delay impacted and delayed the controlling items of Work (i.e., the as-built critical path, as determined from the as-planned schedule and the actual progress of the Work), thus delaying the achievement of a Milestone Deadline or the Completion of the whole Work within the Contract Time;
- (d) The delay was not caused by Design-Builder or its subcontractors or suppliers, including but not limited to their breaches of contract or the standard of care;
- (e) The delay was not associated with loss of time resulting from the necessity of submittals to Owner for approval, or from necessary Owner surveys, measurements, inspections and testing;
- (f) The delay was not caused by usual or common weather for the time of year, including usual or common severe weather; and
- (g) The delay could not have been prevented or mitigated by the exercise of care, prudence, foresight, and diligence by Design-Builder.

Excusable delays may include acts of God, acts of public enemy, acts of the Owner or anyone employed by it, acts of another contractor in performance of a contract (other than this Contract) with the Owner, fires, floods, epidemics, quarantine restrictions, labor disputes, unusual and uncommon weather for the time of year, unforeseen site conditions, or delays of subcontractors due to such causes. Owner shall take into consideration other relevant factors such as concurrent delays. Design-Builder has the burden of proving that any delay was excusable.

8.4.2 COMPENSABLE DELAY (TIME AND MONEY)

Compensable delays are those excusable delays for which Design-Builder is also entitled to money. To be compensable, an excusable delay must be one for which the Owner is responsible, where the delay was unreasonable under the circumstances involved, and where the delay was not within the contemplation of the parties; *however*, Design-Builder shall not be entitled to monetary compensation when (a) Design-Builder could have reasonably anticipated the delay

and avoided or minimized the cost impacts of it, (b) there was a concurrent delay which does not qualify for monetary compensation under this paragraph, (c) the cause of the delay was reasonably unforeseen by the Owner or the delay was caused by factors beyond the control of the Owner, including but not limited to a delay under Section 2.2.8 above or a delay caused by a utility company's failure to perform despite Owner's reasonable arrangements for such performance; or (d) any other defense available to Owner under law or equity applies. Design-Builder has the burden of proving that any delay was excusable and compensable, including an analysis that establishes non-concurrency. Compensation shall be limited to field overhead (i.e., general conditions) and home office overhead, as may be allowed by law.

8.4.3 NOTICE BY DESIGN-BUILDER REQUIRED; PROCEDURES FOR DEMANDING ADDITIONAL TIME OR MONEY

For notice and other required procedures related to requests by Design-Builder for additional time or money related to delay, Design-Builder shall comply with the Contract Documents, including but not limited to Sections 3.18 and 4.5, and Article 7, above.

8.4.4 EARLY COMPLETION

Regardless of the cause therefore, the Design-Builder may not maintain any Claim or cause of action against the Owner for damages incurred as a result of its failure or inability to Complete its Work on the Project in a shorter period than established in the Contract Documents, the parties stipulating that the period set forth in the Contract Documents is a reasonable time within which to perform the Work on the Project.

8.4.5 LIQUIDATED DAMAGES

Failure to Complete the Work within the time and in the manner provided for by the Contract Documents, or delaying another contractor's work on the Project, shall subject the Design-Builder to liquidated damages as described in Article III of the Agreement. For purposes of liquidated damages, the concept of "substantial completion" shall not constitute Completion and is not part of the Contract. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not Completed within the Contract Time, or if another contractor on the Project were to fail to timely Complete its work, are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Damages which the Owner would suffer in the event of delay include, but are not limited to, loss of the use of the Work or other contractors' work on the Project, disruption of activities, costs of administration, supervision, the incalculable inconvenience and loss suffered by the public, and Owner's inability to recover its delay damages from other contractors whose work was delayed by Design-Builder.

Accordingly, the parties agree that the amount set forth in the Agreement shall be presumed to be the amount of damages which the Owner shall directly incur as a result of each calendar day by which Completion of the Work, or other contractors' work, is delayed beyond the Contract Time as adjusted by Change Orders.

If the Design-Builder fails to complete the Work within the Contract Time as adjusted by Change Orders, or another contractor cannot timely Complete its work due to Design-Builder, and liquidated damages therefore accrue, the Owner, in addition to all other remedies provided by law, shall have the right to assess liquidated damages at any time, and to withhold liquidated damages (and any interest thereon) at any time from any and all retention or progress payments, which would otherwise be or become due the Design-Builder. In addition, if it is reasonably apparent to the Owner before expiration of the Contract Time (as adjusted by Change Orders) that the Design-Builder cannot or will not complete the Work within the Contract Time, or that another contractor cannot timely Complete its work due to Design-Builder, Owner may assess and withhold, from retention or progress payments, the estimated amount of liquidated damages that will accrue in the future. If the retained percentage or withheld progress payments are not sufficient to discharge all liabilities of the Design-Builder incurred under this Article, the Design-Builder and its sureties shall continue to remain liable to the Owner until all such liabilities are satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of Completion and liquidated damages.

8.5 GOVERNMENT APPROVALS

Owner shall not be liable for any delays or damages related to the time required to obtain government approvals.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement, later adjusted by Change Orders and Construction Change Directives, and is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Contract Documents.

9.2 COST BREAKDOWN

9.2.1 REQUIRED INFORMATION

On forms approved by the Owner, the Design-Builder shall furnish the following:

- A. Within ten (10) days of the mailing, faxing or delivering of the Notice of Award of the Contract, a detailed breakdown of the Contract Sum (Schedule of Values) for each Project or Site. Each item in the schedule of values shall include its proper share of the overhead and profit.

- B. Within ten (10) days of the mailing, faxing or delivering of the Notice of Award of the Contract, a schedule of estimated monthly payment requests (cash flow) due the Design-Builder showing the values and construction time of the various portions of the Work to be performed by it and by its Subcontractors or material and equipment suppliers containing such supporting evidence as to its correctness as the Owner may require;
- C. Five (5) days prior to the submission of a pay request, an itemized breakdown of work done for the purpose of requesting partial payments;
- D. Within ten (10) days of the mailing, faxing or delivering of the Notice of Award of the Contract, the name, address, telephone number, fax number, license number and classification, and public works contractor registration number of all of its Subcontractors and of all other parties furnishing labor, material, or equipment for its Contract, along with the amount of each such subcontract or the price of such labor, material, and equipment needed for its entire portion of the Work.

9.2.2 OWNER ACCEPTANCE REQUIRED

The Owner shall review all submissions received pursuant to paragraph 9.2.1 in a timely manner. All submissions must be accepted by the Owner before becoming the basis of any payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 PROCEDURE

On or before the fifth (5th) day of each calendar month during the progress of the portion of the Work for which payment is being requested, the Design-Builder shall submit to the Architect, unless there is a construction manager for the Project or the Owner directs otherwise, an itemized Application for Payment for operations completed in accordance with the Schedule of Values through the end of the previous calendar month. Such application shall be notarized, if required, and supported by the following:

- A. The amount paid to the date of the Application to the Design-Builder, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
- B. The amount being requested with the Application for Payment by the Design-Builder on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
- C. The balance that will be due to each of such entities after said payment is made;
- D. A certification that the Record Drawings and Annotated Specifications are current;

- E. The Owner approved additions to and subtractions from the Contract Sum and Time;
- F. A summary of the retentions (each Application shall provide for retention, as set out in Article 9.6);
- G. Material invoices, evidence of equipment purchases, rentals, and other support and details of cost as the Owner may require from time to time;
- H. The percentage of Completion of the Design-Builder's Work by line item;
- I. A statement showing all payments made by the Design-Builder for labor and materials on account of the Work covered in the preceding Application for Payment. Such applications shall not include requests for payment of amounts the Design-Builder does not intend to pay to subcontractors or others because of a dispute or other reason;
- J. Conditional and unconditional waivers and releases in exchange for progress payments, including final progress payments, in compliance with Civil Code sections 8132-8138; and
- K. Design-Builder's monthly reports, daily reports, and monthly schedule updates for all months of Work prior to the Application for Payment that Design-Builder has not previously submitted.

9.3.2 PURCHASE OF MATERIALS AND EQUIPMENT

As the Design-Builder is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Architect specifically recommends, and Owner specifically approves the payment in writing. If payments are to be made on account of materials and equipment not incorporated in the Work, but delivered and suitably stored at the Site or at some other location agreed upon in writing by the Owner, the payments shall be conditioned upon submission by the Design-Builder, Subcontractor, or vendor of bills of sale and such other documents satisfactory to the Owner to establish the Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect the Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to the Owner by sureties of the Design-Builder and the Subcontractor and, if stored off-Site, stored only in a bonded warehouse.

9.3.3 WARRANTY OF TITLE

The Design-Builder warrants that title to all work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that upon submittal of an Application for Payment all work for which Certificates for Payment have

been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Design-Builder, Subcontractors, material and equipment suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. Transfer of title to Work does not constitute a waiver by Owner of any defects in the Work.

9.4 REVIEW OF PROGRESS PAYMENT

9.4.1 OWNER ACCEPTANCE

The Owner will, within seven (7) days after receipt of the Design-Builder's Application for Payment, either accept such payment or notify the Design-Builder in writing of the Owner's reasons for withholding acceptance in whole or in part.

9.4.2 OWNER'S REVIEW

The review of the Design-Builder's Application for Payment by the Owner will be based, at least in part, on the Owner's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated. The review is also subject to an evaluation of the Work for conformance with the Contract Documents, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to Completion, and to specific qualifications expressed by the Owner. The Owner may reject the Application for Payment if it is not complete under section 9.3. The issuance of a Certificate for Payment will constitute a representation that the Design-Builder is entitled to payment in the amount certified, subject to any withholdings under Section 9.5.1 or any specific qualifications Owner expresses in the Certificate for Payment. However, Design-Builder's entitlement to payment may be affected by subsequent evaluations of the Work for conformance with the Contract Documents, test and inspections and discovery of minor deviations from the Contract Documents correctable prior to Completion. The issuance of a Certificate for Payment will not be a waiver by the Owner of any defects in the Work covered by the Application for Payment, nor will it be a representation that the Owner has:

- A. Made exhaustive or continuous on-Site inspections to check the quality or quantity of the Work;
- B. Reviewed construction means, methods, techniques, sequences, or procedures;
- C. Reviewed copies of requisitions received from Subcontractors, material and equipment suppliers, and other data requested by the Owner to substantiate the Design-Builder's right to payment; or
- D. Made an examination to ascertain how or for what purpose the Design-Builder has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD PAYMENT

9.5.1 REASONS TO WITHHOLD PAYMENT

The Owner may withhold from a progress payment, in whole or in part, to such extent as may be necessary to protect the Owner due to any of the following:

- A. Defective or incomplete Work not remedied;
- B. Stop Payment Notices. For any stop payment notice, the Owner shall withhold the amount stated in the stop payment notice, the stop notice claimant's anticipated interest and court costs and an amount to provide for the Owner's reasonable cost of any litigation pursuant to the stop payment notice. For any stop payment notice action the parties resolve before judgment is entered, Owner has the right to permanently withhold for any reasonable cost of litigation for that stop payment notice, even if it exceeds the amount originally withheld by Owner for the estimated reasonable cost of litigation. However, if (1) the Design-Builder at its sole expense provides a bond or other security satisfactory to the Owner in the amount of at least one hundred twenty-five percent (125%) of the claim, in a form satisfactory to the Owner, which protects the Owner against such claim, and (2) the Owner chooses to accept the bond, then Owner would release the withheld stop payment notice funds to the Design-Builder, except that Owner may permanently withhold for any reasonable cost of litigation. Any stop payment notice release bond shall be executed by a California admitted, fiscally solvent surety, completely unaffiliated with and separate from the surety on the payment and performance bonds, that does not have any assets pooled with the payment and performance bond sureties.
- C. Liquidated damages against the Design-Builder, whether already accrued or estimated to accrue in the future;
- D. Reasonable doubt that the Work can be Completed for the unpaid balance of any Contract Sum or by the Completion deadline;
- E. Damage to the property or work of the Owner, another contractor, or subcontractor;
- F. Unsatisfactory prosecution of the Work by the Design-Builder;
- G. Failure to store and properly secure materials;
- H. Failure of the Design-Builder to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;

- I. Failure of the Design-Builder to maintain record drawings;
- J. Erroneous estimates by the Design-Builder of the value of the Work performed, or other false statements in an Application for Payment;
- K. Unauthorized deviations from the Contract Documents;
- L. Failure of the Design-Builder to prosecute the Work in a timely manner in compliance with established progress schedules and Completion deadlines;
- M. Subsequently discovered evidence or observations nullifying the whole or part of a previously issued Certificate for Payment;
- N. Failure by Design-Builder to pay Subcontractors or material suppliers as required by Contract or law, which includes but is not limited to Design-Builder's failure to pay prevailing wage and any assessment of statutory penalties;
- O. Overpayment to Design-Builder on a previous payment;
- P. Credits owed to Owner for reduced scope of work or work that Design-Builder will not perform, including credits for any unspent allowance;
- Q. The estimated cost of performing work pursuant to Section 2.4;
- R. Actual damages related to false claims by Design-Builder;
- S. Breach of any provision of the Contract Documents;
- T. Owner's potential or actual loss, liability or damages caused by the Design-Builder, including defense costs and attorneys' fees incurred due to Design-Builder's failure to defend an action pursuant to the indemnity provisions in the Contract Documents; and
- U. As permitted by other provisions in the Contract or as otherwise allowed by law, including statutory penalties Owner or other entities assessed against Design-Builder. (See e.g., Labor Code section 1813 (working hours) or Public Contract Code section 4110 (subcontractor listings and substitutions))

Owner may, but is not required to, provide to Design-Builder written notice of the items for which Owner is withholding amounts from a progress payment.

To claim a breach of contract or violation of law based on wrongful withholding by the Owner from a progress payment or based on a late progress payment, or if Design-Builder otherwise disputes any progress payment or lack thereof, within fifteen (15) days of the alleged breach of contract, violation of law, or late or disputed progress payment Design-Builder shall submit a

Claim pursuant and subject to Sections 4.5.3-4.5.6. The Design-Builder need not submit a Notice of Potential Change or a Change Order Request.

For any withhold amount based on an estimate where the actual amount later becomes known and certain, no later than the final accounting for the Contract the Owner will release any amount withheld over that certain and known amount. If the certain and known amount exceeds the amount previously withheld, Owner may withhold additional amounts from Contractor to cover the excess amount. If available funds are not sufficient, Design-Builder shall pay Owner the difference.

Despite any withholding from a progress payment, or any other dispute about a progress payment, Design-Builder shall continue to expeditiously perform the Work pursuant to the Contract Documents, including but not limited to General Conditions sections 4.5.8, 7.1.1, 8.3.1, and 8.3.3.

9.5.2 PAYMENT AFTER CURE

When Design-Builder removes or cures the grounds for withholding amounts, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Design-Builder to perform in accordance with the terms and conditions of the Contract Documents.

9.5.3 OVERPAYMENT AND/OR FAILURE TO WITHHOLD

Neither Owner's overpayment to Design-Builder, nor Owner's failure to withhold an amount from payment that Owner had the right to withhold, shall constitute a waiver by Owner of its rights to withhold those amounts from future payments to Design-Builder or to otherwise pursue recovery of those amounts from Design-Builder.

9.6 PROGRESS PAYMENTS

9.6.1 PAYMENTS TO DESIGN-BUILDER

Progress payments shall be made in accordance with Public Contract Code sections 7201, 9203, and 20104.50. Unless otherwise stated in the Contract Documents, within thirty (30) days after receipt of an undisputed and properly submitted Application for Payment, Design-Builder shall be paid a sum equal to ninety-five percent (95%) of the undisputed value of the Work performed up to the last day of the previous month, less the aggregate of previous payments; and Owner shall withhold the other five percent (5%) of the undisputed value of the Work as retainage (or “retention”). The value of the Work completed shall be an estimate only, no inaccuracy or error in said estimate shall operate to release the Design-Builder, or any bondsman, from damages arising from such Work or from enforcing each and every provision of this Contract, and the Owner shall have the right subsequently to correct any error made in any estimate for payment. Design-Builder shall base an Application for Payment only on the original Contract Sum plus any fully executed and Board-approved Change Orders. Design-Builder shall not include Notices of Potential Claims, CORs, Claims or disputed amounts.

The Design-Builder shall not be entitled to have any payment requests processed, or be entitled to have any payment made for work performed, so long as any lawful or proper direction given by the Owner concerning the Work, or any portion thereof, remains uncomplished with. Payment shall not be a waiver of any such direction.

9.6.2 PAYMENTS TO SUBCONTRACTORS

No later than ten (10) days after receipt of payment from Owner, pursuant to Business and Professions Code section 7108.5, the Design-Builder shall pay to each Subcontractor, out of the amount paid to the Design-Builder on account of such Subcontractor’s portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of such Subcontractor’s portion of the Work. The Design-Builder shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 PERCENTAGE OF COMPLETION OR PAYMENT INFORMATION

The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of Completion or amounts applied for by the Design-Builder, and action taken thereon by the Owner, on account of portions of the Work done by such Subcontractor.

9.6.4 NO OBLIGATION OF OWNER FOR SUBCONTRACTOR PAYMENT

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

9.6.5 PAYMENT TO SUPPLIERS

Payment to material or equipment suppliers shall be treated in a manner similar to that provided in paragraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 PAYMENT NOT CONSTITUTING APPROVAL OR ACCEPTANCE

An accepted Application for Payment, issuance of a Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance or approval of any portion of the Work, especially any Work not in accordance with the Contract Documents.

9.6.7 JOINT CHECKS

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

9.7 COMPLETION OF THE WORK

9.7.1 CLOSE-OUT PROCEDURES

When the Design-Builder considers that the Work is Complete and submits a written notice to Owner requesting an inspection of the Work, the Owner shall review the Work and prepare and submit to the Design-Builder a comprehensive list of items to be Completed or corrected (the "Punch List"). The Punch List shall include all outstanding obligations of Design-Builder, including training, start-up, testing, and submission to Owner of all required documentation (e.g., written guarantees, warranties, invoices, as-built drawings, manuals, bonds, and the documents described in Section 9.3 and 9.9). The Design-Builder and/or its Subcontractors shall proceed promptly to Complete and correct items on the Punch List. Failure to include an item on the Punch List does not alter the responsibility of the Design-Builder to Complete all Work (including the omitted item) in accordance with the Contract Documents, and to Complete or correct the Work so long as the statute of limitations (or repose) has not run.

When the Design-Builder believes the Punch List Work is Complete and in accordance with the Contract Documents, it shall then submit a request for an additional inspection by the Owner to determine Completion. Owner shall again inspect the Work and inform the Design-Builder of any items that are not Complete or correct. Design-Builder shall promptly Complete or correct items until no items remain.

After the Work, including all Punch List Work, is inspected and informally deemed by the Owner to be Complete, the Owner's governing body may formally accept the Work as Complete

at a meeting of the governing body. Warranties required by the Contract Documents shall commence on the date of Design-Builder's Completion of the Work (see Sections 3.5, 12.2.5, and 12.2.6).

Owner may record a Notice of Completion as allowed by Civil Code section 9200 *et seq.*

9.7.2 COSTS OF MULTIPLE INSPECTIONS

More than two (2) requests by Design-Builder to make inspections to confirm Completion as required under paragraph 9.7.1 shall be considered an additional service of Owner, and all subsequent costs will be invoiced to Design-Builder and withheld from remaining payments.

9.8 PARTIAL OCCUPANCY OR USE

The Owner may occupy or use any Completed, or partially Completed, portion of the Work at any stage prior to acceptance, or prior to Completion if there is no formal acceptance. Occupancy or use of any portion of the Work, or the whole Work, shall not constitute approval or acceptance of it, nor shall such occupancy or use relieve Design-Builder of any of its obligations under the Contract Documents regarding that portion of, or the whole, Work.

The Owner and the Design-Builder shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. When the Design-Builder considers a portion complete, the Design-Builder may request an inspection of that portion and preparation of a Punch List by the Owner for that portion, as set forth for the entire Work under paragraph 9.7.1; however, such inspection and Punch List shall not act as any form of approval or acceptance of that portion of the Work, or of any Work not complying with the requirements of the Contract, and that portion shall be subject to subsequent inspections and Punch Lists.

Immediately prior to such partial occupancy or use, the Owner, the Architect and the Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9 FINAL PROGRESS PAYMENT AND RELEASE OF RETENTION

9.9.1 FINAL APPLICATION FOR PROGRESS PAYMENT

When, pursuant to Section 9.7.1, the Owner finds all of the Work is Completed in accordance with the Contract Documents, it shall so notify Design-Builder, who shall then submit to the Owner its final Application for Payment.

Upon receipt and approval of such final Application for Payment, the Owner shall issue a final Certificate of Payment, based on its knowledge, information, and belief, and on the basis of its observations, inspections, and all other data accumulated or received by the Owner in connection with the Work, that such Work has been Completed in accordance with the Contract Documents.

If required to do so under Labor Code section 1773.3(d), Owner shall withhold final payment.

9.9.2 PROCEDURES FOR APPLICATION FOR FINAL PROGRESS PAYMENT

The Application for Final Progress Payment pursuant to Section 9.9.1 shall be accompanied by the same details as set forth in Section 9.3, and in addition, the following conditions must be fulfilled:

- A. The Work shall be Complete, and the Design-Builder shall have made, or caused to have been made, all corrections to the Work which are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of Owner required under the Contract.
- B. Each Subcontractor shall have delivered to the Design-Builder all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work, and Design-Builder delivered them to the Owner.
- C. The Design-Builder shall deliver to the Owner (i) reproducible final Record Drawings and Annotated Specifications showing the Design-Builder's Work "as built," with the Design-Builder's certification of the accuracy of the Record Drawings and Annotated Specifications, (ii) all warranties and guarantees, (iii) operation and maintenance instructions, manuals and materials for equipment and apparatus, and (iv) all other documents required by the Contract Documents.
- D. Design-Builder shall provide extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals and training personnel for operation and maintenance.

Acceptance of Final Progress Payment shall constitute a complete waiver of Claims except for those previously identified in writing and identified by that payee as unsettled at the time of Final Progress Payment.

9.9.3 RELEASE OF RETAINAGE

Owner shall withhold not less than 5% of the Contract Sum (“retainage,” or “retention”) until Completion and acceptance of the Project, per Public Contract Code section 9203.

Owner may withhold from release or payment of retainage (or “retention”) up to 150% of disputed amounts, including but not limited to the issues listed in Section 9.5. If retainage is held in an escrow account pursuant to an escrow agreement under Public Contract Code section 22300 (see Section 9.10) and Owner withholds from release of retainage based on a breach of the Contract, or other default, by Design-Builder, Owner may withdraw the withheld retainage from the escrow account.

Owner shall release the undisputed retainage within sixty (60) days after Completion of the Project. For this purpose, “Completion” is defined in Public Contract Code section 7107(c). No interest shall be paid on any retainage, or on any amounts withheld, except as provided to the contrary in any Escrow Agreement and General Conditions between the Owner and the Design-Builder under Public Contract Code section 22300.

To claim a breach of contract or violation of law based on wrongful withholding by the Owner from retention or based on a late payment or late release of retention, or if Design-Builder otherwise disputes any payment or release of retention or lack thereof, within fifteen (15) days of the alleged breach of contract, violation of law, or late or disputed payment/release of retention Design-Builder shall submit a Claim pursuant and subject to Sections 4.5.3-4.5.6. The Design-Builder need not submit a Notice of Potential Change or a Change Order Request.

9.10 SUBSTITUTION OF SECURITIES

In accordance with section 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any retention monies withheld by the Owner to ensure performance under the Contract. At the request and expense of the Design-Builder, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such retention monies to the Design-Builder. Upon completion of the Contract, the securities shall be returned to the Design-Builder if Owner has no basis to withhold under the Contract Documents.

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

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

Any escrow agreement entered by Owner and Design-Builder pursuant to Public Contract Code section 22300, shall be substantially similar to the form set forth in Public Contract Code section 22300.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 DESIGN-BUILDER RESPONSIBILITY

The Design-Builder shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Each Design-Builder shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs. Design-Builder will ensure that his employees and Subcontractors cooperate and coordinate safety matters with any other contractors on the Project to form a joint safety effort.

10.1.2 SUBCONTRACTOR RESPONSIBILITY

Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Design-Builder for the Project, which will cover all Work performed by the Design-Builder and its Subcontractors. Each Subcontractor shall designate a responsible member of its organization whose duties shall include loss and accident prevention, and who shall have the responsibility and full authority to enforce the program. This person shall attend meetings with the representatives of the various Subcontractors employed to ensure that all employees understand and comply with the programs.

10.1.3 COOPERATION

All Subcontractors and material or equipment suppliers, shall cooperate fully with Design-Builder, the Owner, and all insurance carriers and loss prevention engineers.

10.1.4 ACCIDENT REPORTS

Subcontractors shall promptly report in writing to the Design-Builder all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger. Design-Builder shall thereafter promptly report the facts in writing to the Owner giving full details of the accident.

10.1.5 FIRST-AID SUPPLIES AT SITE

The Design-Builder will provide and maintain at the Site first-aid supplies for minor injuries.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 THE DESIGN-BUILDER

The Design-Builder shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- A. Employees on the Work and other persons who may be affected thereby;
- B. The Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Design-Builder or the Design-Builder's Subcontractors or Sub-subcontractors; and
- C. Other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

10.2.2 DESIGN-BUILDER NOTICES

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

10.2.3 SAFETY BARRIERS AND SAFEGUARDS

The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.2.4 USE OR STORAGE OF HAZARDOUS MATERIAL

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Design-Builder shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

10.2.5 FINGERPRINTING

At its own expense, Design-Builder shall comply with all fingerprinting requirements under law and Contract, including but not limited to the requirements of Education Code section 45125.2 and the Independent Design-Builder Student Contact Form which is a part of the Contract. Design-Builder shall hold harmless, defend and indemnify the Owner under section 3.16, for any costs, including attorneys' fees, Owner incurs from Design-Builder's failure to comply.

10.3 PROTECTION OF WORK AND PROPERTY

10.3.1 PROTECTION OF WORK

The Design-Builder and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss until the earlier of formal acceptance of the Work, or 30 days after Completion of the Work. The Design-Builder and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner; except that for projects not solely funded through revenue bonds, (a) Design-Builder shall not be responsible for damages caused by a tidal wave to the extent that the damages exceed 5% of the Contract Sum, and (b) Design-Builder shall not be responsible for damages caused by an earthquake above 3.5 on the Richter Scale in magnitude to the extent that the damages exceed 5% of the Contract Sum, per Public Contract Code §7105(a).

10.3.2 PROTECTION FOR ELEMENTS

The Design-Builder will remove all mud, water, or other elements as may be required for the proper protection and prosecution of its Work. The Design-Builder shall at all times provide heat, coverings, and enclosures necessary to maintain adequate protection against weather so as to preserve the Work, materials, equipment, apparatus, and fixtures free from injury or damage.

10.3.3 SHORING AND STRUCTURAL LOADING

The Design-Builder shall not impose structural loading upon any part of the Work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the Work. The design of all temporary construction equipment and appliances used in construction of the Work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of the Design-Builder. All such items shall conform to the requirements of governing codes and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. The Design-Builder shall take special precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the Work. The installation of such bracing or shoring shall not damage or cause damage to the Work in place or the Work installed by others. Any damage which does occur shall be promptly repaired by the Design-Builder at no cost to the Owner.

10.3.4 CONFORMANCE WITHIN ESTABLISHED LIMITS

The Design-Builder and Subcontractors shall confine their construction equipment, the storage of materials, and the operations of workers to the limits indicated by laws, ordinances, permits, and the limits established by the Owner, and shall not unreasonably encumber the premises with construction equipment or materials.

10.3.5 SUBCONTRACTOR ENFORCEMENT OF RULES

Subcontractors shall enforce the Owner’s and the Design-Builder’s instructions, laws, and regulations regarding signs, advertisements, fires, smoking, the presence of liquor, and the presence of firearms by any person at the Site.

10.3.6 SITE ACCESS

The Design-Builder and the Subcontractors shall use only those ingress and egress routes designated by the Owner, observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

10.3.7 PROTECTION OF MATERIALS

The Design-Builder and the Subcontractors shall receive, count, inspect for damage, record, store, and protect construction materials for the Work and Subcontractors shall promptly send to the Design-Builder evidence of receipt of such materials, indicating thereon any shortage, change, or damage (failure to so note shall constitute acceptance by the Subcontractor of financial responsibility for any shortage).

10.4 EMERGENCIES

10.4.1 EMERGENCY ACTION

In an emergency affecting the safety of persons or property, the Design-Builder shall take any action necessary, at the Design-Builder’s discretion, to prevent threatened damage, injury, or loss. Additional money or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section 4.5 and Article 7.

10.4.2 ACCIDENT REPORTS

The Design-Builder shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

10.5 HAZARDOUS MATERIALS

10.5.1 DISCOVERY OF HAZARDOUS MATERIALS

In the event the Design-Builder encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material

defined as being hazardous by section 25249.5 of the California Health and Safety Code, which (a) has not been rendered harmless, and (b) the handling or removal of which is not within the scope of the Work, the Design-Builder shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing, whether such material was generated by the Design-Builder, another contractor, or the Owner. The Work in the affected area shall not thereafter be resumed, except by written agreement of the Owner and the Design-Builder, if in fact the material is asbestos, polychlorinated biphenyl (PCB), or other hazardous material, and has not been rendered harmless. The Work in the affected area shall be resumed only in the absence of asbestos, polychlorinated biphenyl (PCB), or other hazardous material, or when it has been rendered harmless by written agreement of the Owner and the Design-Builder.

10.5.2 HAZARDOUS MATERIAL WORK LIMITATIONS

In the event that the presence of hazardous materials is suspected or discovered on the Site, the Owner shall retain an independent testing laboratory to determine the nature of the material encountered and whether corrective measures or remedial action is required. The Design-Builder shall not be required pursuant to Article 7 to perform without consent any Work in the affected area of the Site relating to asbestos, polychlorinated biphenyl (PCB), or other hazardous material, until any known or suspected hazardous material has been removed, or rendered harmless, or determined to be harmless by Owner, as certified by an independent testing laboratory and/or approved by the appropriate government agency.

10.5.3 INDEMNIFICATION BY OWNER FOR HAZARDOUS MATERIAL NOT CAUSED BY DESIGN-BUILDER

In the event the presence of hazardous materials on the Site is not caused by the Design-Builder, Owner shall pay for all costs of testing and remediation, if any, and shall compensate Design-Builder for any delay or additional costs incurred in accordance with the applicable provisions of Articles 7 and 8 herein. Owner shall defend, indemnify and hold harmless the Design-Builder and its agents, officers, directors and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with or arising out of, or relating to, the performance of the Work in the area affected by the hazardous material, except to the extent the claims, damages, losses, costs, or expenses were caused by Design-Builder's active negligence, sole negligence or willful misconduct. By providing this indemnification, District does not waive any immunities.

10.5.4 NATURALLY OCCURRING ASBESTOS

If the Site is found to contain naturally occurring asbestos (asbestos naturally contained in rocks which can become airborne when released "NOA"), in addition to complying with applicable provisions in sections 10.5.1-10.5.3 above, Contractor shall comply with, and be solely responsible for, all applicable NOA requirements of the California Air Resources Board (CARB), California Department of Industrial Relations, California Division of Occupational Safety and Health (Cal/OSHA), any local air quality management district with jurisdiction over the Site, the County, and all other applicable federal, State and local governmental entities. This compliance and responsibility includes, but is not limited to, dust control mitigation measures

and a monitoring plan.

10.5.5 INDEMNIFICATION BY DESIGN-BUILDER FOR HAZARDOUS MATERIAL CAUSED BY DESIGN-BUILDER

In the event the presence of hazardous materials on the Site is caused by Design-Builder, Subcontractors, materialmen or suppliers, the Design-Builder shall pay for all costs of testing and remediation, if any, and shall compensate the Owner for any additional costs incurred as a result of the generation of hazardous material on the Project Site. In addition, the Design-Builder shall defend, indemnify and hold harmless Owner and its agents, officers, and employees from and against any and all claims, damages, losses, costs and expenses incurred in connection with, arising out of, or relating to, the presence of hazardous material on the Site, except to the extent the claims, damages, losses, costs, or expenses were caused by Owner's active negligence, sole negligence or willful misconduct.

10.5.6 TERMS OF HAZARDOUS MATERIAL PROVISION

The terms of this Hazardous Material provision shall survive the Completion of the Work and/or any termination of this Contract.

10.5.7 ARCHEOLOGICAL MATERIALS

In the event the Design-Builder encounters or reasonably suspects the presence on the Site of archeological materials, the Design-Builder shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing. The Work in the affected area shall not thereafter be resumed, except after Design-Builder's receipt of written notice from the Owner.

ARTICLE 11

INSURANCE AND BONDS

11.1. DESIGN-BUILDER'S LIABILITY INSURANCE

11.1.1 LIABILITY INSURANCE REQUIREMENTS

11.1.1 By the earlier of the deadline set forth in the Instructions to Bidders or the commencement of the Work and within limits acceptable to the Owner, the Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports such commercial general liability insurance per occurrence for bodily injury, personal injury and property damage as set forth in the Agreement and automobile liability insurance per accident for bodily injury and property damage combined single limit as set forth in the Agreement as will protect the Design-Builder from claims set forth below, which may arise out of or result from the Design-Builder's operations under the Contract and for which the Design-Builder may be legally liable, whether such

operations are by the Design-Builder, by a Subcontractor, by Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- 11.1.1.1 claims for damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than the Design-Builder's employees. This coverage shall be provided in a form at least as broad as Insurance Services Office (ISO) Form CG 0001 11188;
- 11.1.1.2 claims for damages arising from personal or advertising injury in a form at least as broad as ISO Form CG 0001 11188;
- 11.1.1.3 claims for damages because of injury or destruction of tangible property, including loss of use resulting therefrom, arising from operations under the Contract Documents; and
- 11.1.1.4 claims for damages because of bodily injury, death of a person, or property damage arising out of the ownership, maintenance, or use of a motor vehicle, all mobile equipment, and vehicles moving under their own power and engaged in the Work; and
- 11.1.1.5 claims involving blanket contractual liability applicable to the Design-Builder's obligations under the Contract Documents, including liability assumed by and the indemnity and defense obligations of the Design-Builder and the Subcontractors; and
- 11.1.1.6 claims involving Completed Operations, Independent Design-Builders' coverage, and Broad Form property damage, without any exclusions for collapse, explosion, demolition, underground coverage, and excavating. (XCU)

If commercial general liability insurance or another insurance form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project location (with the ISO CG 2501 or insurer's equivalent endorsement provided to the Owner) or the general aggregate limit shall be twice the required occurrence limit.

Any deductible or self-insured retention must be declared to and approved by the Owner. At the option of the Owner, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its Board of Trustees, members of its Board of Trustees, officers, employees, agents and volunteers; or the Design-Builder shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

11.1.2 SUBCONTRACTOR INSURANCE REQUIREMENTS

The Design-Builder shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar public liability insurance and property damage insurance, in a company or companies lawfully authorized to do business in California as admitted carriers with a financial rating of at least A+, Class XII status as rated in the most recent edition of Best's Insurance Reports, in like amounts and scope of coverage.

11.1.3 OWNER'S INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. Optionally, the Owner may purchase and maintain other insurance for self protection against claims which may arise from operations under the Contract. The Design-Builder shall not be responsible for purchasing and maintaining this optional Owner's liability insurance unless specifically required by the Contract Documents.

11.1.4 ADDITIONAL INSURED ENDORSEMENT REQUIREMENTS

The Design-Builder shall name, on any policy of insurance, the Owner and the Architect as additional insureds. Subcontractors shall name the Design-Builder, the Owner and the Architect as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be excess to any policy of insurance required herein. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

11.1.5 WORKERS' COMPENSATION INSURANCE

During the term of this Contract, the Design-Builder shall provide workers' compensation insurance for all of the Design-Builder's employees engaged in Work under this Contract on or at the Site of the Project and, in case any of the Design-Builder's work is sublet, the Design-Builder shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract. Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by the Design-Builder's insurance. In case any class of employees engaged in Work under this Contract on or at the Site of the Project is not protected under the Workers' Compensation laws, the Design-Builder shall provide or cause a Subcontractor to provide adequate insurance coverage for the protection of those employees not otherwise protected. The Design-Builder shall file with the Owner certificates of insurance as required under this Article and in compliance with Labor Code section 3700.

If the Design-Builder fails to maintain such insurance, the Owner may take out compensation insurance which the Owner might be liable to pay under the provisions of the Act by reason of an employee of the Design-Builder being injured or killed, and withhold from progress payments and/or retention the amount of the premium for such insurance.

11.1.6 BUILDER’S RISK/“ALL RISK” INSURANCE

11.1.6.1 COURSE-OF-CONSTRUCTION INSURANCE REQUIREMENTS

Unless provided by Owner at Owner’s sole discretion, Design-Builder, during the progress of the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, shall maintain Builder’s Risk/Course-of-Construction insurance satisfactory to the Owner, issued on a completed value basis on all insurable Work included under the Contract Documents. This insurance shall insure against all risks, including but not limited to the following perils: Vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood including tidal wave (however, for projects not solely funded through revenue bonds, Design-Builder is only required to provide insurance for damages caused by a tidal wave up to 5% of the Contract Sum [except as provided in Section 11.1.6.2, below; see Public Contract Code §7105(a)]), earthquake (however, for projects not solely funded through revenue bonds, Design-Builder is only required to provide insurance for damages caused by an earthquake above 3.5 magnitude on the Richter Scale up to 5% of the Contract Sum [except as provided in Section 11.1.6.3, below; see Public Contract Code §7105(a)]), wind, hail, lightning, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for the Architect’s services and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work. Such insurance shall include the Owner, the Architect, and any other person or entity with an insurable interest in the Work as an additional named insured.

The Design-Builder shall submit to the Owner for its approval all items deemed to be uninsurable under the Builder’s Risk/Course-of Construction insurance. The risk of the damage to the Work due to the perils covered by the Builder’s Risk/Course-of-Construction insurance, as well as any other hazard which might result in damage to the Work, is that of the Design-Builder and the surety, and no claims for such loss or damage shall be recognized by the Owner, nor will such loss or damage excuse the Complete and satisfactory performance of the Contract by the Design-Builder.

11.1.6.2 TIDAL WAVE INSURANCE

If the Contract is not solely funded through revenue bonds and Owner accepts an alternate bid by Design-Builder for insurance coverage for a tidal wave, Design-Builder shall maintain, in effect during the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, insurance providing coverage for loss, destruction or damage arising out of or caused

by tidal wave and other similar acts of God. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work.

11.1.6.3 EARTHQUAKE INSURANCE

If the Contract is not solely funded through revenue bonds and Owner accepts an alternate bid by Design-Builder for insurance coverage for an earthquake over 3.5 on the Richter Scale, Design-Builder shall maintain, in effect during the Work and until final acceptance of the Work by Owner upon Completion of the entire Contract, insurance providing coverage for loss, destruction or damage arising out of or caused by earthquake and/or other earth movement, whether seismic or volcanic in origin, over 3.5 on the Richter Scale in magnitude. This insurance shall provide coverage in an amount not less than the full cost to repair, replace or reconstruct the Work.

11.1.7 CONSENT OF INSURER FOR PARTIAL OCCUPANCY OR USE

Partial occupancy or use in accordance with the Contract Documents shall not commence until the insurance company providing property insurance has consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company and shall, without mutual consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of the insurance.

11.1.8 FIRE INSURANCE

Before the commencement of the Work, the Design-Builder shall procure, maintain, and cause to be maintained at the Design-Builder's expense, fire insurance on all Work included under the Contract Documents, insuring the full replacement value of such Work as well as the cost of any removal and demolition necessary to replace or repair all Work damaged by fire. The amount of fire insurance shall be subject to approval by the Owner and shall be sufficient to protect the Work against loss or damage in full until the Work is accepted by the Owner. Should the Work being constructed be damaged by fire or other causes during construction, it shall be replaced in accordance with the requirements of the drawings and specifications without additional expense to the Owner.

11.1.9 OTHER INSURANCE

The Design-Builder shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations.

11.1.10 PROOF OF CARRIAGE OF INSURANCE

The Design-Builder shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance, certificates, and an Additional Insured Endorsement and Declarations Page have been obtained and delivered in duplicate to the Owner

for approval subject to the following requirements:

- (a) Certificates and insurance policies shall include the following clause:

This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice.

- (b) Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices.
- (c) Certificates of insurance shall clearly state that the Owner and the Architect are named as additional insureds under the policy described and that such insurance policy shall be primary to any insurance or self-insurance maintained by Owner and any other insurance carried by the Owner with respect to the matters covered by such policy shall be excess and non-contributing.
- (d) The Design-Builder and its Subcontractors shall produce a certified copy of any insurance policy required under this Section upon written request of the Owner.

11.1.11 COMPLIANCE

In the event of the failure of any Design-Builder to furnish and maintain any insurance required by this Article, the Design-Builder shall be in default under the Contract. Compliance by Design-Builder with the requirement to carry insurance and furnish certificates, policies, Additional Insured Endorsement and Declarations Page evidencing the same shall not relieve the Design-Builder from liability assumed under any provision of the Contract Documents, including, without limitation, the obligation to defend and indemnify the Owner and the Architect.

11.2 PERFORMANCE AND PAYMENT BONDS

11.2.1 BOND REQUIREMENTS

Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Design-Builder shall apply for and furnish Owner separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California. All bonds shall be submitted on the Owner's approved form.

To the extent, if any, that the Contract Sum is increased in accordance with the Contract Documents, the Design-Builder shall cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the Owner. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Sum, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Design-Builder will release the surety. If the Design-Builder fails to furnish the required bond, the Owner may terminate the Contract for cause.

11.2.2 SURETY QUALIFICATION

Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than “A-” as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Design-Builder and to require Design-Builder to obtain bonds from surety insurers satisfactory to the Owner.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 UNCOVERING WORK FOR REQUIRED INSPECTIONS

If a portion of the Work is covered contrary to the Owner’s request or to requirements specifically expressed in the Contract Documents, Design-Builder must, if required in writing by the Owner, uncover it for the Owner’s observation and replace the removed work at the Design-Builder’s expense without change in the Contract Sum or Time.

12.1.2 COSTS FOR INSPECTIONS NOT REQUIRED

If a portion of the Work has been covered which the Owner has not specifically requested to observe prior to its being covered, the Owner may request to see such work, and it shall be uncovered by the Design-Builder. If such work is in accordance with the Contract Documents, costs of uncover and replacement shall, by appropriate Change Order, be paid by the Owner. If such work is not in accordance with Contract Documents, the Design-Builder shall pay such costs, unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs to the Design-Builder.

12.2 CORRECTION OF WORK; WARRANTY

12.2.1 CORRECTION OF REJECTED WORK

The Design-Builder shall promptly correct the work rejected by the Owner for failing to conform

to the requirements of the Contract Documents, until the statutes of limitation (or repose) and all warranties have run, as applicable, and whether or not fabricated, installed or completed. The Design-Builder shall bear costs of correcting the rejected work, including additional testing, inspections, and compensation for the Owner's expenses and costs incurred.

12.2.2 REMOVAL OF NONCONFORMING WORK

The Design-Builder shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Design-Builder or accepted or approved by the Owner.

12.2.3 OWNER'S RIGHTS IF DESIGN-BUILDER FAILS TO CORRECT

If the Design-Builder fails to correct nonconforming work within a reasonable time, the Owner may correct it in accordance with Section 2.4. As part of Owner's correction of the work, the Owner may remove any portion of the nonconforming Work and store any salvageable materials or equipment at the Design-Builder's expense. If the Design-Builder does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days written notice sell such material or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design-Builder, including compensation for the Architect's and other professionals and representatives' services and expenses, made necessary thereby. If such proceeds of sale do not cover costs which the Design-Builder should have borne, the Design-Builder shall be invoiced for the deficiency or Owner may withhold such costs from payment pursuant to Section 9.5. If progress payments or retention then or thereafter due the Design-Builder are not sufficient to cover such amount, the Design-Builder shall pay the difference to the Owner.

12.2.4 COST OF CORRECTING THE WORK

The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether Completed or partially Completed, caused by the Design-Builder's correction or removal of the nonconforming work.

12.2.5 WARRANTY CORRECTIONS (INCLUDES REPLACEMENT)

Pursuant to the warranty in Sections 3.5 and 9.7.1, if within one (1) year after the Completion of the Work or within a longer time period for an applicable special warranty or guarantee required by the Contract Documents, any of the Work does not comply with the Contract Documents, the Design-Builder shall correct it after receipt of Owner's written notice to do so, unless the Owner has previously waived in writing such right to demand correction. Design-Builder shall correct the Work promptly, and passage of the applicable warranty period shall not release Design-Builder from its obligation to correct the Work if Owner provided the written notice within the applicable warranty period. Design-Builder's obligation to correct the warranty item continues until the correction is made. After the correction is made to Owner's satisfaction, a new warranty period of the same length as the original warranty period shall run on the corrected work. The obligations under this paragraph 12.2.5 shall survive acceptance of the Work under

the Contract and termination of the Contract.

12.2.6 NO TIME LIMITATION

Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Design-Builder might have under the Contract Documents. Establishment of the time period of one (1) year as described in Sections 3.5, 9.7.1, and 12.2.5 relates only to the specific warranty obligation of the Design-Builder to correct the Work after the date of commencement of warranties, and has, for example, no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations under the Contract Documents.

12.3 NONCONFORMING WORK AND WITHHOLDING THE VALUE OF IT

If it is found at any time before Completion of the Work that the Design-Builder has varied from the Contract Documents in materials, quality, form, finish, or in the amount or value of the materials or labor used, the Owner may, in addition to other remedies in the Contract Documents or under law and as allowed by law, accept the improper Work. The Owner may withhold from any amount due or to become due Design-Builder that sum of money equivalent to the difference in value between the Work performed and that called for by the Drawings and Specifications. The Owner shall determine such difference in value. No structural related Work shall be accepted that is not in conformance with the Contract Documents.

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

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

13.3 WRITTEN NOTICE

In the absence of specific notice requirements in the Contract Documents, any written notice required by the Contract Documents shall be deemed to have been duly served if delivered in

person to the individual, member of the firm or entity, or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the party giving notice. Owner shall, at Design-Builder's cost, timely notify Design-Builder of Owner's receipt of any third party claims relating to the Contract pursuant to Public Contract Code section 9201.

13.4 RIGHTS AND REMEDIES

13.4.1 DUTIES AND OBLIGATIONS CUMULATIVE

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

13.4.2 NO WAIVER

No action or failure to act by the Owner, Inspector of Record, Architect or any construction manager shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in a written amendment to the Contract.

13.5 TESTS AND INSPECTIONS

13.5.1 COMPLIANCE

Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

13.5.2 INDEPENDENT TESTING LABORATORY

The Owner will select and pay an independent testing laboratory to conduct all tests and inspections, including shipping or transportation costs or expenses (mileage and hours). Selection of the materials required to be tested shall be made by the laboratory and not by the Design-Builder. However, if Design-Builder requests that the Owner use a different testing laboratory and Owner chooses to approve such request, Design-Builder shall reimburse the Owner for any additional shipping or transportation costs or expenses (mileage and hours). Owner may invoice such costs or expenses to the Design-Builder or withhold such costs or expenses from progress payments and/or retention.

13.5.3 ADVANCE NOTICE TO INSPECTOR OF RECORD

The Design-Builder shall notify the Inspector of Record a sufficient time in advance of its readiness for required observation or inspection so that the Inspector of Record may arrange for same. The Design-Builder shall notify the Inspector of Record a sufficient time in advance of

the manufacture of material to be supplied under the Contract Documents which must, by terms of the Contract Documents, be tested in order that the Inspector of Record may arrange for the testing of the material at the source of supply.

13.5.4 TESTING OFF-SITE

Any material shipped by the Design-Builder from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from said Inspector of Record that such testing and inspection will not be required, shall not be incorporated in the Work.

13.5.5 ADDITIONAL TESTING OR INSPECTION

If the Inspector of Record, the Architect, the Owner, or public authority having jurisdiction determines that portions of the Work require additional testing, inspection, or approval not included under section 13.5.1, the Inspector of Record will, upon written authorization from the Owner, make arrangements for such additional testing, inspection, or approval. The Owner shall bear such costs except as provided in section 13.5.6.

13.5.6 COSTS FOR RETESTING

If such procedures for testing, inspection, or approval under sections 13.5.1, 13.5.2 and 13.5.5 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Design-Builder shall bear all costs arising from such failure, including those of re-testing, re-inspection, or re-approval, including, but not limited to, compensation for the Architect's services and expenses. Any such costs shall be paid by the Owner, invoiced to the Design-Builder, and, among other remedies, can be withheld from progress payments and/or retention.

13.5.7 COSTS FOR PREMATURE TEST

In the event the Design-Builder requests any test or inspection for the Project and is not completely ready for the inspection, the Design-Builder shall be invoiced by the Owner for all costs and expenses resulting from that testing or inspection, including, but not limited to, the Architect's fees and expenses, and the amount of the invoice can among other remedies, be withheld from progress payments and/or retention.

13.5.8 TESTS OR INSPECTIONS NOT TO DELAY WORK

Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 [INTENTIONALLY LEFT BLANK]

13.7 TRENCH EXCAVATION

13.7.1 TRENCHES GREATER THAN FIVE FEET

Pursuant to Labor Code section 6705, if the Contract Sum exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Design-Builder shall, in advance of excavation, submit to the Owner or a registered civil or structural engineer employed by the Owner a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

13.7.2 EXCAVATION SAFETY

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the Owner or by the person to whom authority to accept has been delegated by the Owner.

13.7.3 NO TORT LIABILITY OF OWNER

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the Owner or any of its employees.

13.7.4 NO EXCAVATION WITHOUT PERMITS

The Design-Builder shall not commence any excavation work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.

13.8 WAGE RATES

13.8.1 WAGE RATES

Pursuant to the provisions of Article 2 (commencing at § 1770), Chapter 1, Part 7, Division 2, of the Labor Code, the governing board of the Owner has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed for this Project from the Director of Industrial Relations (“Director”). These rates are on file with the Clerk of the Owner’s governing board, and copies will be made available to any interested party on request. The Design-Builder shall post a copy of such wage rates at the Site.

13.8.2 HOLIDAY AND OVERTIME PAY

Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and

one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. Holidays shall be defined in the Collective Bargaining Agreement applicable to each particular craft, classification, or type of worker employed.

13.8.3 WAGE RATES NOT AFFECTED BY SUBCONTRACTS

The Design-Builder shall pay and shall cause to be paid each worker engaged in the Work not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Design-Builder or any Subcontractor and such workers.

13.8.4 CHANGE IN PREVAILING WAGE DURING BID OR CONSTRUCTION

If during the period this bid is required to remain open, the Director of Industrial Relations determines that there has been a change in any prevailing rate of per diem wages in the locality in which this public work is to be performed, such change shall not alter the wage rates discussed in the Notice to Bidders or the Contract subsequently awarded.

13.8.5 FORFEITURE AND PAYMENTS

Pursuant to Labor Code section 1775, the Design-Builder and any subcontractor under the Design-Builder shall as a penalty to the Owner, forfeit not more than two hundred dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rate of per diem wages, determined by the Director, for such craft or classification in which such worker is employed for any public work done under the Agreement by the Design-Builder or by any Subcontractor under it. Minimum penalties shall apply, as also provided in Civil Code section 1775. The amount of the penalty shall be determined by the Labor Commissioner and shall be based on both of the following: (1) whether the failure of the Design-Builder or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected upon being brought to the attention of the Design-Builder or subcontractor; and (2) whether the Design-Builder or subcontractor has a prior record of failing to meet its prevailing wage obligations. The difference between such prevailing rate of per diem wage and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing rate of per diem wage shall be paid to each worker by the Design-Builder or subcontractor. Labor Code section 1777.1 shall also apply.

13.8.6 MINIMUM WAGE RATES

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

13.8.7 PER DIEM WAGES

Pursuant to Labor Code section 1773.1, per diem wages includes employer payments for health and welfare, pension, and vacation pay.

13.8.8 POSTING OF WAGE RATES AND OTHER REQUIRED JOB SITE NOTICES

The Design-Builder shall post at appropriate conspicuous points on the Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned and all other required job site notices as prescribed by regulation.

13.9 RECORD OF WAGES PAID: INSPECTION

13.9.1 APPLICATION OF LABOR CODE

Pursuant to section 1776 of the Labor Code:

(a) Each Design-Builder and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, and 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 him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) The employer has complied with the requirements of sections 1771, 1811 and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Design-Builder on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and as may be required by the Labor Commissioner under Labor Code section 1771.4. The Design-Builder and each subcontractor shall furnish a certified copy of all payroll records directly to the Labor Commissioner monthly or more frequently, if so specified in the Agreement and in a format the Labor Commissioner prescribes.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement of the Department of Industrial Relations (“DIR”). If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of the preparation by the Design-Builder, subcontractors, and the entity through which the request was made. The public may not be given access to such records at the principal office of the Design-Builder.

(c) Unless required as of January 1, 2015, to be furnished directly to the Labor Commissioner under Labor Code section 1771.4(a)(3), the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement of the DIR or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in (a) above.

(d) A Design-Builder or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement of the DIR shall be marked or obliterated to prevent disclosure of an individual’s name, address and social security number. The name and address of the Design-Builder awarded the Contract or the subcontractor performing the Contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual’s full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual’s social security number.

(f) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent

disclosure of an individual's name, address, and social security number. An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subsection.

(g) The Design-Builder shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The Design-Builder or subcontractor has 10 days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (a). In the event that the Design-Builder or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement of the DIR, these penalties shall be withheld from progress payments then due. Design-Builder is not subject to a penalty assessment pursuant to this section due to the failure of the subcontractor to comply with this section.

13.10 APPRENTICES

13.10.1 APPRENTICE WAGES AND DEFINITIONS

All apprentices employed by the Design-Builder to perform services under the Contract shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he or she is employed, and shall be employed only at the work of the craft or trade to which he or she is registered. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing with § 3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training. Contractor shall pay apprentices for any preemployment activities, as set forth in Labor Code section 1777.5.

13.10.2 APPRENTICE LABOR POOL

When the Design-Builder to whom the Contract is awarded by the Owner, or any Subcontractor under him or her, in performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Design-Builder and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the Project, for a certificate approving the Design-Builder or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. The joint apprenticeship committee or committees, subsequent to approving the subject Design-Builder or Subcontractor, shall arrange for the dispatch of apprentices to the Design-Builder or

Subcontractor in order to comply with this section. Every Design-Builder and Subcontractor shall submit the contract award information to the applicable joint apprenticeship committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the joint apprenticeship committee or committees administering the apprenticeship standards of the crafts or trade in the area of the Site of the public work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Design-Builders or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the Project, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but, except as otherwise provided in this section, in no case shall the ratio be less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman. However, the minimum ratio for the land surveyor classification shall not be less than one (1) apprentice for each five (5) journeymen.

13.10.3 JOURNEYMAN/APPRENTICE RATIO; COMPUTATION OF HOURS

Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the joint apprenticeship committee, is employed at the job Site and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Design-Builder shall employ apprentices for the number of hours computed as above before the end of the Contract. However, the Design-Builder shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job Site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a joint apprenticeship committee, may order a minimum ratio of not less than one (1) apprentice for each five (5) journeymen in a craft or trade classification.

13.10.4 JOURNEYMAN/APPRENTICE RATIO

The Design-Builder or Subcontractor, if he or she is covered by this section upon the issuance of the approval certificate, or if he or she has been previously approved in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Design-Builder that he or she employs apprentices in the craft or trade in the state on all of his or her contracts on an annual average of not less than one (1) hour of apprentice work for every five (5) hours of labor performed by a journeyman, or in the land surveyor classification, one (1) apprentice for each five (5) journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Design-Builder from the 1-to-5 hourly ratio as set forth in this section. This section shall not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor, when the contracts of general contractors or those specialty contractors involve less than Thirty Thousand Dollars (\$30,000) or twenty (20) working days. Any work performed by a journeyman in excess of eight (8) hours per day or

forty (40) hours per week, shall not be used to calculate the hourly ratio required by this section.

13.10.4.1 ***Apprenticeable Craft or Trade.*** “Apprenticeable craft or trade” as used in this Article means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The joint apprenticeship committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting a Design-Builder from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions is met:

- A. Unemployment for the previous three-month period in the area exceeds an average of fifteen percent (15%).
- B. The number of apprentices in training in such area exceeds a ratio of 1-to-5.
- C. There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth (1/30) of its journeymen annually through the apprenticeship training, either on a statewide basis or on a local basis.
- D. Assignment of an apprentice to any work performed under this contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

13.10.5 **RATIO EXEMPTION**

When exemptions are granted to an organization which represents Design-Builders in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member Design-Builders will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

13.10.6 APPRENTICE FUND

A Design-Builder to whom the Contract is awarded or any Subcontractor under him or her, who, in performing any of the work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the Site of the Project, to which fund or funds other contractors in the area of the Site of the Project are contributing, shall contribute to the fund or funds in each craft or trade in which he or she employs journeymen or apprentices on the Project in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept the funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Design-Builder or Subcontractor may add the amount of the contributions in computing his or her bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in the Labor Code section 227.

13.10.7 PRIME DESIGN-BUILDER COMPLIANCE

The responsibility of compliance with section 13.10 and section 1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Design-Builder.

13.10.8 DECISIONS OF JOINT APPRENTICESHIP COMMITTEE

All decisions of the joint apprenticeship committee under this section 13.10 and Labor Code section 1777.5 are subject to Labor Code section 3081.

13.10.9 NO BIAS

It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works on the grounds of race, religious creed, color, national origin, ancestry, sex, or age, except as provided in the Labor Code section 3077.

13.10.10 VIOLATION OF LABOR CODE

Pursuant to Labor Code section 1777.1, in the event a Design-Builder or Subcontractor fails to comply with the provisions of this section 13.10 and Labor Code section 1777.5, among other things:

- (a) If a Contractor or Subcontractor willfully fails to comply, the Labor Commissioner may deny to the Design-Builder or subcontractor, and to its responsible officers, the right to bid on, or be awarded or perform work as a subcontractor on, any public works project for a period of up to one year for the first violation and for a period of up to three years for the second and subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Labor Commissioner becomes a final order.

(b) A Design-Builder or subcontractor who violates section 1777.5 shall forfeit as a civil penalty an amount not exceeding the sum of one hundred dollars (\$100) for each full calendar day of noncompliance. Upon receipt of a determination that a civil penalty has been imposed, the awarding body shall enforce the penalty, which includes withholding the amount of the civil penalty from the contract progress payments or retention then due or to become due.

(c) In lieu of the penalty provided, the Labor Commissioner may for a first time violation and with the concurrence of an applicable apprenticeship program, order the Design-Builder or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(d) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund.

(e) The interpretation and enforcement of section 1777.5 and this section shall be in accordance with the regulations of the California Apprenticeship Council.

Pursuant to Public Contract Code section 6109, no contractor or subcontractor may bid on, be awarded, or perform work as a subcontractor on a public works project if ineligible to bid or work on, or be awarded, a public works project pursuant to section 1777.1 of the Labor Code.

13.11 ASSIGNMENT OF ANTITRUST CLAIMS

13.11.1 APPLICATION

Pursuant to Public Contract Code section 7103.5 and Government Code section 4552, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Design-Builder or Subcontractor offers and agrees to assign to the Owner 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. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Bus. & Prof. Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders Final Progress Payment to the Design-Builder, without further acknowledgment by the parties. If the Owner receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under Chapter 11 (commencing with § 4550) of Division 5 of Title 1 of the Government Code, the assignor may, upon demand, recover from the Owner any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the Owner as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

13.11.2 ASSIGNMENT OF CLAIM

Upon demand in writing by the assignor, the Owner shall, within one (1) year from such

demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose and the Owner has not been injured thereby or the Owner declines to file a court action for the cause of action.

13.12 AUDIT

Pursuant to and in accordance with the provisions of Government Code section 8546.7, or any amendments thereto, all books, records, and files of the Owner, the Design-Builder, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of three (3) years after release of all retention under this Contract. Design-Builder shall preserve and cause to be preserved such books, records, and files for the audit period. During the progress of the Work and for three (3) years after release of all retention under the Contract, Owner shall also have the right to an audit of all of Design-Builder's books, records, subcontracts, material and equipment contracts, files, and information related to the project, and Design-Builder must cooperate by producing all requested items within seven (7) days.

13.13 STORM WATER DISCHARGE PERMIT

If applicable, the Design-Builder shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity (WQ Order No. 920-08-DWQ). The Notice of Intent must be sent to the following address along with the appropriate payment (warrant to be furnished by the Owner upon request by the Design-Builder, allow warrant processing time.): California State Water Resources Control Board, Division of Water Quality, Storm Water Permit Unit, P.O. Box 1977, Sacramento, CA 95812-1977. The Design-Builder may also call the State Water Board's Construction Activity Storm Water Hotline at (916) 657-1146. The Notice of Intent shall be filed prior to the start of any construction activity.

ARTICLE 14

TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE DESIGN-BUILDER FOR CAUSE

Design-Builder may not terminate performance for convenience. Design-Builder may only terminate performance for cause if the Work is stopped by others for a period of one hundred eighty (180) consecutive days through no act or fault of the Design-Builder, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Design-Builder is contractually responsible, **and** the Work was stopped by others for one of the following reasons: (A) Issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work. If such grounds exist, the Design-Builder may serve written notice of such grounds on

Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within twenty (20) days of Owner's receipt of such notice. If such conference does not lead to resolution and the grounds for termination still exist, Design-Builder may terminate the Contract and recover from the Owner payment for Work executed and for reasonable verified costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages for the Work executed, but excluding overhead (field and home office) and profit for (i) Work not performed and (ii) the period of time that the Work was stopped.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 GROUNDS FOR TERMINATION

The Owner may terminate performance of the Contract if the Design-Builder:

- A. Refuses or fails to supply enough properly skilled workers or proper materials, or refuses or fails to take steps to adequately prosecute the Work toward Completion within the Contract Time;
- B. Fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable;
- C. Violates Labor Code section 1771.1(a), subject to the provisions of Labor Code section 1771.1(f);
- D. Disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or
- E. Otherwise is in breach of the Contract Documents.

14.2.2 NOTIFICATION OF TERMINATION

When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner, give notice to Design-Builder of the grounds for termination and demand cure of the grounds within seven (7) days (a "Notice of Intent to Terminate"). If Design-Builder fails to **either** (a) completely cure the grounds for termination within seven (7) days **or** (b) reasonably commence cure of the grounds for termination within seven (7) days and reasonably continue to cure the grounds for termination until such cure is complete, then Owner may terminate performance of the Contract effective immediately upon service of written Notice of Termination and may, subject to any prior rights of Design-Builder's surety on the performance bond ("Surety"):

- A. Take possession of the Site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;

- B. Accept assignment of subcontracts pursuant to section 5.4; and
- C. Complete the Work by whatever reasonable method the Owner may deem expedient, including tender of completion to the Surety.

14.2.3 PAYMENTS

If the Owner terminates performance of the Contract for one of the reasons stated in section 14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is Complete.

If the unpaid balance of the Contract Sum exceeds costs of Completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Design-Builder. If such costs exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. This payment obligation shall survive Completion of the Contract.

14.2.4 WRONGFUL TERMINATION

To claim a breach of contract or violation of law based on alleged wrongful termination for cause by the Owner, or if Design-Builder otherwise seeks any payment or damages related to a termination, within fifteen (15) days of the alleged breach of contract, violation of law, or wrongful termination Design-Builder shall submit a Claim pursuant and subject to Sections 4.5.3-4.5.6. The Design-Builder need not submit a Notice of Potential Change or a Change Order Request.

14.2.5 INCLUSION OF TERMINATION FOR CONVENIENCE

Any purported termination by Owner for cause under this section 14.2, which is revoked or determined to not have been for cause, shall be deemed to have been a termination for convenience effective as of the same date as the purported termination for cause.

14.3 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE

14.3.1 SUSPENSION BY OWNER

The Owner may, without cause, order the Design-Builder in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.1.1 *Adjustments.* An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent:

- A. That performance is, was or would have been so suspended, delayed, or interrupted by another cause for which the Design-Builder is responsible; or

- B. That an equitable adjustment is made or denied under another provision of this Contract.

14.3.1.2 **Adjustments for Fixed Cost.** Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

14.3.2 **TERMINATION BY THE OWNER FOR CONVENIENCE**

14.3.2.1 The Owner may, at any time, terminate performance of the Contract for the Owner's convenience and without cause.

14.3.2.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

1. Cease operations as directed by the Owner in the notice;
2. Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
3. Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.3.2.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

14.4 **NOT A WAIVER**

Any suspension or termination by Owner of performance by Design-Builder for convenience or cause under this Article 14 shall not act as a waiver of any claims by Owner against Design-Builder or others for damages based on breach of contract, negligence or other grounds.

14.5 **MUTUAL TERMINATION FOR CONVENIENCE**

The Design-Builder and the Owner may mutually agree in writing to terminate performance of this Contract for convenience. The Design-Builder shall receive payment for all Work performed to the date of termination in accordance with the provisions of Article 9.

14.6 **EARLY TERMINATION**

Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, the Owner may upon thirty (30) days' notice, order work on the Project to cease. The Owner will remain obligated to pay for the work already performed but shall not be obligated to pay the balance remaining unpaid beyond

the fiscal period for which funds have been appropriated or allocated and for which the work has not been done.

EXHIBIT F

THE DISTRICT'S DESIGN REQUIREMENTS
("BRIDGING DOCUMENTS") FOR THE PROJECT