

**CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT**

**CONSTRUCTION MANAGER AT RISK (CM) SERVICES  
PROPOSAL NO.: 14-01**

**for  
Building 2000, Library Renovation Project, Las Positas College**

**Proposals Due:**

**December 12, 2013 at 2:00 P.M.**



**Return Proposal To:  
District Office  
Facilities Planning & Management Department  
7600 Dublin Blvd., 3<sup>rd</sup> Floor  
Dublin, California 94568**

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## NOTICE TO CM/CONTRACTORS CALLING FOR PROPOSALS

<b>DISTRICT</b>	<b>CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT</b>
<b>PROJECT DESCRIPTION</b>	<b>PROPOSAL NO.: 14-01, Building 2000, Library Renovation Project, Las Positas College</b>
<b>LATEST TIME/DATE FOR SUBMISSION OF BID PROPOSALS</b>	<b>THURSDAY, DECEMBER 12, 2013; 2:00 P.M.</b>
<b>LOCATION FOR SUBMISSION OF BID PROPOSALS</b>	<b>Chabot-Las Positas Community College District 7600 Dublin Blvd., 3<sup>rd</sup> Floor, Dublin, CA 94568 Attn: Victoria L. Lamica, Contract Manager</b>
<b>LOCATION FOR OBTAINING BID AND CONTRACT DOCUMENTS</b>	<b>ARC - OAKLAND 1700 Jefferson Street Oakland, CA 94612 Tel: 510.250.6100 Fax: 510.595.2363 Email: <a href="mailto:Oakland@e-arc.com">Oakland@e-arc.com</a> Website: <a href="http://www.e-arc.com">www.e-arc.com</a></b>

**NOTICE IS HEREBY GIVEN** that the above-named California Community College District, acting by and through its Board of Trustees, hereinafter “the District” will receive up to, but not later than the above-stated date and time, sealed Proposals for services as the Construction Manager At Risk (“CM At-Risk”) for the Work of the Project generally described as: **PROPOSAL No.: 14-01, BUILDING 2000, LIBRARY RENOVATION PROJECT, LAS POSITAS COLLEGE.** Parties submitting proposals shall be referred to herein as “CM Candidate”.

**1. Submittal of Proposals.** All Proposals shall be submitted on forms furnished by the District. Proposals must conform with, and be responsive to the Contract Documents, copies of which may be obtained from ARC as set forth above. Only Proposals submitted to the District at or prior to the date and time set forth above for the public opening and reading of Proposals shall be considered. Parties submitting Proposals shall be referred to herein as “CM Candidate”.

**2. Proposal and Contract Documents.** The Proposal forms and Contract Documents are available at the location stated above for a non-refundable payment of the cost of reprographics and shipping per set. Payment shall be made to ARC.

**3. Documents Accompanying CM At-Risk Proposal.** Each Proposal shall be accompanied by: (a) Non-Collusion Affidavit; (b) Certification of Pre-Bid Site Visit; and (c) Statement of Bidder’s Qualifications. All information or responses contained in the Proposal and other documents accompanying the Proposal shall be complete, accurate and true; incomplete, inaccurate or untrue responses or information provided therein by a Bidder shall be grounds for the District to reject the Proposal for non-responsiveness.

**4. Prevailing Wage Rates.** Pursuant to California Labor Code §1773, the Director of the Department of Industrial Relations of the State of California has determined the generally prevailing rates of wages in the locality in which the Work is to be performed. Copies of these determinations, entitled “PREVAILING WAGE SCALE” are filed at the District’s Administrative Offices located at 5020 Franklin Drive, Pleasanton, California 94588, and are available to any interested party upon request. Alternatively, prevailing wage rate classifications and determinations may be viewed and obtained by accessing the

Division of Labor Standards Enforcement databases at <http://www.dir.ca.gov/dir/databases.html>. The CM Candidate awarded the Contract for the Work shall post a copy of all applicable prevailing wage rates for the Work at conspicuous locations at the Site of the Work. The Contractor and all Subcontractors performing any portion of the Work shall pay not less than the applicable prevailing wage rate for the classification of labor provide by their respective workers in prosecution and execution of the Work.

**5. Contractors License Classification.** In accordance with the provisions of California Public Contract Code §3300, the District requires that CM Candidate possess the following classification(s) of California Contractors License B – General Building. Any CM Candidate not so duly and properly licensed shall be subject to all penalties imposed by law. No payment shall be made for work, labor, materials or services provided under the Contract for the Work unless and until the Registrar of Contractors verifies to the District that the CM Candidate awarded the Contract is properly and duly licensed to perform the Work.

**6. Contract Time.** The date(s) for completion of portions of the Work, if applicable, and for achieving Substantial Completion of the Work shall be achieved as set forth in the Special Conditions. Failure to complete designated portions of the Work within the time(s) established in the Special Conditions and/or failure to achieve Substantial Completion of the Work within the Contract Time established in the Special Conditions shall subject the CM Candidate to assessment of Liquidated Damages as set forth in the Special Conditions.

**7. Labor Compliance Program (AB 1506).** The District has established a Labor Compliance Program (“LCP”) pursuant to Labor Code §1771.5. The CM Candidate awarded the Contract for the Work shall comply with the LCP and provisions of the Contract Documents relating to implementation, compliance with, and enforcement of the LCP.

**8. No Withdrawal of Proposals.** Proposals shall not be withdrawn by any CM Candidate for a period of **sixty (60)** days after the opening of Proposals. During this time, all CM Candidates shall guarantee prices quoted in their respective Proposals.

**9. Job-Walk.** The District will conduct a **Mandatory Job Walk**. **CM Candidate must attend the Mandatory Job Walk on Thursday, November 21, 2013 at 10:00 a.m.** CM Candidates are to meet at **Las Positas College, 3000 Campus Hill Drive, Maintenance & Operations Building, Room 3123, in Livermore, California 94551** for the Job Walk. Campus maps are available at [www.laspositascollege.edu](http://www.laspositascollege.edu). The Job Walk is mandatory. If a Proposal is submitted by a CM Candidate whose representative(s) did not attend the entirety of the Mandatory Job Walk, such proposal will be rejected by the District as being non-responsive.

**10. Waiver of Irregularities.** The District reserves the right to reject any or all Proposals or to waive any irregularities or informalities in any Proposal or in the bidding.

**11. Award of Contract.** The Contract for the Work, if awarded, will be by action of the District's Board of Trustees to the responsible and responsive CM Candidate submitting the best proposal, based on price, experience and qualifications.

CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT

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**Request for Proposal (RFP) 14-01 for  
Construction Manager Services at Risk with a Guaranteed Maximum Price  
Building 2000, Library Renovation Project  
Las Positas College  
3000 Campus Hill Drive  
Livermore, CA**

**SECTION 1, GENERAL REQUIREMENTS**

**1.1 Introduction**

Subject to the conditions prescribed by Chabot-Las Positas Community College District, hereinafter called "District," acting on behalf of the Board of Trustees of the District proposals are requested for furnishing Construction Services at Risk with a Guaranteed Maximum Price for the construction of Building 2000, Library Renovation on the Las Positas College campus.

The procurement method for this contract is commonly known as "Construction Manager at Risk with Guaranteed Maximum Price" (CM at Risk). Public Contract Code Section 10708 states that "...the Trustees may enter into an agreement with a contractor to provide all or significant portions of the design services and construction of a project under this chapter." Additionally, the contractor shall be "chosen by a competitive bidding process that employs selection criteria in addition to cost."

In this Request for Proposal (RFP), the District describes the project in terms of construction budget, preconstruction phase services, and construction phase services. The District is soliciting proposals from qualified and experienced contractors to perform CM at Risk services for this project. Each proposer is required to adhere to all of the District's requirements, including the requirement to be licensed in the State of California with a Type B Contractor's license.

The project consists of the renovation of the Library Building at the Las Positas College campus and four (4) distinct sub-projects. The total construction budget is \$4.3 million of which \$3.4 million is allocated for the renovation of Building 2000, the campus Library. The remaining funds are allocated for renovation of Buildings 700, 900, 1310/1320 and 1700 which are the four (4) sub-projects. The project scope will include related site improvements and minor renovations to other campus facilities. The renovation designs have been prepared by two architectural firms. The Buildings 700 and 2000 design has been prepared by Noll & Tam Architects. The remaining buildings design has been prepared by Charles Ham & Associates. These renovations will be constructed in phases as follows:

	<u>Construction Start</u>	<u>Complete</u>
Buildings 700, 900 and 1700	Feb 15, 2014	May 15, 2014
Buildings 1310/1320	Apr 15, 2014	Aug 1, 2014
Building 2000	Jun 1, 2014	Dec 1, 2014

**1.2 Qualification Statement**

The firms responding to this RFP must include "Statement of CM Candidate's Qualifications" form as defined in this RFP.

**1.3 RFP Contents:**

- Section 1      General Requirements
- Section 2      Scope of Work and Qualification Requirements
- Section 3      Duties of Others
- Section 4      Proposal Requirements
- Section 5      Fee Proposal
- Section 6      Selection Process
- Section 7      Other Information
- Table A        CM at Risk General Conditions Requirements



**1.4 Clarifications Regarding this RFP**

Requests for information or clarification of the intent or content of this RFP must be received by the District’s Representative in writing no later than the date set for submitting questions stated in Section 1.5 of this RFP. Only the District’s Representative is authorized to answer questions or prepare addenda relative to the project RFP. Information obtained verbally from any other source has no authority, may not be relied upon, and shall have no standing in any event that may occur.

Written addenda will be distributed on or before the date fixed for issuing addenda as stated in Section 1.5. Failure of proposer to receive any addenda shall not relieve the proposer from any obligation therein.

**1.5 Key Action Dates and Proposed Construction Schedule:**

RFP release date:	<u>November 21, 2013</u>
Last date to submit questions regarding RFP:	<u>November 26, 2013</u>
Last date to issue RFP addendum:	<u>December 5, 2013</u>
Date and time proposals due:	<u>December 12, 2013 at 2:00 PM</u>
Interview of the proposers (if required):	<u>December 16, 2013</u>
Estimated Award of preconstruction service agreement:	<u>January 13, 2014</u>
Estimated Notice to Proceed preconstruction services:	<u>January 21, 2014</u>
Notice to Proceed construction phase:	<u>February 1, 2014</u>
Construction begins:	<u>February 15, 2014</u>
Construction complete:	<u>December 1, 2014</u>

The proposed construction schedule is 289 calendar days. Note: the District may adjust those dates after proposals due date without written notice.

**1.6 Proposals**

The District will receive proposals no later than the time and date indicated in Section 1.5 of this Request for Proposals. Proposers shall divide each proposal into two (2) submittals in two separately sealed envelopes and/or packages along with a copy on a CD for delivery to the District. One envelope shall be marked “Technical Proposal” and the other shall be marked “Fee Proposal Package.” The proposals are not anonymous.

All proposals must be delivered to Victoria Lamica, Contract Manager at the District Offices at or before the time and date set in Section 1.5. **Proposals will be received at no other place.** If the proposal is submitted by U.S. mail, it must be postmarked sufficiently in advance of the due date to ensure delivery to the submittal location prior to the specified date and time. The proposer is solely responsible for ensuring delivery no later than the date and time specified. Use of the United States Postal Service, campus mail system, express or overnight delivery, or any other service, shall not relieve the proposer from the requirements of meeting the specified deadline. The District shall return unopened, any proposal received after the time specified in the Request for Proposals or in any addendum (Public Contract Code Sections 4104.5 and 10766).

**1.7 Proposer’s Cost**

Each proposer responding to this RFP acknowledges and agrees that the preparation of all materials for submittal to the District and all presentations, related costs and travel expenses are at the proposer’s sole expense, and the District are not, under any circumstances, responsible for any cost or expense incurred by the proposer. In addition, each proposer acknowledges and agrees that all documentation and/or materials submitted with their RFP shall remain the property of the District.

**1.8 Contracting Process**

The District proposes to contract with the successful proposer using the contract agreements contained a part of this request for proposals.

**Part A. Preconstruction Phase**

The District will provide a notice to proceed with the preconstruction services portion of the contract.

**Part B. Construction Phase**

Once District and CM at Risk have agreed upon a Guaranteed Maximum Price, the District will provide a notice to proceed for the construction phase in accordance with the construction agreement of the CM at Risk incorporating the Contract General Conditions and Special Conditions. If the District and the CM at Risk do not agree upon a Guaranteed Maximum Price, the District will not award the construction phase of the project to the CM at Risk. The District will stop all work, and award the construction phase through other means.

**SECTION 2. SCOPE OF WORK AND QUALIFICATION REQUIREMENTS**

The specific scopes of work to be performed by the Construction Manager at Risk with a Guaranteed Maximum Price (GMAX) are linked to the two separate phases of the project; Preconstruction Phase and Construction Phase. Each phase will have a separate Notice to Proceed. There is no guarantee for award of the Construction Phase; therefore, if the District does not award the Construction Phase, there will be no recovery of any monetary awards associated with the Construction Phase, such as cost and/or anticipated profit.

**Part A. Preconstruction Phase**

Even though the Preconstruction Phase of services will be covered with a lump sum service agreement, the District requires that the CM at Risk monitor costs incurred for this phase separately from costs incurred against the GMAX during the Construction Phase, if awarded. At the request of the District, the CM at Risk may be required to provide a copy of a cost report supporting Preconstruction Phase costs incurred by the CM at Risk.

**2.1 Design Phase Services**

The design of the Project is essentially complete. During the design phase the CM at Risk shall work closely with the District, the Project Architect (Architect) and the District's Campus Construction Manager (Campus CM) on the following tasks:

**2.1.1 Construction Documents**

The CM at Risk shall work with the Architect in reviewing the construction documents, taking into account quality of materials and equipment, to ensure an efficient design and minimum lifecycle cost. Participate in design decisions by providing information, estimates, schemes, and recommendations regarding construction materials, methods, systems, phasing, and costs that shall provide the highest quality building within the budget and schedule.

**2.1.2 Phasing and Scheduling**

CM at Risk shall provide a phasing and project schedule incorporating the preconstruction, bidding, regulatory agency permits and other project-related scheduling issues and activities. CM at Risk shall update the schedule as necessary to reflect the most recent project developments.

**2.1.3 Alternate Analysis**

CM at Risk shall develop bid alternates to allow the District to obtain additional project components depending upon the bid valuations

**2.1.4 Constructability Review**

Check the documents for completeness and coordination and make recommendations to the Architect and District' Representative.

**2.1.5 Cost Control Management**

In conjunction with the Architect, evaluate the cost estimate and evaluate the estimate against the construction budget. Recommend, if necessary, the appropriate action to correct and/ or avoid potential cost overruns.

If the direct cost portion of the GMAX exceeds the construction budget, then the CM at Risk shall value engineer the project back within the construction budget at its cost. If direct cost of GMAX exceeds the construction budget by five percent or more, then the CM at Risk shall also pay the Architect's design fees associated with value engineering the project back within the construction budget.

**2.1.6 Approvals**

Monitor all regulatory approvals required during the design phase.

**2.1.7 Trade Contractor Bid Packages**

The CM at Risk shall develop the most logical, competitive, seamless and distinct trade contractor bid packages with all scopes of work included in the packages. Include bid alternatives (deductive or additive) in each trade contractor bid package to enable full utilization of the project budget. Include the District' Contract General Conditions in trade contractor bid packages. The CM at Risk shall develop Special Conditions (with the District's participation and subsequent approval) that address the trade contracts, schedule for trade contracts, and the responsibilities of all parties under a CM at Risk with GMAX procurement method, where the CM at Risk bids the project elements and enters into contracts with the trade contractors. The CM at Risk shall include construction contingency in its fee proposal, and shall not require it as part of trade contractors' bids. The CM at Risk shall not cause the trade contractors to include any construction contingency in their bids.

**2.1.8 Delivery**

Create a delivery system for construction that is a CM at Risk with a GMAX procurement method, where the CM at Risk bids the project elements and enters into contracts with the trade contractors.

**2.2 Bid Phase Services**

During the Preconstruction Phase, the CM at Risk, with the assistance of the Architect, shall determine the number and make-up of the trade contractor bid packages. The CM at Risk shall obtain the review and approval of the District of the proposed trade contractor bid documents and trade contractor agreements. Once the District has approved the trade contractor bid and contract documents, the CM at Risk shall bid these packages competitively, using the Special Conditions and Contract General Conditions as agreed upon and approved by the District. The CM at Risk shall:

**2.2.1 Develop the Master Project Schedule**

Develop the Master Project Schedule for inclusion in every trade contractor bid set. Develop and include in the trade contractor bid sets that portion or subset of the Master Project Schedule that applies to that trade.

**2.2.2 Identify Qualified Trade Contractors**

Identify a minimum of three qualified trade contractors for each trade bid package, unless otherwise agreed to in writing by the District.

**2.2.3 Solicit Bids**

Solicit bids from CM at Risk qualified trade contractors in a manner most appropriate to obtain competitive trade bids. The CM at Risk shall issue trade contractor bid packages to trade contractors. Identify in the bid packages the construction budget for that trade.

**2.2.4 Receive bids**

Receive bids from trade contractors. Review the bids with the District, Architect and Campus CM towards identifying the lowest responsible bidder for each trade, including alternatives for that trade.

**2.2.5 Agree on a Guaranteed Maximum Price**

Agree with the District on a Guaranteed Maximum Price (GMAX) for all construction work for no more than the project construction budget, which is \$4,300,000 and it includes the direct costs and the total fee for CM at Risk. The CM at Risk shall warrant that the construction documents are free of ambiguities and conflicts and that the trade contractor bid packages include all of the scope of work identified in the construction documents. The CM at Risk shall also guarantee to the District that the project shall be built for no more than the available construction budget where the aggregate of all trade contractor bids, including alternatives, shall be less than the construction budget, and within the construction duration identified in this Request for Proposal.

If District and CM at Risk cannot agree on a GMAX, then District will terminate the agreement and proceed with the construction phase through other means.

**2.2.6 Execute Trade Contracts**

After reaching agreement with the District on a GMAX, the CM at Risk shall enter into contracts with the successful bidder in each trade.

If the value of a trade contract is more than one half of one percent of the construction budget, then the trade contractors shall become listed subcontractors, and the District shall enforce Public Contract Code Section 4100 *et seq.*

**Part B. Construction Phase****2.3 Construction Phase Services**

The CM at Risk shall furnish construction administration and management services and use its best efforts to perform the project in an expeditious and economical manner consistent with the interests of the District. The scope of this task includes the CM at Risk construction phase services as described herein. The CM at Risk shall assume all the duties and responsibilities assigned in the General Contractor as defined in the Contract General Conditions.

**2.3.1 Conduct Preconstruction Conference**

The District's Campus CM and the CM at Risk will jointly conduct a preconstruction conference with the trade contractors, design personnel and other appropriate District staff. The CM at Risk preconstruction conference services include preparation of meeting agenda, preparation of job procedures for clarifications, change orders, shop drawings, progress payments, field testing and inspection, safety, and preparation and distribution of preconstruction conference notes.

**2.3.2 Update the Master Project Schedule**

Update the Master Project Schedule. Review and approve the trade contractors' schedules for compliance with the individual requirements of each trade contract and the overall Master Project Schedule. Review and approve trade contractors' proposed construction schedule for logic, reasonableness, and conformance to the requirements of the contract documents. The CM at Risk shall conduct daily review of the trade contractors' progress and conformance with monthly updated construction schedules.

**2.3.3 Review Monthly Progress Payment Requests**

Review and approve trade contractors' monthly progress payment requests. Compare the requested payments to actual work completed in accordance with the pre-approved schedule of values presented by the trade contractors at the beginning of construction. Combine invoices and prepare the CM at Risk's payment request, prepare a current overall schedule of values, and submit to the District one invoice approved by the Architect and the District's Inspector of Record in quadruplicate for approval and payment.

**2.3.4 Project Cash Flow**

Provide monthly updated cash flow requirement projections for each month of construction.

**2.3.5 Act as Liaison**

Act as liaison between trade contractors, the Inspector of Record, and Campus CM in order to maintain campus operations during construction. Coordinate the scheduling of work impacting operations through the Campus CM.

**2.3.6 Clarify Design**

Coordinate and address trade contractors' Requests for Information (RFIs) with the Campus CM and the Architect. RFIs shall be processed through the Campus CM's internet based project information system, ProjectSolve. Architect shall be responsible for interpretations and clarifications of the contract documents. Architect shall prepare sketches to clarify contract documents where necessary. Campus CM shall coordinate the clarification and interpretation process.

**2.3.7 Report Monthly Construction Progress**

Prepare a monthly construction progress report, summarizing the progress of construction and key issues currently pending. The report will indicate each trade contractor's progress. The report shall also summarize the current cash flow projections. Submit the monthly construction progress report to the Campus CM.

**2.3.8 Coordinate Trade Contractors**

Throughout construction, provide direct supervision, scheduling and problem resolution for trade contractors.

**2.3.9 Provide Trailers and Equipment**

Provide all necessary on-site trailers and office equipment for both the staff of the CM at Risk and the District's Inspector of Record.

**2.3.10 Provide Necessary Personnel**

Provide all necessary on-site construction management, supervisory, and clerical staff for the proper management of the construction.

**2.3.11 As-Built Drawings**

Monitor that the trade contractors are maintaining as-built drawings. Compile the as-built drawings and submit them at the end of the project to the Architect for review, approval and further processing.

**2.3.12 Closeout Project**

Prepare a recommendation for final acceptance of the project after the trade contractors have corrected deficient work and satisfied all contract conditions. CM at Risk shall prepare final payment request and final report. CM at Risk shall provide a complete set of contract files to the construction administrator. This shall include, but not be limited to, as-built drawings, operation and maintenance manuals, additional materials, and warranties.

**Section 3. Duties of Others**

The District, the Campus CM and the Architect shall work in conjunction with the CM at Risk towards realizing a high quality project.

**3.1 Testing and Inspection.**

The CM at Risk shall not be responsible for providing the testing and inspection of the project's construction. These responsibilities shall be performed and paid for by the District. The CM at Risk shall coordinate and cooperate with the District's inspection and testing agencies.

### 3.2 Project Design

The CM at Risk shall not be responsible for the correctness or design completeness of the technical design of the project or the technical interpretation of design issues. These responsibilities shall be performed by the Architect under a separate agreement with the District. The CM at Risk shall coordinate and cooperate with the Architect.

### Section 4. Proposal Requirements

Qualification Requirements-- Proposers responding to this RFP seeking selection as the Construction Manager at Risk shall meet the qualification requirements stated in this Section 4.

#### 4.1 Project Experience

List at least five (5) projects completed by proposer in the last five (5) years in California for which proposer worked with designers on similar size and type of projects. Provide reference information such as owner, owner's representative, location of project, and current telephone and fax numbers. For these projects, demonstrate experience in value engineering, construction estimating, and constructability review during the design phase, and delineating trade contractor's scope of work with no overlap or gaps between trade bid packages. (Tab 4 in the Statement of Qualifications submittal)

#### 4.2 Demonstrate CM at Risk experience

List at least five (5) projects completed by proposer in the last five (5) years in California which the proposer acted as a Construction Manager at Risk with a Guaranteed Maximum Price, soliciting bids, contracting with and managing multiple trade contractors consistent with the type, size and complexity of this project.

#### 4.3 Proposed Staff

The Proposer shall include in his/her proposal a proposed organization with resumes of key individuals. Identify individuals that have specific experience with the project type and delivery method proposed for this project.

#### 4.4 Project Approach

The proposer shall demonstrate its approach to the construction management at risk process indicating a clear understanding of the purpose, service, scope, and objectives of this RFP.

#### 4.5 Preparing and Packaging Your Proposal:

Proposals should provide straightforward, concise information that satisfies the requirements noted in this RFP. Expensive binding, color displays, and the like are discouraged. Emphasis should be placed on brevity, conformity to the District's instructions, selection criteria of this RFP, and completeness and clarity of content. Organizing proposals into the tab order suggested below will not only help each proposer achieve the proper emphasis, but will also facilitate review and evaluation. Attachments, except as noted, will not be accepted.

Each Proposer's Proposal should clearly and accurately demonstrate specialized knowledge and experience required for consideration. In one sealed envelope (clearly marked "Proposal – (firm name). Project Name- RFP 14-01, Building 2000, Library Renovation Project, Las Positas College), submit the following:

- a) One (1) copy in paper form of your Price Proposal. Submit Price Proposal in a separate sealed envelope which will be included with other materials listed below. Clearly mark the envelope "Price Proposal – (firm name). Project Name- RFP 14-01, Building 2000, Library Renovation Project, Las Positas College);
- b) Two (2) copies in paper form of the Proposal which consists of a Cover Letter and the following sections. Proposal shall be prepared in a bound 8.5" x 11" booklet format using organizational tabs that correspond, in number and title, to the sections outlined below:

##### Tab 1. Cover Letter

Provide a cover letter that references this RFP and confirms that all elements of the RFP have been read and understood and that the Proposer takes no exception to the

materials provided including the Contracts for Preconstruction and Construction Phase Services (including its Exhibits and any other referenced documents). The cover letter shall be one page maximum and signed by an individual authorized to bind the Proposer contractually. Include in the letter:

- The exact legal name, address, telephone and fax numbers, and federal tax identification number of the organization proposing to do business with the District,
- The name, telephone, fax, address, and e-mail address of one business person who is the organization's designated representative,
- The name, telephone, fax, address, and e-mail address of the contracts management or legal person who will liaise with the District in contractual matters.

**Tab 2. Firm Identification**

Identify the Proposer's point of contact; list proposed team comprised of the key members of Proposer's firm to be assigned to this project, including their roles and their time, in hours, dedicated to the project for each phase of work (one page maximum); and an organizational team chart for this project (one page maximum). Attach a one page maximum firm description. If more than one firm is identified, submit a one page description for each firm.

**Tab 3. Resumes of Key Personnel**

Include resumes of key personnel of the proposed team for the project. (One page per person maximum)

**Tab 4. Examples Projects**

Maximum ten (10) example projects which best illustrate firm's qualifications for the scope and size of the specific project. Indicate any projects accomplished by current firm staff conducted while under the employment of others. Indicate services performed as either Preconstruction and/or Construction Manager at Risk services. Projects shall be relevant to California community college facility renovation or projects of similar complexity completed in the last five (5) years and demonstrate the Proposer's ability and experience to successfully complete this project. Provide Owner's information as a reference contact. (Two pages per project maximum);

**Tab 5. Proposed Approach**

Provide a Project Plan for performing the activities specified in the Statement of Work provided in this RFP. The Project Plan should be organized into three sections: Preconstruction, Guarantee of GMAX/Bidding, and Construction Management. Use these categories to group information that illustrates your firm's proposed approach to the entire CM at Risk process, indicating your strategies for quality control, issue anticipation resolution throughout the project, your methodology for coordination and issue tracking, as well as any other information you feel is pertinent.

**Tab 6. Qualifications Questionnaire**

Include completed Statement of CM @ Risk Candidate Qualifications form bearing an original signature from an individual with a level of authority qualified to commit your organization.

**Tab 7. Additional Information**

Certification of Pre-Bid Site Visit

Non-Collusion Affidavit - The Non-Collusion Affidavit shall be executed by an individual duly authorized to execute the same on behalf of the proposer.

- c) One (1) copy of the entire submittal in CD format. Clearly mark the CD "Price Proposal – (firm name). Project Name- RFP 14-01, Building 2000, Library Renovation Project, Las Positas College);

Any questions regarding this solicitation document shall be directed in writing to the Contract Manager for this RFP process. Proposers/potential Proposers are to refrain from contacting any other personnel with regards to this RFP. The Contract Manager for this solicitation process is:

Ms. Victoria Lamica  
 Contract Manager  
 7600 Dublin Boulevard, 3<sup>rd</sup> Floor  
 Dublin, CA 94568  
 vlamica@clpccd.org

#### **4.6 Examination of Site and Contract Documents**

Each proposer shall, at its sole cost and expense, inspect the Site and to become fully acquainted with the Contract Documents and conditions affecting the Work, including the CM At-Risk Agreement. The failure of a proposer to receive or examine any of the Contract Documents or to inspect the Site shall not relieve such party from any obligation with respect to the Proposal, or the Work required under the Contract Documents. The District assumes no responsibility or liability to any party for, nor shall the District be bound by, any understandings, representations or agreements of the District's agents, employees or officers concerning the Contract Documents or the Work made prior to execution of the Contract which are not in the form of Addenda duly issued by the District. The submission of a Proposal shall be deemed prima facie evidence of the proposer's full compliance with the requirements of this section.

#### **4.7 Non-Collusion Affidavit.**

No person, firm, corporation or other entity shall submit or be interested in more than one Proposal for the same Work; provided, however, that a person, firm or corporation that has submitted a sub-proposal to a proposer or who has quoted prices for materials to a proposer is not thereby disqualified from submitting a sub-proposal, quoting prices to other proposers or submitting a Proposal for the proposed Work to the District. The form of Non-Collusion Affidavit included in the Contract Documents must be completed and duly executed on behalf of the proposer; failure of a proposer to submit a completed and executed Non-Collusion Affidavit with its Proposal will render the Proposal non-responsive.

### **Section 5. Fee Proposal**

The CM at Risk's GMP shall include a contractor's project contingency. The use of this contingency shall cover any problems arising from a lack of coordination among and within the trade contractors' bid packages, other problems arising from trade contractor performance and schedule performance. The CM at Risk shall itemize its contingency on the Schedule of Values and it will be tracked by the Campus CM. The CM at Risk shall return any unused portion of its contingency to the District at 100%. Costs incurred due to lack of coordination in the trade contractors' bid packages in excess of the contingency shall be borne by the CM at Risk. The Proposer shall propose a percentage to be included within the GMP for the contractor's contingency as described above.

Using the following table, the proposer shall provide a fee proposal as part of the proposal, but in a separate package clearly identified as the "Fee Proposal Package." The dollar amount for each component of the fees will be calculated by multiplying the percentage times the construction budget of \$4.3 million. The construction budget is identified in Section 2.2.5 of this RFP. Reference Table A-Project Cost Distribution for items to be included in the CM at Risk's overhead and profit.



<b>FEES CALCULATION TABLE</b>	Fee Percentage (Fee as % of Construction Budget)	Fee in \$ (Fee % multiplied by Construction Budget)
Preconstruction Services (Construction Document Phase & Bid Phase Services, see Sections 2.1 and 2.2) not to exceed 1%		
Construction Manager's Contingency, not to exceed 3%		
Construction Manager's Overhead & Profit		
Total Construction Services Fees		

**Section 6. Selection Process**

**6.1 General**

It is the policy of the District that the selection of the CM at Risk to provide professional construction management services for this project is based on the quality of the CM at Risk, combining demonstrated competence and experience, and on the cost to provide the satisfactory performance of the services required.

The evaluation team shall evaluate each proposal to determine its responsiveness to the District's requirements. The evaluation team shall not be privy to the contents of the fee proposals.

**6.2 Evaluation Criteria and Scoring**

**6.2.1 RFP Compliance Check**

Proposals that do not meet minimum submittal or content requirements of this RFP, do not meet overall qualification standards, or take unacceptable exceptions to the RFP requirements, may be eliminated from further consideration.

**6.2.2 Proposal Analysis**

Each proposal will be independently analyzed by members of an evaluation team comprised of the District's representatives. The evaluation team will analyze the firm's experience, qualifications, professional content, and proposed work methodology to ensure that the District's needs will be met. The evaluation team may choose to interview some proposers. Points will be assigned by each team member and then averaged.

**6.2.3 Quality Point Scoring Schedule: TOTAL POSSIBLE POINTS = 100**

- Experience: **40 points**

The proposer has verifiable construction management at risk experience with a client group that demonstrates proposer's performance can best satisfy District's project needs.

- Project Organization, Personnel Experience and Qualifications: **40 points**

Confirmation that the proposer's professional and key personnel who will serve as primary contact possess professional certifications and demonstrate successful, related construction management work

experience and construction manager at risk experience with emphasis placed on technical expertise and credentials of the intended project staff. Evaluation of effective and efficient staffing plan.

- Project Approach: **20 points**

In the response to the RFP, the proposer demonstrates its approach to the construction management at risk process indicating a clear understanding of the purpose, service, scope, and objectives of this RFP.

The sum of the quality points assigned by the evaluation team shall be the Total Quality Points for each proposer.

**6.3 Fee Proposal**

The proposal shall include, as part of the response to the RFP but in a separate package clearly identified as the Fee Proposal Package, the proposed fee proposal, see Section 4. The fee proposal and the technical proposal are not anonymous; they shall identify the name of the proposers.

**6.4 Selection Process**

The evaluation team shall review each proposal and assign the quality points for each proposal per Section 6.2.3.

For each proposer, the fee percentage will be applied to the construction budget, to obtain the Fee in Dollars. The Fee in Dollars will be divided by the Total Quality Points. The proposer with the lowest ratio of fee to quality points shall be the best value proposer.

$$\text{Fee Percentage} \times \text{Construction Budget} = \text{Fee in Dollars}$$

$$\frac{\text{Fee in Dollars}}{\text{Total Quality Points}} = \text{Cost/Unit Quality}$$

The lowest cost per unit of quality is thus determined, and the apparent finalist announced.

EXAMPLE (Based on a construction budget of \$5,000,000):

$$\text{Proposal 001: } 14\% \times \$5,000,000 = \frac{\$700,000}{89} = \$7,865$$

$$\text{Proposal 002: } 15\% \times \$5,000,000 = \frac{\$750,000}{94} = \$7,979$$

$$\text{Proposal 003: } 13\% \times \$5,000,000 = \frac{\$650,000}{82} = \$7,927$$

In this example, Proposal No. 001 is determined to be the apparent selected proposer. It must be noted that in this example, the best value proposal does not represent the lowest fee submitted, but the lowest cost per unit of quality within the established budget.

Due to the aggressive schedule, the top ranked candidate firm will be informed in a timely fashion and should be prepared to commence work immediately. In the event contract award is unsuccessful with the selected proposer, the District may choose to award the contract to the next proposer in the ranking.

## **Section 7. Other Information**

### **7.1 Irregularities**

The District reserve the right to accept or reject any or all proposals, to alter the selection process in any way, to postpone the selection process for its own convenience at any time, and to waive any defects in the RFP.

### **7.2 Non-Binding**

This RFP, and any interview process, if required, shall in no way be deemed to create a binding contract or agreement of any kind between the District and the proposers, see Section 5.12.

### **7.3 Agreement**

The selected proposer will be required to sign an agreement with the District to perform preconstruction services. A sample agreement is included with this RFP. The agreement shall be signed by the selected proposer and returned, along with the required submittals, to the District within ten (10) calendar days of written award notice.

### **7.4 Insurance**

The successful proposer shall maintain commercial general liability insurance with proper endorsement for the duration of the construction management at risk agreement. Coverage shall be in accordance with Article 6 of the Contract General Conditions for Construction Manager at Risk Projects. The successful proposer shall maintain insurance, including but not limited to Commercial General Liability, Business Auto Liability, and Worker's Compensation, and Errors & Omissions, for the duration of the preconstruction and the construction contracts. See Article 6.3 in the Contract General Conditions for Construction Manager at Risk with Guaranteed Maximum Price Projects.

### **7.5 Rejection of Proposal**

The District may reject any or all proposals and may waive any immaterial deviation in a proposal. The District' waiver of an immaterial defect shall in no way modify the RFP documents or excuse the proposer from full compliance with the specifications if awarded the contract.

### **7.6 Failure to Execute the Agreement**

Failure to execute the agreement within the timeframe identified above shall be sufficient cause for voiding the award. Failure to comply with other requirements within the set time shall constitute failure to execute the agreement. If the selected proposer refuses or fails to execute the contract, the District may award the contract to the next qualified, highest-ranked proposer.

### **7.7 Disposition of the Proposals**

Proposals become the property of the District. The information contained in all proposals shall be held confidential to the extent permitted by law, except that the Total Fee Percentage, separately submitted as part of the Fee Proposal Package of each proposal, shall be publicly opened and read after the Total Quality Points have been tabulated and published. Proposals will become public upon execution of the Construction Management at Risk agreement with the successful Proposer. All materials, ideas, and formats submitted in response to this RFP will become the property of the District upon receipt and may be returned only at the District' option.

### **7.8 Cancellation**

While it is the intent of the District to award to the successful proposer, this solicitation does not obligate the District to enter into an agreement. The District reserve the right to cancel this RFP at any time, should the District lose the required funding or it is in the best interest of the District. No obligation, either expressed or implied, exists on the part of the District to make an award or to pay any costs incurred in the preparation or submission of a proposal in response to this RFP.

### **7.9 Workers' Compensation Insurance.**

Pursuant to California Labor Code §3700, the successful CM Candidate shall secure Workers' Compensation Insurance for its employees engaged in the Work of the Contract. The successful CM

Candidate shall sign and deliver to the District the following certificate prior to performing any of the Work under the Contract:

“I am aware of the provisions of §3700 of the California Labor Code which require every employer to be insured against liability for worker's 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 the Contract.”

The form of such Certificate is included as part of the Contract Documents.

**7.10 CM/Contractor's License.**

No Proposal will be considered from a CM Candidate who, at the time Proposals are opened, is not licensed to perform the Work, in accordance with the Contractors License Law, California Business & Professions Code §§7000 et seq. This requirement is not a mere formality and will not be waived by the District or its Board of Trustees. The required California Contractor's License classification(s) for the Work is/are set forth in the Call for Proposals.

**7.11 Anti-Discrimination.**

It is the policy of the District that there is no discrimination against any prospective or active employee engaged in the Work because of race, color, ancestry, national origin, religious creed, sex, age or marital status. All CM Candidates agree to comply with the District's anti-discrimination policy and all applicable Federal and California anti-discrimination laws including but not limited to the California Fair Employment & Housing Act beginning with California Government Code §§12940 et seq. and California Labor Code §1735. In addition, all CM Candidates agree to require like compliance by any Subcontractor employed by them on the Work of the Contract.

**7.12 Drug-Free Workplace Certificate.**

In accordance with California Government Code §§8350 et seq., the Drug Free Workplace Act of 1990, the successful Candidate will be required to execute a Drug Free Workplace Certificate concurrently with execution of the Agreement. The successful Candidate will be required to implement and take the affirmative measures outlined in the Drug Free Workplace Certificate and in California Government Code §§8350 et seq. Failure of the successful Candidate to comply with the measures outlined in the Drug Free Workplace Certificate and in California Government Code §§8350 et seq. may result in penalties, including without limitation, the termination of the Agreement, the suspension of any payment of the Contract Price otherwise due under the Contract Documents and/or debarment of the successful CM Candidate.

**7.13 Compliance with Immigration Reform and Control Act of 1986.**

The CM Candidate is solely and exclusively responsible for employment of individuals for the Work of the Contract in conformity with the Immigration Reform and Control Act of 1986, 8 USC §§1101 et seq. (the “IRCA”); the successful CM Candidate shall also require that any person or entity employing labor in connection with any of the Work of the Contract shall so similarly comply with the IRCA.

**Building 2000, Library Renovation Project  
Table A**

**CM at Risk – Project Cost Distribution**

	<b>Project Staff while on site or engaged on the project</b>	<b>Direct Cost of the Work</b>	<b>CM at Risk – General Conditions</b>	<b>Paid by District</b>
1	Project Manager		X	
2	Construction Manager		X	
3	Project Superintendent		X	
4	Project Engineer		X	
5	Home Office Engineer		X	
6	Scheduling Engineer		X	
7	Field Engineer		X	
8	Secretarial/Clerk Typist		X	
9	Safety &. E.E.O. Officer		X	

	<b>Temporary Utilities</b>	<b>Direct Cost of the Work</b>	<b>CM at Risk – General Conditions</b>	<b>Paid by District</b>
1	Telephone Installation		X	
2	Telephone Monthly Charges			X
3	Elect Power Installation		X	
4	Elect Power Distribution Wiring		X	
5	Elect Power Monthly Charges			X
6	Water Service – Installation		X	
7	Water Service - Monthly Costs			X
8	Heating & Cooling Costs		X	
9	Light Bulbs & Misc. Supplies		X	
10	Clean-Up-Periodical	X		
11	Clean-Up-Final	X		
12	Dump Permits and Fees	X		
13	Recycling/Trash Dumpster Removal/Hauling		X	
14	Flagger/Traffic Control	X		
15	Dust Control	X		
16	Trash Chute & Hopper		X	
17	Wages of Construction Labor	X		
18	Labor/Fringe Benefits & Burden	X		
19	Subcontract Costs	X		
20	Material & Equipment/Included	X		
	a. Rental-Contractor Owned Equip	X		
	b. Small Tools – Purchase	X		
	c. Small Tools – Rental	X		

**Building 2000, Library Renovation Project  
Table A**

<b>General Conditions</b>		<b>Direct Cost of the Work</b>	<b>CM at Risk – General Conditions</b>	<b>Paid by District</b>
1	Office Trailer/Rental		X	
2	Storage Trailer & Tool Shed Rental		X	
3	Office Furniture/Equip/computers		X	
4	Xerox Copies/Misc Printing		X	
5	Postage/UPS/FedEx		X	
6	Project Photographs		X	
7	Temporary Toilets		X	
8	Project Sign		X	
9	Temporary Fencing/Enclosures		X	
10	Covered Walkways		X	
11	Barricades		X	
12	Temporary Stairs		X	
13	Opening Protection		X	
14	Safety Railing & Nets		X	
15	Drinking Water/Cooler/Cup		X	
16	Safety/First Aid Supplies		X	
17	Fire Fighting Equipment		X	
18	Security Guards		X	
19	Watchman Services		X	
20	Premium – GC Bond & Insurance		X	
21	Premium – Subcontract Bonds & Insurance	X		
22	Printing – Drawings & Specs		X	
23	Facility Operator/Training	X		
24	Fees – Plan Check-DSA			X

**Building 2000, Library Renovation Project  
Table A**

		<b>Direct Cost of the Work</b>	<b>CM at Risk - Construction Contingency</b>	<b>Paid by District</b>
1	Warranty Work & Coordination		X	
2	Corrective Work Damaged by GC or his subs		X	
3	Corrective Work Non-Conforming with Specs		X	
4	Scope Gaps after GMP		X	
5	Delay Mitigation/ Damages		X	
6	Costs in excess of GMP		X	

	<b>Contractor's Main Office Staff- If not directly involved with the project</b>	<b>Direct Cost of the Work</b>	<b>CM at Risk - Overhead and Profit</b>	<b>Paid by District</b>
1	Corporate Executives		X	
2	Principal in Charge/Operations Manager		X	
3	Estimating Cost Engineering		X	
5	Scheduling		X	
6	Drafting and Detailing		X	
7	Purchasing & Contracts		X	
8	Accounting & Bookkeeping		X	
9	Safety & E.E.O Officer		X	
10	Secretarial		X	
11	Clerk/Typist		X	
12	Computer/Data Processing		X	
13	Legal (General Services/Pertaining to Project)		X	
14	Travel & Subsistence		X	
15	Fringe Benefits & Burden, Bonus		X	

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## INSTRUCTIONS FOR CM CANDIDATE

1. **Preparation and Submittal of Proposal.**
  - 1.1 **Proposal Preparation.** All information required by the proposal forms must be completely and accurately provided. Numbers shall be stated in both words and figures where so indicated in the proposal forms; conflicts between a number stated in words and in figures are governed by the words. Partially completed Proposals or Proposals submitted on other than the proposal forms included herein are non-responsive and will be rejected. Proposals not conforming to these Instructions for CM Candidate and the Notice to CM/Contractors Calling for Proposals (“Call for Proposals”) may be deemed non-responsive and rejected.
  - 1.2 **Proposal Submittal.** Proposals shall be submitted at the place designated in the Call for Proposals in sealed envelopes bearing on the outside the CM Candidate’s name and address along with an identification of the Work for which the Proposal is submitted. CM Candidate’s are solely responsible for timely submission of Proposals to the District at the place designated in the Call for Proposals.
  - 1.3 **Date and Time of Proposal Submittal.** The District will place a clock (“the District Clock”) in a conspicuous location at the place designated for submittal of Proposals. For purposes of determining the time that a Proposal is submitted, the District Clock shall be controlling. The foregoing notwithstanding, whether or not Proposals are opened exactly at the time fixed in the Call for Proposals, no Proposals shall be received or considered by the District after it has commenced the public opening and reading of Proposals; Proposals submitted after such time are non-responsive and will be returned to the CM Candidate unopened.
2. **Documents Accompanying Proposal; Signatures.** The Proposal must be submitted with: Statement of Qualifications, Certification of Pre-Bid Site Visit, and Non-Collusion Affidavit. The Proposal, Statement of Qualifications, and Non-Collusion Affidavit shall be executed by an individual duly authorized to execute the same on behalf of the CM Candidate.
3. **Modifications.** Changes to the proposal forms which are not specifically called for or permitted may result in the District’s rejection of the Proposal as being non-responsive. No oral or telephonic modification of any submitted Proposal will be considered. A written modification may be considered only if actually received by the District prior to the scheduled closing time for receipt of Proposals and the public opening thereof.
4. **Erasures; Inconsistent or Illegible Proposals.** If any Proposal or portions thereof, is determined by the District to be illegible, ambiguous or inconsistent, whether by virtue of any erasures, interlineations, corrections or otherwise, the District may reject such a Proposal as being non-responsive.
5. **Examination of Site and Contract Documents.** Each CM Candidate shall, at its sole cost and expense, inspect the Site and to become fully acquainted with the Contract Documents and conditions affecting the Work, including the CM At-Risk Agreement. The failure of a CM Candidate to receive or examine any of the Contract Documents or to inspect the Site shall not relieve such party from any obligation with respect to the Proposal, or the Work required under the Contract Documents. The District assumes no responsibility or liability to any party for, nor shall the District be bound by, any understandings, representations or agreements of the District’s agents, employees or officers concerning the Contract Documents or the Work made prior to execution of the Contract which are not in the form of Addenda duly issued by the District. The submission of a Proposal shall be deemed prima facie evidence of the CM Candidate’s full compliance with the requirements of this section.
6. **Withdrawal of Proposal.** Any CM Candidate may withdraw its Proposal by way of written request actually received by the District prior to the scheduled closing time.

7. **CM At-Risk Agreement.** The CM At-Risk Agreement which the successful CM Candidate, as CM/Contractor, will be required to execute along with other documents and instruments which will be required to be furnished are included in the Contract Documents and shall be carefully examined by the CM Candidate.
8. **Interpretation of Drawings, Specifications or Contract Documents.** Any CM Candidate in doubt as to the true meaning of any part of the Contract Documents; finds discrepancies, errors or omissions therein; or finds variances in any of the Contract Documents with applicable rules, regulations, ordinances and/or laws, a written request for an interpretation or correction thereof may be submitted to the District. It is the sole and exclusive responsibility of the CM Candidate to submit such request not less than seven (7) calendar days prior to the scheduled closing date for the receipt of Proposals. Interpretations or corrections of the Contract Documents will be by written addendum issued by the District or the Architect. A copy of any such addendum will be mailed, faxed, emailed or delivered to each CM Candidate receiving a set of the Contract Documents. No person is authorized to render an oral interpretation or correction of any portion of the Contract Documents to any CM Candidate, and no CM Candidate is authorized to rely on any such oral interpretation or correction. Failure to request interpretation or clarification of any portion of the Contract Documents pursuant to the foregoing is a waiver of any discrepancy, defect or conflict therein.
9. **District's Right to Modify Contract Documents.** Before the public opening and reading of Proposals, the District may modify the Work, the Contract Documents, or any portion(s) thereof by the issuance of written addenda disseminated to all CM Candidates who have obtained a copy of the Specifications, Drawings and Contract Documents pursuant to the Call for Proposals. If the District issues any addenda during the period, the failure of any Bidder to acknowledge such addenda in its Proposal will render the Proposal non-responsive and rejected.
10. **Non-Collusion Affidavit.** No person, firm, corporation or other entity shall submit or be interested in more than one Proposal for the same Work; provided, however, that a person, firm or corporation that has submitted a sub-proposal to a CM Candidate or who has quoted prices for materials to a CM Candidate is not thereby disqualified from submitting a sub-proposal, quoting prices to other CM Candidates or submitting a Proposal for the proposed Work to the District. The form of Non-Collusion Affidavit included in the Contract Documents must be completed and duly executed on behalf of the CM Candidate; failure of a CM Candidate to submit a completed and executed Non-Collusion Affidavit with its Proposal will render the Proposal non-responsive.
11. **Award of CM At-Risk Agreement.**
- 11.1 **Waiver of Irregularities or Informalities.** The District reserves the right to reject any and all Proposals or to waive any irregularities or informalities in any Proposal.
- 11.2 **Award of CM At-Risk Agreement.** The award of the Contract, if made by the District through action of its Board of Trustees, will be based on a combination of the total fee and quality points.
- 11.3 **Responsive Proposal.** A responsive Proposal shall mean a Proposal which conforms, in all material respects, to the Proposal and Contract Documents.
- 11.4 **Responsible CM Candidate.** A responsible CM Candidate is a Candidate who has the capability in all respects, to perform fully the requirements of the Contract Documents and the moral and business integrity and reliability which will assure good faith performance. In determining responsibility, the following criteria will be considered: (i) the ability, capacity and skill of the CM/Contractor to perform the Work of the Contract Documents; (ii) whether the CM Candidate can perform the Work promptly and within the time specified, without delay or interference; (iii) the character, integrity, reputation, judgement, experience and efficiency of

the CM Candidate; (iv) the quality of performance of the CM/Contractor on previous contracts, by way of example only, the following information will be considered: (a) the administrative, consultant or other cost overruns incurred by the District on previous contracts with the Candidate; (b) the CM Candidate's compliance record with contract general conditions on other projects; (c) the submittal by the CM Candidates of excessive and/or unsubstantiated extra cost proposals and claims on other projects; (d) the CM Candidate's record for completion of work within the contract time and the CM Candidate's compliance with the scheduling and coordination requirements on other projects; (e) the CM Candidate's demonstrated cooperation with the District and other contractors on previous contracts; (f) whether the work performed and materials furnished on previous contracts was in accordance with the Contract Documents; (v) the previous and existing compliance by the Candidates with laws and ordinances relating to contracts; (vi) the sufficiency of the financial resources and ability of the Candidates to perform the work of the Contract Documents; (vii) the quality, availability and adaptability of the goods or services to the particular use required; (viii) the ability of the Candidates to provide future maintenance and service for the warranty period of the Contract; (ix) whether the Candidate is in arrears on debt or contract or is a defaulter on any surety bond; (x) such other information as may be secured by the District having a bearing on the decision to award the CM At-Risk Contract, to include without limitation the ability, experience and commitment of the CM Candidate to properly and reasonably plan, schedule, coordinate and execute the Work of the Contract Documents and whether the Candidate has ever been debarred from bidding or found ineligible for bidding on any other projects.

- 12. Workers' Compensation Insurance.** Pursuant to California Labor Code §3700, the successful CM Candidate shall secure Workers' Compensation Insurance for its employees engaged in the Work of the Contract. The successful CM Candidate shall sign and deliver to the District the following certificate prior to performing any of the Work under the Contract:

“I am aware of the provisions of §3700 of the California Labor Code which require every employer to be insured against liability for worker's 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 the Contract.”

The form of such Certificate is included as part of the Contract Documents.

- 13. CM/Contractor's License.** No Proposal will be considered from a CM Candidate who, at the time Proposals are opened, is not licensed to perform the Work, in accordance with the Contractors License Law, California Business & Professions Code §§7000 et seq. This requirement is not a mere formality and will not be waived by the District or its Board of Trustees. The required California Contractor's License classification(s) for the Work is/are set forth in the Call for Proposals.
- 14. Anti-Discrimination.** It is the policy of the District that there is no discrimination against any prospective or active employee engaged in the Work because of race, color, ancestry, national origin, religious creed, sex, age or marital status. All CM Candidates agree to comply with the District's anti-discrimination policy and all applicable Federal and California anti-discrimination laws including but not limited to the California Fair Employment & Housing Act beginning with California Government Code §§12940 et seq. and California Labor Code §1735. In addition, all CM Candidates agree to require like compliance by any Subcontractor employed by them on the Work of the Contract.
- 15. CM/Contractor's Qualifications.** Each CM Candidate shall submit with its Proposal the form of Statement of CM Candidate's Qualifications, which is included within the Contract Documents. All information required by Statement of CM Candidate's Qualifications shall be completely and fully provided. Any Proposal not accompanied by the Statement of CM Candidate's Qualifications completed with all information required and bearing the signature of the CM Candidate duly

authorized representative under penalty of perjury will render the Proposal non-responsive and rejected. If the District determines that any information provided by a CM Candidate in the Statement of CM Candidate's Qualifications is false or misleading, or is incomplete so as to be false or misleading, the District may reject the Proposal submitted by such Candidate as being non-responsive.

16. **Job-Walk.** The District will conduct a Job-Walk at the time(s) and place(s) designated in Item 9 in the Call for Proposals.
17. **Public Records.** Proposals and other documents responding to the Call for Proposals become the exclusive property of the District upon submittal to the District. At such time as the District issues the Notice of Intent to award the Contract pursuant to these Instructions for CM Candidates, all Proposals and other documents submitted in response to the Call for Proposals become a matter of public record and shall be thereupon be considered public records, except for information contained in such Proposals deemed to be Trade Secrets (as defined in California Civil Code §3426.1) and information provided in response to the Statement of Qualifications. The District is not liable or responsible for the disclosure of such records, including those exempt from disclosure if disclosure is deemed required by law, by an order of Court, or which occurs through inadvertence, mistake or negligence on the part of the District or its officers, employees or agents. At such time as Proposals are deemed a matter of public record, pursuant to the above, any Candidate or other party shall be afforded access for inspection and/or copying of such Proposals, by request made to the District in conformity with the California Access to Public Records Act, California Government Code §§6250, et. seq. If the District is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of the contents of any portion of a Proposal deemed exempt from disclosure hereunder, the Candidate submitting the materials sought by such action or proceeding agrees to defend, indemnify and hold harmless the District in any action or proceeding from and against any liability, including without limitation attorneys' fees arising therefrom. The party submitting materials sought by any other party shall be solely responsible for the cost and defense in any action or proceeding seeking to compel disclosure of such materials; the District's sole involvement in any such action shall be that of a stakeholder, retaining the requested materials until otherwise ordered by a court of competent jurisdiction.
18. **Drug Free Workplace Certificate.** In accordance with California Government Code §§8350 et seq., the Drug Free Workplace Act of 1990, the successful Candidate will be required to execute a Drug Free Workplace Certificate concurrently with execution of the Agreement. The successful Candidate will be required to implement and take the affirmative measures outlined in the Drug Free Workplace Certificate and in California Government Code §§8350 et seq. Failure of the successful Candidate to comply with the measures outlined in the Drug Free Workplace Certificate and in California Government Code §§8350 et seq. may result in penalties, including without limitation, the termination of the Agreement, the suspension of any payment of the Contract Price otherwise due under the Contract Documents and/or debarment of the successful CM Candidate.
19. **Compliance with Immigration Reform and Control Act of 1986.** The CM Candidate is solely and exclusively responsible for employment of individuals for the Work of the Contract in conformity with the Immigration Reform and Control Act of 1986, 8 USC §1101 et seq. (the "IRCA"); the successful CM Candidate shall also require that any person or entity employing labor in connection with any of the Work of the Contract shall so similarly comply with the IRCA.
20. **Notice of Intent to Award Contract.** After the evaluation of the proposals and interviews, if any, the District will issue a Notice of Intent to Award the Contract, identifying the CM Candidate to whom the District intends to award the Contract.
21. **Bid Protest.** Any CM Candidate submitting a Proposal to the District may file a protest of the District's intent to award the Contract provided that each and all of the following are complied with:

- (i) The protest is in writing;
- (ii) The protest is filed and received by the District's Vice-Chancellor, Facilities Planning and Management not more than five (5) calendar days following the date of issuance of the District's Notice of Intent to Award the Contract; and
- (iii) The written protest sets forth, in detail, all grounds for the protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the protest; any matters not set forth in the written protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence.

Any protest not conforming to the foregoing shall be rejected by the District as invalid. Provided that a protest is filed in strict conformity with the foregoing, the District's Vice-Chancellor, Facilities Planning and Management or such individual(s) as may be designated by him/her, shall review and evaluate the basis of the protest. Either, the District's Vice-Chancellor, Facilities Planning and Management or other individual designated by him/her shall provide the Candidate submitting the protest with a written statement concurring with or denying the protest. The District's Board of Trustees will render a final determination and disposition of a protest by taking action to adopt, modify or reject the disposition of a protest as reflected in the written statement of the District's Vice-Chancellor, Facilities Planning and Management or his/her designee. Action by the District's Board of Trustees relative to a protest shall be final and not subject to appeal or reconsideration by the District's Vice-Chancellor, Facilities Planning and Management any other employee or officer of the District or the District's Board of Trustees.

**End of Section**

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# NON-COLLUSION AFFIDAVIT

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_)

**PROJECT: PROPOSAL No.: 14-01, BUILDING 2000, LIBRARY RENOVATION PROJECT, LAS POSITAS COLLEGE**

I, \_\_\_\_\_, being first duly sworn, deposes and says that I am  
(Typed or Printed Name)  
the \_\_\_\_\_ of \_\_\_\_\_, the party submitting  
(Title) (Bidder Name)  
the foregoing Proposal ("the CM Candidate"). In connection with the foregoing Proposal, the undersigned declares, states and certifies that:

1. The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization or corporation.
2. The Proposal is genuine and not collusive or sham.
3. The CM Candidate has not directly or indirectly induced or solicited any other Candidate to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other Candidate or anyone else to put in sham bid, or to refrain from submitting.
4. The CM Candidate has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price, or that of any other Candidate, or to fix any overhead, profit or cost element of the proposal price or that of any other Candidate, or to secure any advantage against the public body awarding the contract or of anyone interested in the proposed contract.
5. All statements contained in the Proposal and related documents are true.
6. The CM Candidate has not, directly or indirectly, submitted the proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any person, corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2013 at \_\_\_\_\_.  
(City, County and State)

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Name Printed or Typed

\_\_\_\_\_  
(City, County and State)

(\_\_\_\_\_) \_\_\_\_\_  
(Area Code and Telephone Number)

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# STATEMENT OF CM CANDIDATE'S QUALIFICATIONS

## 1. CM Candidate's Organization

1.1 Form of entity of Candidates, i.e., corporation, partnership, etc. \_\_\_\_\_

1.1.1 If a corporation, state the following:

State of incorporation: \_\_\_\_\_

Date of incorporation: \_\_\_\_\_

President/Chief Executive Officer: \_\_\_\_\_

Secretary: \_\_\_\_\_

Treasurer/Chief Financial Officer: \_\_\_\_\_

1.1.2 If a partnership, state the following:

Type of partnership, i.e., general partnership, limited partnership: \_\_\_\_\_

Names of all general partners, if any of the general partners are not natural persons, provide the information for each such general partner requested by Paragraphs 1.1.1, 1.1.2 and 1.1.4 as appropriate: \_\_\_\_\_

1.1.3 If a proprietorship, state the names of all proprietors: \_\_\_\_\_

1.1.4 If a joint venture, state the following

Date of organization: \_\_\_\_\_

Names of all joint venture members. For each member of the joint venture, provide the information requested by Paragraphs 1.1.1, 1.1.2 and 1.1.3 for each joint venture member, as applicable: \_\_\_\_\_

1.2 Number of years your organization has been in business as a CM/Contractor: \_\_\_\_\_

1.3 Number of years your organization has conducted business under its present name: \_\_\_\_\_

1.4 If your organization has conducted business under a name or name style different than your organization's present name, identify all prior name(s) or name style(s): \_\_\_\_\_

1.5 Your organization's Federal Tax Identification Number: \_\_\_\_\_

## 2. Licensing

2.1 California Contractors License: Number: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Responsible Managing Employee/Officer: \_\_\_\_\_

License Classification(s): \_\_\_\_\_

2.2 Has a claim or other demand ever been made against your organization’s California Contractors License Bond? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, on a separate attachment, state the following: (i) the name, address and telephone number of each person or entity making claim or demand; (ii) the date of each claim or demand; (iii) the circumstances giving rise to each such claim or demand; and (iv) the disposition of each such claim or demand.

2.3 Has a complaint ever been filed against your organization’s California Contractors License with the California Contractors State License Board? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, on a separate attachment, state the following for each complaint: (i) the name, address and telephone number of each person or entity making the complaint; (ii) the date of each complaint; (iii) the circumstances giving rise to each such complaint; and (iv) the disposition of each such complaint, including without limitation, any disciplinary or other action imposed or taken by the California Contractors State License Board as a result of any such complaint.

**3. Experience**

3.1 Categories of work (other than management/supervision) your organization typically performs with your own forces \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.2 Project Experience information shall be submitted as instructed in Section 4.1 – Proposal Requirements of the Request for Proposal under Tab 4.

**4. Performance History**

4.1 Claims and lawsuits (if you answer yes to any of the following, you must attach details).

4.1.1 Have any lawsuits or other administrative, legal, arbitration or other proceedings, ever been brought or commenced against your organization or any of its principals, officers or equity owners in connection with any construction contract or construction project? \_\_\_\_\_ Yes \_\_\_\_\_ No

If so, describe the circumstances, the amount demanded or other relief demand and the disposition of each such lawsuit or other proceeding.

4.1.2 Has your organization ever filed a lawsuit or commenced other administrative, legal or other proceedings in connection with any construction contract or construction project? \_\_\_\_\_ Yes \_\_\_\_\_ No

If so, describe the circumstances, the amount demanded or other relief demand and the disposition of each such lawsuit or other proceeding.

4.1.3 Are there any judgements, orders, decrees or arbitration awards pending, outstanding against your organization or any of the officers, directors, employees or principals of your organization? \_\_\_\_\_ Yes \_\_\_\_\_ No

If so, describe each such judgement, order, decree or arbitration award and the present status of the satisfaction or discharge thereof.

4.2 Has your organization ever refused to sign a construction contract awarded to it? \_\_\_\_\_ Yes \_\_\_\_\_ No

If so, on a separate attachment, state the following: (i) describe each such contract; (ii) the owner's name, address, telephone number and contact person; and (iii) the circumstances of your refusal to sign such contract.

- 4.3 Has your organization ever failed to complete a construction contract?  Yes  No  
 If so, on a separate attachment, state the following: (i) describe each such contract; (ii) the owner's name, address, telephone number and contact person; and (iii) the circumstances of your failure to complete such contract.
- 4.4 Has your organization ever been declared in default of a construction contract?  
 Yes  No  
 If so, on a separate attachment, state the following: (i) describe each such contract; (ii) the owner's name, address, telephone number and contact person; and (iii) the circumstances of each such declaration of default.
- 4.5 Has any construction contract to which your organization is a party been terminated for the convenience of the project owner?  Yes  No  
 If so, identify the project and project owner along with a description of the circumstances under which the convenience termination occurred.
- 4.6 Has a claim or other demand ever been asserted against any Bid Bond, Performance Bond, or Payment Bond posted by your organization in connection with any construction contract or your submittal of a bid proposal for a construction contract?  
 Yes  No  
 If so, on a separate attachment, state the following: (i) the name, address, telephone number and contact person for each claimant; (ii) the date upon which each such demand or claim was made; and (iii) the disposition of each such demand or claim.
- 4.7 Has your organization or any predecessor to your organization been charged with a violation of the California False Claims Act or similar federal statute within the past ten (10) years?  
 Yes  No  
 If yes, on a separate attachment, provide the following: (i) a detailed description of the circumstances upon which charges were based; (ii) the public agency involved, including name, address, telephone and email address of contact person(s) at such public agency; and (iii) disposition of such charges.
- 4.8 Has any individual or entity who owns ten percent (10%) or more of the equity interest of your organization been an equity owner of ten percent (10%) or more of the equity interest of any other entity or organization, within the past ten (10) years, which has been charged with a violation of the California False Claims Act or similar federal statute within the past ten (10) years?  
 Yes  No  
 If yes, on a separate attachment, provide the following: (i) the name(s) of each such other entity or organization; (ii) a detailed description of the circumstances upon which charges were based; (iii) the public agency involved, including name, address, telephone and email address of contact person(s) at such public agency; and (iv) disposition of such charges.
- 4.9 Has any individual or entity who owns ten percent (10%) or more of the equity interest of your organization been charged with a violation of the California False Claims Act or similar federal statute within the past ten (10) years?  
 Yes  No  
 If yes, on a separate attachment, provide the following: (i) the name of such individual(s) or entity(ies); (ii) a detailed description of the circumstances upon which charges were based; (iii) the public agency involved, including name, address,

telephone and email address of contact person(s) at such public agency; and (iv) disposition of such charges.

**5. References** (Include name, contact person, telephone/telecopier and address for each reference provided):

5.1 Trade References (three (3) minimum)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5.2 Bank References

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5.3 Public Works Inspectors of Record (K-12 or community college project)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5.4 Owner references (three (3) minimum, preferably California K-12 school districts and/or California community college districts)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6. Accuracy and Authority**

The undersigned is duly authorized to execute this Statement of CM Candidate's Qualifications under penalty of perjury on behalf of the Candidate. The undersigned warrants and represents that he/she has personal knowledge of each of the responses to this Statement of CM Candidate's Qualifications and/or that he/she has conducted all necessary and appropriate inquiries to determine the truth, completeness and accuracy of responses to this Statement of CM Candidate's Qualifications.

The undersigned declares and certifies that the responses to this Statement of CM Candidate's Qualifications are complete and accurate; there are no omissions of material fact or information that render any response to be false or misleading and there are no misstatements of fact in any of the responses.

Executed this \_\_\_ day of \_\_\_\_\_ 2013 at \_\_\_\_\_  
(City and State)

I declare under penalty of perjury under California law that the foregoing is true and correct.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or written name)

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## CERTIFICATION OF PRE-BID SITE VISIT

The Honorable Board of Trustees  
Chabot-Las Positas Community College District  
7600 Dublin Blvd., 3<sup>rd</sup> Floor  
Dublin, California 94568

RE: PROPOSAL No.: 14-01, BUILDING 2000, LIBRARY RENOVATION PROJECT, LAS POSITAS COLLEGE

Ladies and Gentlemen:

In connection with submitting a Proposal for the Work described as PROPOSAL No.: 14-01, BUILDING 2000, LIBRARY RENOVATION PROJECT, LAS POSITAS COLLEGE, I visited the Site of the Work on

\_\_\_\_\_, \_\_\_\_\_ / \_\_\_\_\_ on behalf of \_\_\_\_\_  
Date A.M. P.M. Name of CM/Contractor

to inspect the Site of the proposed work, which will be turned over to the CM/Contractor, if awarded the Contract, in its present condition, with a representative of the Chabot-Las Positas Community College, in order to acquaint the CM Candidate with the proposed Work so that the Candidate fully understands the facilities, difficulties, and restrictions attendant to execution and completion of the Work. I have also reviewed on behalf of the CM Candidate, the as-built drawings and/or previous Contract Documents, site conditions and Proposal Documents with District representatives and Contract Manager at Las Positas College.

I certify all conditions provided for my review and their effect on the Work as called for in the Contract Documents are included and accounted for in the Proposal amounts submitted to the District.

I understand that a Candidate who fails to submit this Certification of Pre-Bid Site Visit, fully executed, with the CM Candidate's Proposal form, will result in rejection of the Proposal for non-responsiveness.

\_\_\_\_\_  
Name of CM Candidate

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Address

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Date

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# PROPOSAL

**TO: CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT**, a California Community College District, acting by and through its Board of Trustees (“the District”).

**FROM:**

(Name of CM Candidate)
(Address)
(City, State, Zip Code)
(Telephone/Telecopier)
(E-Mail Address)
(Name(s) of Candidate's Authorized Representative(s))

**1. Proposal:**

The undersigned proposer hereby offers, in the amounts stated below, to furnish all services for both the Preconstruction Phase and Construction Phase and to furnish all labor, materials, tools, equipment, apparatus, facilities, transportation, and permits for the construction of Project Number 14-01, Building 2000, Library Renovation Project, Las Positas College, in accordance with all the provisions of the solicitation including appendices, and to the satisfaction of Chabot-Las Positas Community College District.

The proposer also hereby agrees to enter into contract for this project if the District accepts this proposal. The construction budget for this project is approx. \$4,300,000.00.

Proposer shall complete the information in the following table.

	Preconstruction Fee*	Fixed Amount	\$
3.	CM Contingency (not to exceed 3%)	___ % of Construction	\$
4.	CM Home Office Overhead & Profit**	___ % of Construction	\$
	Total Fee and Expenses (#1-3)		\$

The above amounts are to be stated in figures only and are the total amounts proposed for the entire contract work. Any alteration, erasure, or change must be clearly indicated and initialed by the proposer. In the event of any error in the Fee Proposal, the individual fee percentages will prevail. The proposer agrees that the above fees will be held until award of the construction phase in accordance with the



proposed schedule in Article 3. The District reserves the right to reject any and all proposals or to waive any irregularities.

\* Fee shall be inclusive of all of Proposer's profit and all costs expended in pursuit of performing the Services applicable to the Preconstruction Phase, including but not limited to any materials, payroll, overhead and administrative costs, travel and living expenses, licenses, bonds, insurance, incidentals, and any other fees or expenses expended or incurred when necessary for the performance of the Services specified in the SOW applicable to that Phase.

\*\* Fee shall be inclusive of all Proposer's general overhead, profit, all price risk assumed in guaranteeing the GMAX price, and all costs expended in pursuit of performing the Construction Phase Services for the Project as specified in the Statement of Work and in the final approved Construction Documents, including but not limited to any home office materials, payroll, overhead and administrative costs, travel and living expenses, corporate licenses, insurance, incidentals, and any other fees or expenses expended or incurred when necessary for the performance of the Services and completion of the Project, and any other ancillary costs necessary to provide services for the turnover of the Project to the District in a condition fit for its intended use, all to be provided within the planned duration for the construction as specified in this RFP.

The CM at Risk's construction contingency will be provided for the CM's use. The use of this contingency shall cover issues arising from a lack of coordination among and within the subcontractors' bid packages, and for any construction phase changes arising from subcontractors' performance, as determined by the District. The CM shall return any unused portion of this contingency and any other project savings to the District as part of the final Pay Application. Costs incurred due to any issues arising from a lack of coordination among and within the subcontractors' bid packages, and for any construction phase changes arising from subcontractors' performance, in excess of the CM's contingency shall be borne by the CM.

- 1.1 Construction Fee and General Conditions.** The Architect's estimated cost of construction is \$4,300,000. The construction schedule is as stated in Division 00, Special Conditions. The Construction Fee is to be based on Division 00 of the specifications and an estimated construction cost of \$4,300,000.
- 1.2 Basis of Award.** A CM At-Risk Agreement shall be awarded to the CM Candidate with the best value to the District based on the Total Proposal Amount on Line 3 of the proposal and the quality points.
- 1.3 Proposal Amount.** The undersigned CM Candidate proposes and agrees to perform the Contract including, without limitation, providing and furnishing any and all of the labor, materials, tools, equipment and services necessary to complete in a workmanlike manner all of the Work and other obligations required by the Contract Documents. The CM Candidate confirms that it has checked all of the above figures and understands that neither the District nor any of its agents, employees or representatives shall be responsible for any errors or omissions on the part of the undersigned in preparing and submitting this Proposal.
- 1.4 Acknowledgment of Addenda.** The CM Candidate confirms that this Proposal incorporates and is inclusive of, all items or other matters contained in Addenda issued by or on behalf of the District.

\_\_\_\_\_ **Addenda Nos.** \_\_\_\_\_ received, acknowledged  
 (initial) and incorporated into this Proposal.

- 2. **Documents Included in Proposal.** The CM Candidate has submitted with this Proposal the following: (a) Statement of Qualifications; (b) Certification of Pre-Bid Site Visit; and (c) Non-Collusion Affidavit. The CM Candidate acknowledges that if this Proposal and the foregoing documents are not fully in compliance with applicable requirements set forth in the Call for Proposal, the Instructions for CM Candidates and in each of the foregoing documents, the Proposal may be rejected as non-responsive.
  
- 3. **Award of Contract.** If the CM Candidate submitting this Proposal is awarded the Contract, the undersigned will execute and deliver to the District the Contract in the form attached hereto within ten (10) days after notification of award of the Contract. Concurrently with delivery of the executed Agreement to the District, the CM Candidate awarded the Contract shall deliver to the District: (a) Certificates of Insurance evidencing all insurance coverages required under the Contract Documents; (b) the Certificate of Workers' Compensation Insurance; and (c) the Drug-Free Workplace Certificate. Failure of the CM Candidate awarded the Contract to strictly comply with the preceding may result in the District's rescission of the award of the Contract.
  
- 4. **CM/Contractor's License.** The undersigned CM/Contractor is currently and duly licensed in accordance with the California Contractors License Law, California Business & Professions Code §§7000 et seq., under the following classification(s) \_\_\_\_\_ bearing License Number(s) \_\_\_\_\_, with expiration date(s) of \_\_\_\_\_. The CM/Contractor certifies that: (a) it is duly licensed, in the necessary class(es), for performing the Work of the Contract Documents; (b) that such license shall be in full force and effect throughout the duration of the performance of the Work under the Contract Documents; and (c) that all Subcontractors providing or performing any portion of the Work shall be so properly licensed to perform or provide such portion of the Work.
  
- 5. **Acknowledgment and Confirmation.** The undersigned CM/Contractor acknowledges its receipt, review and understanding of the Drawings, the Specifications and other Contract Documents pertaining to the proposed Work. The undersigned certifies that the Contract Documents are, in its opinion, adequate, feasible and complete for providing, performing and constructing the Work in a sound and suitable manner for the use specified and intended by the Contract Documents. The undersigned certifies that it has, or has available, all necessary equipment, personnel, materials, facilities and technical and financial ability to complete the Work for the amount bid herein within the Contract Time and in accordance with the Contract Documents.

By: \_\_\_\_\_  
(Signature)

(Corporate Seal)

\_\_\_\_\_  
(Typed or Printed Name)

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

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# CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT

## Construction Manager at Risk with Guaranteed Maximum Price Preconstruction Services Agreement

THIS AGREEMENT is entered into on \_\_\_\_\_, in the City of Dublin, County of Alameda, State of California, by and between the Trustees of Chabot-Las Positas Community College District (District), and \_\_\_\_\_ hereinafter referred to as CM at Risk.

In consideration of the covenants contained herein, District and CM at Risk agree as follows:

1. A. For:
  - Project Number:
  - Project Name:
  - Campus:
  - Amount:
  - Architect:
  
- B. That CM at Risk shall perform preconstruction services as follows:
  - (1) Design Phase Services: During this phase the CM at Risk shall work closely with the District and the Project Architect (Architect) on the following tasks:
    - a. **Constructability Review.** Construction Manager agrees to perform plan coordination reviews and limited constructability review. In its review of the drawings and specifications and any recommendations regarding such documents pursuant to this Agreement. The Construction Manager does not assume any responsibility for any of the Architect's design errors, omissions and or inconsistencies.
    - b. **Cost Evaluation and Project Budget.** Construction Manager shall evaluate the final construction cost estimate prepared by the Architect. The estimate review shall consider unit prices and current labor, equipment, material and Trade Contractor market conditions.
    - c. **Value Engineering.** Construction Manager shall evaluate the Contract Documents and present any value engineering recommendations to the District, its Consultants, and the Architect for consideration.
    - d. **Trade Contractor Bid Packages.**  
 CM at Risk shall:
      - (i) develop the most logical, competitive, seamless and distinct trade bid packages with all scopes of work included in the packages;
      - (ii) include bid alternatives in certain packages to enable full utilization of the project budget;
      - (iii) utilize the District's Contract General Conditions for soliciting trade bid packages, but develop Special Conditions (with the District's participation and subsequent approval) that address the trade contracts, schedule for trade contracts, and the responsibilities of all parties under a CM at Risk with Guaranteed Maximum Price format, where the CM at Risk bids the project elements and enters into contracts with the trade contractors.

- e. **Agreement on a Guaranteed Maximum Price (GMAX).** If the District and the CM at Risk agree to a Guaranteed Maximum Price, the District shall award a contract to the CM to construct the project for the aggregate of the direct cost of the work, plus the CM's fee for Construction Phase Services, contingency, and overhead and profit. The Construction Budget is \$4,300,000, including the direct construction costs, CM fees, contingency and overhead and profit.
- (2) **Bid Phase Services:** With the review and approval of the District and the assistance of the Architect, the CM at Risk shall solicit and competitively bid trade contractor bid packages complying with the applicable state statutes and Special Conditions and Contract General Conditions as agreed upon by the District and the CM at Risk. The CM at Risk shall:
- a. Develop the Master Project Schedule for inclusion in every trade contractor bid package. The duration of the Master Project Schedule shall be the same as that for the Proposed Construction Schedule, as identified in the Request for Proposal. Also develop and include in the trade contractor bid packages that portion or subset of the Master Project Schedule that applies to that trade.
  - b. Identify a minimum of three qualified trade contractors for each trade bid package, unless approved otherwise in writing by the District' Representative.
  - c. Issue trade contractor bid packages to trade contractors. Identify in the bid packages the construction budget for that trade.
  - d. Receive bids from trade contractors. Review the bids with the District and Architect and identify the lowest responsible bidder for each trade, including alternatives for that trade. If the aggregate of the trade contract bids is over the estimated total project construction budget, then the CM at Risk shall value engineer the project to bring it within the estimated total construction budget. The CM at Risk shall secure the District's approval of all value engineering.
  - e. Agree with the District on a Guaranteed Maximum Price (GMAX) for all construction work for no more than the total project construction budget, as stated in item 1-B (1) (e). The CM at Risk shall warrant the construction documents against ambiguities, conflicts, or omissions in the trade contractor bid packages, and guarantee to the District that the total project shall be built for the available construction budget where the aggregate of all trade contractor bids, including any authorized alternatives, shall be less than, but close to, the construction budget.
  - f. If the direct cost portion of the GMAX exceeds the construction budget, then the CM at Risk shall value engineer the project back within the construction budget at its cost. If the direct cost of GMAX exceeds the construction budget by five percent or more, then the CM at Risk shall also pay the Architect's design fees associated with value engineering the project back into the construction budget.

- C. After reaching agreement on a GMAX, the CM at Risk, by signing this agreement, agrees to execute a contract with the District for the construction phase of the project, and that contract shall incorporate the "Contract Documents" as defined in the Contract General Conditions. Once the District issues a Notice to Proceed for the construction phase of the project, the CM at Risk shall then enter into trade contracts with the lowest responsible bidders in each trade. If the value of the trade contract is greater than one-half of one percent of the Construction Budget, then that trade contractor shall be a listed subcontractor (trade contractor), and the District shall enforce Public Contract Code Section 4100 *et seq.*
- D. Invoices shall be submitted in triplicate, (including contract number, project name and project number) to the attention of the District's Representative at the following address: Chabot-Las Positas Community College District, 7600 Dublin Blvd., 3<sup>rd</sup> Fl., Dublin, CA 94568.
2. District' payment to CM at Risk shall be as follows:
- End of Trade Contractor Bidding Phase and agreement on GMAX, 100% of the service agreement amount CM at Risk shall submit an invoice in triplicate at the end of each phase above, in accordance with the requirements of item 1 D.
3. CM at Risk in the performance of this agreement is an independent contractor and is not an employee, agent, or officer of the District.
4. The District may cancel this agreement should CM at Risk fail to perform in the manner herein provided. In the event of such cancellation, the District shall be relieved of the obligation to make any payment to CM at Risk, and District may proceed with the work in any manner the District deems proper.
5. District may terminate this agreement either upon giving 15 days written notice or upon immediate notice with payment of \$25.00 to CM at Risk. CM at Risk shall be paid for the work satisfactorily completed.
6. CM at Risk shall not delegate duties under this agreement in whole or in part without the prior written approval of the District nor assign any moneys due or to become due hereunder without the written consent of the District.
7. The provisions of this agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.
8. No alteration or variation of the terms of this agreement shall be valid unless made in writing and signed by the parties. Oral understandings or other agreements not incorporated herein shall not be binding.
9. District may issue written amendments with respect to the services to be performed under this agreement at any time prior to the completion of the services. CM at Risk agrees to perform the services under such amendments. In case the District issues amendments, the parties shall negotiate the payment due to CM at Risk and the time for completion of the amended services.
10. Any notice which may be proper or necessary for either of the parties hereto to serve on the other, in case of the District, may be served effectually upon the District by delivering it in writing,

addressed to: Victoria Lamica, Contract Manager, 7600 Dublin Blvd., 3<sup>rd</sup> Floor, Dublin, CA 94568 or by depositing it in a United States mail deposit box with first class postage thereon fully prepaid and addressed to the District at the above-mentioned address; and in the case of the CM at Risk, may be served effectually upon the CM at Risk by delivering it in writing to the CM at Risk at the address appearing on the first page of this Agreement or depositing it in a United States mail deposit box with first class postage thereon fully prepaid, and addressed to the CM at Risk at the CM at Risk's above-mentioned address; or any notice may be served effectually by delivering or mailing it, as in this section provided, addressed to any other place or places, the District or the CM at Risk, by written notice served upon the other from time to time may designate provided, however, that nothing herein shall preclude the giving of the notice by personal service.

11. Fair Employment Practices: In the performance of this agreement, the CM at Risk will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, physical handicap, medical condition, or marital status. The CM at Risk will take action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, national origin, physical handicap, medical condition, or marital status as prohibited by the California Fair Employment and Housing Act (Government Code Section 12900 *et seq.*).
12. CM at Risk shall not utilize any information, not a matter of public record, which is received by reason of this agreement, for pecuniary gain not contemplated by the terms of this agreement, regardless of whether the CM at Risk is or is not under contract at the time such gain is realized. The work performed, including written documents produced by the CM at Risk pursuant to this agreement is the property of the District, and shall not be used in any manner by the CM at Risk unless authorized by the District. Breach of this provision shall make the agreement voidable at the District's option, and the CM at Risk shall be liable for any other damages incurred by the District as the result of such breach.
13. Examination and audit: If the agreement exceeds \$10,000.00, the contracting parties shall be subject to the examination and audit by the District for a period of three years after final payment under the agreement. Further, the CM at Risk shall be subject to examination and audit by the District's Auditor. The examination and audit shall be confined to those matters connected with the performance of this agreement, including, but not limited to, the cost of administering this agreement (Government Code Section 8546.7).
14. Drug-Free Workplace Certification: The CM at Risk hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace.
15. CM at Risk's Insurance: The CM at Risk shall not commence work under this service agreement until it has obtained all the insurance required in this Article, and such insurance has been approved by the District.
  - a. Policies, Coverage and Amounts: CM at Risk shall obtain the following policies and coverage. The insurance furnished by the CM at Risk under this article shall provide coverage in amounts not less than the following:
    - (1) Comprehensive or Commercial Form General Liability Insurance: on an occurrence basis, covering work done or to be done by or on behalf of the CM at Risk and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work.
 

Limits of Liability:	\$2,000,000.00 General Aggregate
----------------------	----------------------------------

\$1,000,000.00 Each Occurrence—  
combined single limit for bodily injury and  
property damage.

- (2) Business Automobile Liability Insurance: on an occurrence basis, covering owned, scheduled, hired, and non owned automobiles used by or on behalf of the CM at Risk and providing insurance for bodily injury, property damage, and contractual liability.

Limits of Liability: \$1,000,000.00 Each Accident—combined  
single limit for bodily injury and property  
damage.

- (3) Workers' Compensation: including Employers Liability limits of \$1,000,000.00 and other limits as required under California law.

- (4) Errors & Omissions Insurance: The CM at Risk shall submit certification of coverage to the District upon signing of this Agreement.

\$2,000,000.00	General Aggregate
\$1,000,000.00	Each Occurrence

b. Verification of Coverage: The CM at Risk shall submit to the District certificates of insurance and original endorsements to the policies of insurance required by the agreement as evidence of the insurance coverage. The scope of coverage and deductible shall be shown on the certificate of insurance. The certificates of insurance and endorsements shall provide for no cancellation or modification of coverage without thirty days written notice to the District, as specified in 15-c (3). Renewal certifications and endorsements shall be timely filed by the CM at Risk for all coverage until the work is accepted as complete. The District reserves the right to require the CM at Risk to furnish the District complete, certified copies of all required insurance policies.

c. Insurance Provisions: The insurance policies shall contain, or be endorsed to contain, the following provisions.

- (1) For the general and automobile liability policies, the State of California, the Trustees of the District, the District, their officers, employees, representatives, volunteers, and agents shall be covered as additional insureds.
- (2) For any claims related to the work, the CM at Risk's insurance coverage shall be primary insurance as respects the District, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the District, their officers, employees, representatives, volunteers, and agents shall be in excess of the CM at Risk's insurance and shall not contribute with it.
- (3) Each insurance policy required by this article shall state that coverage shall not be canceled or modified by either party, except after thirty days prior written notice by certified mail, return receipt requested, has been given to the District.
- (4) The District, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.



- d. Acceptability of Insurers: Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of no less than A-VII, or shall be a carrier otherwise acceptable to the District.
- e. Miscellaneous.
  - (1) Any deductible under any policy of insurance required in this Article shall be CM at Risk's liability.
  - (2) Acceptance of certificates of insurance by the District shall not limit the CM at Risk's liability under the agreement.
  - (3) In the event the CM at Risk does not comply with these insurance requirements, the District may, at its option, provide insurance coverage to protect the District. The CM at Risk shall pay the cost of the insurance and, if prompt payment is not received by the insurance carrier from the CM at Risk, the District may pay for the insurance from agreement sums otherwise due the CM at Risk.
  - (4) If the District is damaged by the failure of CM at Risk to provide or maintain the required insurance, the CM at Risk shall pay the District for all such damages.
  - (5) The CM at Risk's obligations to obtain and maintain all required insurance are non-delegable duties under this agreement.

16. Indemnification: CM at Risk agrees to indemnify, defend and hold harmless the District, and each and every officer, employee, representative, volunteer, and agent of each of them from any and all claims, damages, losses, causes of action and demands and all costs and expenses incurred in connection therewith resulting from or in any manner arising out of or in connection with any negligence or intentional misconduct on the part of the CM at Risk, its agents or employees, in the performance of this agreement.

17. In accordance with Labor Code Section 1720, CM at Risk shall pay employees the minimum prevailing rate wages for inspection, surveying, or similar work during the design, preconstruction, and construction phase of a public works project.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the parties hereto, the day and year first above written.

**CM AT RISK**

\_\_\_\_\_  
(State full legal name of business entity)

\_\_\_\_\_  
Federal ID No. for CM at Risk

Check appropriate box below:

Sole Proprietorship  Partnership  Corporation  Limited Liability  Other (specify)\_\_\_\_\_

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

\_\_\_\_\_  
Company

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## **CONSTRUCTION MANAGEMENT (AT-RISK) CONSTRUCTION AGREEMENT**

This Construction Management Construction Agreement (“Agreement”) is made and entered into between the CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT (hereinafter “District”) and [CM at RISK COMPANY] (hereinafter referred to as “Construction Manager at Risk”) for construction management services to be performed in an “at-risk” capacity, while serving as an agent of the District to facilitate through packaging of complete scopes of work for each separate trade involved, and for the management of separate trade contracts awarded after bidding to ensure timely completion of all work for an agreed price, for the “Construction Manager At-Risk” construction project delivery method for work on the Building 2000, Library Renovation Project (“Project”), located at Las Positas College at 3000 Campus Hill Drive, in the City of Livermore, California.

### **ARTICLE 1 - CONSTRUCTION MANAGER’S SERVICES AND RESPONSIBILITIES**

1. Construction Manager shall provide all work required by the Contract Documents (the “Work”). Construction Manager agrees to do additional Work arising from changes ordered by the District pursuant to Article 9 of the General Conditions.

2. The District and Construction Manager agree that Construction Manager has facilitated and will guarantee construction of the Project for a Base Contract Amount, thorough packaging of complete scopes of work for each separate trade involved, and management of separate trade contracts awarded after bidding, to ensure timely completion of all work for an agreed price, incorporating the Construction Manager’s fee structure set forth herein. The Construction Manager shall aggregate the sum of all separate trade bids added to the fee structure as set forth herein to develop the base contract amount. The sum of all trade bids shall be added to this Construction Manager Construction Agreement by change order.

3. Construction Manager covenants to provide its best skill and judgment in furthering the interests of the District in the management of the construction of the Project. Construction Manager shall be responsible, to the extent described in this Agreement, for ensuring that the Project is properly completed in a competent and professional manner within the District’s budget and in accordance with the District’s schedule for timely completion of the Project.

### **ARTICLE 2 - PRE-BID SERVICES**

1. Constructability Review. Construction Manager agrees to perform plan coordination reviews and limited constructability review. In its review of the drawings and specifications and any recommendations regarding such documents pursuant to this Agreement. The Construction Manager does not assume any responsibility for any of the Architect’s design errors, omissions and or inconsistencies.

2. Cost Evaluation and Project Budget. Construction Manager shall evaluate the final construction cost estimate prepared by the Architect. The estimate review shall consider unit prices and current labor, equipment, material and Trade Contractor market conditions.

3. Value Engineering. Construction Manager shall evaluate the Contract Documents and present any value engineering recommendations to the District, its Consultants, and the Architect for consideration.

### **ARTICLE 3 - BID/AWARD SERVICES PHASE**

1. Summary of General Bid Services. Services to be provided by Construction Manager during the Bid/Award phase for the Project shall include, but are not limited to, providing responsible evaluation, documentation, recommendations and supervision of the following services: establishment of bidding

procedures, generate bidder interest, preparation of legal advertisements, prepare and expedite final bid documents that meet district and government requirements, conduct pre-bid conferences, coordinate bidder inquiries and issuance of addenda, provide bid evaluation and recommendations for award, purchase, delivery and storage of materials and equipment coordination, provide analysis of labor, conduct post-bid interviews, make post-bid value engineering recommendations, and coordinate post-bid contract document submittals. Subcontractors and material suppliers will be required to sign the Construction Manager's standard form of contract and/or purchase order.

2. Bidding Procedures. Construction Manager shall develop and expedite bidding procedures for bid document issuance for the phases of construction, including bid tracking and receipt of proposals with regard to each of the Trade Bid Packages. Construction Manager shall also take the necessary steps to administer any prequalification of potential contractors recommended by Construction Manager and accepted by the District, and ensure that all Trade Bid Packages are competitively bid, as required by Public Contract Code. Bids shall be opened in the presence of the District's representative; it's Consultants and the Architect. Construction Manager shall target a minimum of three (3) bidders for each trade package.

3. Bidder Interest. Construction Manager shall develop bidder interest in the Project and shall maintain contact with potential bidders for the Trade Contracts on a regular basis throughout the bid period. A telephone campaign shall be conducted by the Construction Manager to stimulate and maintain interest by the contracting community in bidding on the Project.

4. Bid Advertisements. Construction Manager shall prepare and place notices to bidders and advertisements to solicit bids for each of the Trade Bid Packages at least once a week for two weeks, as required by Public Contract Code Section 20112, in cooperation with District. Costs for advertisements shall be paid directly by the District.

5. Final Bid Documents. Construction Manager shall prepare, assemble and deliver the final bid documents and any addenda for each of the Trade Bid Packages to the prospective bidders.

6. Pre-Bid Conference(s). In conjunction with the Architect, District and its Consultants, Construction Manager shall conduct the pre-bid conference(s) and site visit meetings with prospective bidders. These conferences will be a forum for the Construction Manager, District, its Consultants and Architect to present the Project requirements to the bidders, including any prequalification requirements, as appropriate, and will familiarize bidders with the Project, bid documents, management techniques and with any special systems, materials or methods.

7. Scope Certification. Construction Manager shall prepare bid tabulations, and provide post analysis summaries. Construction Manager shall forward a copy of the proposed Trade Contract to the District for each bidder recommended by the Construction Manager. Construction Manager shall certify in writing that the number and breakdown of Trade Bid Packages for the Project represents all the work in the plans and specifications for the Project, and that no additional contracts are foreseen to complete the necessary work for the Project. In the event the Trade Contracts and any work deferred for the future does not represent 100% of the work, the additional necessary work will be offset by reasonable allowance or budget prepared by the Construction Manager and agreed to by the District. District shall not unreasonably deny the trade contractors selected by the Construction Manager.

8. Rejection of Bids. The District may, in its sole discretion, reject any and all bids and require any and all packages for the entire Project to be re-bid or any individual bid package to be re-bid.

9. Value Engineering. In the event the bids exceed the Project Cost by ten percent (10%) or more, or District authorizes re-bidding of all or portions of such Project. Construction Manager shall cooperate

with the Architect in revising the scope and the quality of the work as required in reducing the construction costs for the Project. Construction Manager shall cooperate with District and Architect as necessary to bring construction costs within the Project Budget. Notwithstanding the foregoing, District is not obligated to authorize the re-bidding of all or any portions of the Project.

10. Role and Responsibilities of Construction Manager during Construction. The Construction Manager at Risk shall assume the roles and responsibilities of the Contractor as defined in the General Conditions and other Contract Documents are defined herein.

#### **ARTICLE 4 - CONSTRUCTION MANAGER'S REPRESENTATIONS**

1. Construction Manager's Representations. Without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, the Construction Manager makes the following representations to the District:

(a) Construction Manager accepts the relationship of trust and confidence with the District established by the Contract Documents. Construction Manager will cooperate with the District.

(b) Construction Manager has carefully examined the site of the Project, to the extent available, and the adjacent areas, has suitably investigated the nature and location of the Work and has satisfied itself as to the general and local conditions which will be applicable, including but not limited to: (a) conditions related to site access and to the transportation, disposal and handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the site and existing site conditions including: size utility capacities and connection options of external utilities; (e) the surface conditions of the ground; and (f) the character and availability of the equipment and facilities which will be needed prior to and during the performance of Work.

(c) Construction Manager shall establish and administer the Project accounting system in conjunction with District and shall maintain cost accounting records on authorized work performed on the basis of actual costs of labor and materials, or other work requiring accounting records. Construction Manager shall make available to the District and its consultants the Project accounting system and all other records and documents for inspection, review and audit any time during the process of construction and up to two (2) years after Project completion.

#### **ARTICLE 5 - CONTRACT SUM**

1. Contract Sum Amount. Subject to the provisions of the Contract Documents, the District shall pay to the Construction Manager for the performance of the Work, the sum of (Stated In Words) \$\_\_\_\_\_. The Initial Contract Amount includes the General Conditions. The Contract Amount will be increased by the change order for the collective amount of Trade Contracts and material Purchase Orders to develop a Revised Contract Amount.

#### **ARTICLE 6 - BASE CONTRACT AMOUNT**

1. Revised Contract Amount. Within ten (10) calendar days, or as soon as practicable, after any of the Trade Bid Packages have been received, tabulated and accepted by the District, a Revised Contract Amount may be established. Construction Manager shall include with the Revised Contract

Amount a written statement of its basis, which shall include:

- (a) A list of approved Trade Contractor bids and any allowances and a statement of their basis.
- (b) A list of the clarifications and assumptions made by Construction Manager in the preparation of the Revised Contract Amount to supplement the information contained in the Drawings and Specifications.
- (c) The proposed Revised Contract Amount, including a statement of the estimated cost organized by trade categories, allowances, and other items and the associated fee.
- (d) The date of final completion and an updated Master Construction Schedule upon which the date of final completion is based.

2. Non-Acceptance of Proposal. Unless District accepts the Base Contract Amount Proposal in writing within fifteen (15) calendar days of District’s receipt of the Base Contract Amount Proposal, the Base Contract Amount Proposal shall not be effective and this Agreement shall automatically terminate and Construction Manager shall be deemed to have been terminated for convenience in accordance with Section 15 of the General Conditions and entitled to compensation in as defined therein. No other amount shall be paid to Construction Manager or any other subcontractor, supplier, or vendor of any kind.

3. Acceptance of Proposal. Upon acceptance by District of the Base Contract Amount Proposal, District and Construction Manager agree to the following:

- (a) Agreement Amendment-The Base Contract Amount and its basis shall be set forth as an Amendment to this Agreement via the change order process.

4. Adjustment to Fee. Subsequent phases and/or additions of work to the Base Contract Amount may include an appropriate adjustment to Construction Manager’s fee.

**ARTICLE 7 - EXTENT OF AGREEMENT**

This Agreement represents the entire and integrated agreement between District and Construction Manager and supersedes all prior negotiations, representations or agreements, either written oral. This Agreement may be amended only by written instrument signed by both District and Construction Manager.

**ARTICLE 8 - CONTRACT TIME**

The Work shall be commenced on the date stated in the District’s Notice to Proceed; the Contractor shall achieve Substantial Completion of the Work within the Contract Time set forth in the Contract Documents.

**ARTICLE 7 - LIQUIDATED DAMAGES**

If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, including adjustments thereto authorized by the Contract Documents, the Contractor shall be subject to assessment of Liquidated Damages in accordance with the Contract Documents. Failure of the Contractor to complete the Punch list items noted upon Substantial Completion within the time established to complete the Punch list items will result in the District’s assessment of Liquidated Damages in accordance with the Contract Documents.

**ARTICLE 8 - THE CONTRACT DOCUMENTS**

The documents forming a part of the Contract Documents consist of the following, all of which are component parts of the Contract Documents:

- |  |                                      |
|--|--------------------------------------|
| CM At Risk Construction Agreement      | Bonds                                |
| General Conditions                     | Drug-Free Workplace Certification    |
| Special Conditions                     | Certificate of Worker’s Compensation |
| Specifications                         | Non-Collusion Affidavit              |
| Drawings                               | Insurance Certification              |
| Addenda Nos. _____                     | Guarantee                            |
| Asbestos and Other Hazardous Materials | Debris Recycling Statement           |

**ARTICLE 9 - AUTHORITY TO EXECUTE**

The individual(s) executing this Agreement on behalf of the Construction Manager is/are duly and fully authorized to execute this Agreement on behalf of Construction Manager and to bind the Construction Manager to each and every term, condition and covenant of the Contract Documents.

**ARTICLE 10 - SEVERABILITY**

If any part of this Agreement is determined to be illegal or unenforceable, all other parts shall remain in effect. The parties, through their authorized representatives, have executed this Agreement on the dates indicated opposite their signatures.

**CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 2600, SACRAMENTO, CALIFORNIA 95826**

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the District and the Contractor as of the date set forth above.

**“DISTRICT”  
CHABOT-LAS POSITAS COMMUNITY  
COLLEGE DISTRICT**

**“CM/CONTRACTOR”  
(CONTRACTOR NAME)**

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

**Mr. Lorenzo Legaspi  
Vice Chancellor, Business Services**

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

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

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## CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

**PROJECT: PROPOSAL No.: 14-01, Building 2000, Library Renovation Project – Las Positas College**

I, \_\_\_\_\_ the \_\_\_\_\_ of  
(Name) (Title)

\_\_\_\_\_, declare, state and certify that:  
(Contractor Name)

1. I am aware that California Labor Code §3700(a) and (b) 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 one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.”

2. I am aware that the provisions of California Labor Code §3700 require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of this Contract.

\_\_\_\_\_  
(Contractor Name)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or printed name)

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## DRUG-FREE WORKPLACE CERTIFICATION

I, \_\_\_\_\_, am the \_\_\_\_\_ of  
(Print Name) (Title)

\_\_\_\_\_. I declare, state and certify to all of the following:  
(Contractor Name).

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

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

Executed at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_, 2013  
(City and State)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Handwritten or Typed Name)

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## GENERAL CONDITIONS

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- 6.6 Maintenance of Insurance.
- 6.7 Contractor's Insurance Primary.
- 6.8 Indemnity.
- 6.9 Payment Bond; Performance Bond.

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- 7.1 Substantial Completion of the Work Within Contract Time.
- 7.2 Progress and Completion of the Work.
  - 7.2.1 Time of Essence.
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    - 7.2.3.1 Punchlist.
    - 7.2.3.2 Time for Completing Punchlist Items.
  - 7.2.4 Final Completion.
  - 7.2.5 Contractor Responsibility for Multiple Inspections.
  - 7.2.6 Final Acceptance.
- 7.3 Construction Schedule.
  - 7.3.1 General Construction Schedule Requirements.
  - 7.3.2 Submittal of Preliminary Construction Schedule.
  - 7.3.3 Review of Preliminary Construction Schedule.
  - 7.3.4 Preparation of Submittal of Contract Construction Schedule.
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    - 7.3.6.1 Updated Construction Schedule Requirements.
    - 7.3.6.2 Monthly Submission of Updated Construction Schedule.
  - 7.3.7 Contractor Responsibility for Construction Schedule.
  - 7.3.8 Three (3) Week Look-Ahead Schedule; One (1) Week As Built Schedule.
  - 7.3.9 Unanticipated Unusually Severe Weather Conditions.
  - 7.3.10 Construction Schedules; Conditions Precedent To Progress Payment Disbursements.
  - 7.3.11 Contractor Schedule Compliance Obligations.
- 7.4 Adjustment to Contract Time.
  - 7.4.1 Excusable Delays.
  - 7.4.2 Compensable Delays.
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  - 7.4.4 Adjustment of Contract Time.



- 7.4.4.1 Procedure for Adjustment of Contract Time.
  - 7.4.4.1.1 Contractor Notice of Adjustment of Contract Time.
  - 7.4.4.1.2 Time Impact Evaluation.
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- 7.5 Liquidated Damages.
- 7.6 District Right to Take-Over Work.

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- 8.1 Contract Price.
- 8.2 Cost Breakdown.
- 8.3 Progress Payments.
  - 8.3.1 Applications for Progress Payments.
  - 8.3.2 Initial Progress Payment Meeting.
  - 8.3.3 District’s Review of Applications for Progress Payments.
  - 8.3.4 Review of Applications for Progress Payments.
  - 8.3.5 District’s Disbursement of Progress Payments.
    - 8.3.5.1 Timely Distribution of Progress Payments.
    - 8.3.5.2 Untimely Disbursement of Progress Payments.
    - 8.3.5.3 District’s Right to Disburse Progress Payments by Joint Checks.
    - 8.3.5.4 No Waiver of Defective or Non-Conforming Work.
  - 8.3.6 Progress Payments for Changed Work.
  - 8.3.7 Materials or Equipment Not Incorporated into the Work.
    - 8.3.7.1 Limitations Upon Payment.
    - 8.3.7.2 Materials or Equipment Delivered and Stored at the Site.
    - 8.3.7.3 Materials or Equipment Not Delivered or Stored at the Site.
    - 8.3.7.4 Materials or Equipment in Fabrication or Transit.
  - 8.3.8 Exclusions from Progress Payments.
  - 8.3.9 Title to Work.

- 8.3.10 Substitute Security for Retention.
- 8.4 Final Payment.
  - 8.4.1 Application for Final Payment.
  - 8.4.2 Conditions Precedent to Disbursement of Final Payment.
  - 8.4.3 Disbursement of Final Payment.
  - 8.4.4 Waiver of Claims.
  - 8.4.5 Claims Asserted After Final Payment.
- 8.5 Withholding of Payments.
- 8.6 Payments to Subcontractors.
- 8.7 Computerized Job Cost Reporting System.
  - 8.7.1 Job Cost Reporting.
  - 8.7.2 Job Cost Reporting System Requirements.
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- 9.1 Changes in the Work.
- 9.2 Oral Order of Change in the Work.
- 9.3 Contractor Submittal of Data.
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    - 9.4.1.2 Determination by the District.
    - 9.4.1.3 Basis for Adjustment of Contract Price.
      - 9.4.1.3.1 Labor.
      - 9.4.1.3.2 Materials and Equipment.
      - 9.4.1.3.3 Construction Equipment.
      - 9.4.1.3.4 Mark-up on Costs of Changes to the Work.
    - 9.4.1.4 Contractor Maintenance of Records.
  - 9.4.2 Adjustments to Contract Time.
  - 9.4.3 Addition or Deletion of Alternate Bid Item(s).
- 9.5 Change Orders.
- 9.6 Contractor Notice of Changes.
- 9.7 Disputed changes.
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- 10.1 District's Right to Award Separate Contracts.
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- 10.3 Mutual Responsibility.
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- 11.1 Tests; Inspections; Observations.
  - 11.1.1 Contractor's Notice.
  - 11.1.2 Costs of Tests and Inspections.
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- 11.2 Delivery of Certificates.
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- 12.1 Inspection of the Work.
  - 12.1.1 Access to the Work.
  - 12.1.2 Limitations Upon Inspections.
- 12.2 Uncovering of Work.
- 12.3 Rejection of Work.
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- 12.5 Removal of Non-Conforming or Defective Work.
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- 13.1 Workmanship and Materials.
- 13.2 Warranty Work.
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- 14.1 District's Right to Suspend Work.
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- 15.1 Termination for Cause.
  - 15.1.1 District's Right to Terminate.
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  - 15.1.3 Completion by the Surety.
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- 15.1.6 Contractor Responsibility for Damages.
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- 16.1 Governing Law.
- 16.2 Marginal Headings; Interpretation.
- 16.3 Successors and Assigns.
- 16.4 Cumulative Rights and Remedies; No Waiver.
- 16.5 Severability.
- 16.6 No Assignment by Contractor.
- 16.7 Gender and Number.
- 16.8 Independent Contractor Status.
- 16.9 Notices.
- 16.10 Disputes; Continuation of Work.
- 16.11 Dispute Resolution; Arbitration.
  - 16.11.1 Claims Under \$375,000.00.
  - 16.11.2 Government Code Claim Requirements.
  - 16.11.3 Arbitration.
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- 16.12 Capitalized Terms.
- 16.13 Attorneys Fees.
- 16.14 Waiver of Special/Consequential Damages.
- 16.15 Provisions Required by Law Deemed Inserted.
- 16.16 Days.
- 16.17 Prohibited Interests.
- 16.18 Entire Agreement.

## GENERAL CONDITIONS

### ARTICLE 1: DEFINITIONS; GENERAL

- 1.1 District.** The “District” refers to **CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT** and unless otherwise stated, includes the District’s authorized representatives, including the Construction Manager, if a Construction Manager is designated, the District’s Board of Trustees and the District’s officers, employees, agents and representatives.
- 1.2 Contractor.** The Contractor is the person or entity identified as such in the Agreement; references to “Contractor” include the Contractor’s authorized representative.
- 1.3 Architect.** The Architect is the person or entity identified as such in the Agreement; references to the “Architect” includes the Architect’s authorized representative.
- 1.4 The Work.** The “Work” is the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment or services provided or to be provided by the Contractor to fulfill the Contractor’s obligations under the Contract Documents. The Work may constitute the whole or a part of the Project.
- 1.5 The Project.** The Project is the total construction of which the Work performed by the Contractor under the Contract Documents which may be the whole or a part of the Project and which may include construction by the District or by separate contractors.
- 1.6 Surety.** The Surety is the person or entity that executes, as surety, the Contractor’s Labor and Material Payment Bond and/or Performance Bond.
- 1.7 Subcontractors; Sub-Subcontractors.** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work. “Subcontractor” does not include a separate contractor to the District or subcontractors of any separate contractor. A Sub-Subcontractor is a person or entity of any tier, who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site.
- 1.8 Material Supplier.** A Material Supplier is any person or entity who only furnishes materials, equipment or supplies for the Work without fabricating, installing or consuming them in the Work.
- 1.9 Drawings and Specifications.** The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing generally, the design, location and dimensions of the Work and may include without limitation, plans, elevations, sections, details, schedules or diagrams. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services. The Drawings and Specifications are intended to delineate and describe the Work and its component parts so as to permit skilled and competent contractors to bid upon the Work and prosecute the same to completion. Large scale Drawings shall take precedence over smaller scale Drawings as to shape and details of construction. Figured dimensions on Drawings shall govern, but Work which is not dimensioned shall be as directed or required by field conditions. Specifications shall govern as to materials, workmanship and installation procedures.

**1.10 Special Conditions; Supplemental Conditions.** If made a part of the Contract Documents, Special Conditions and Supplemental Conditions are special or supplemental provisions, not otherwise provided for in the Agreement or the General Conditions.

**1.11 Contract Documents.** The Contract Documents consist of the Agreement between the District and the Contractor, Conditions of the Contract (whether General, Special, Supplemental or otherwise), Drawings, Specifications, including addenda thereto issued prior to execution of the Agreement and any other documents listed in the Agreement. The Contract Documents shall include modifications issued after execution of the Agreement. The Contract Documents form the Contract for Construction.

**1.12 Intent and Correlation of Contract Documents.**

**1.12.1 Work of the Contract Documents.** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable therefrom as being necessary to produce the intended results. Organization of the Specifications into divisions, sections or articles, and the arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Where any portion of the Contract Documents is silent and information appears elsewhere in the Contract Documents, such other portions of the Contract Documents shall control.

**1.12.2 Technical Terms.** Unless otherwise stated in the Contract Documents, words or terms which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**1.12.3 Conflict in Contract Documents.** Conflicts, inconsistencies or ambiguities in the Contract Documents shall be resolved by the Architect in accordance with Article 3.1.9 of the General Conditions; where conflicts or inconsistencies arise between the Drawings and the Specifications, in resolving such conflicts or inconsistencies, the Architect will be governed generally by the following standards: the Drawings are intended to describe matters relating to placement, type, quantity and the like; the Specifications are intended to describe matters relating to quality, materials, compositions, manufacturers and the like. If conflicts exist between portions of the Contract Documents regarding the quality of any item, product, equipment or materials, unless otherwise directed or authorized by the District, the Contractor shall provide the item, product, equipment or material of the highest or more stringent quality.

**1.13 Shop Drawings; Samples; Product Data (“Submittals”).** Shop Drawings are diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-Subcontractor, manufacturer, Material Supplier, or distributor to illustrate some portion of the Work. Samples are physical examples of materials, equipment or workmanship forming a part of, or to be incorporated into the Work. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. Shop Drawings, Samples and Product Data prepared or furnished by the Contractor or any of its Subcontractors or Material Suppliers are collectively referred to as “Submittals”.

**1.14 Division of State Architect (“DSA”).** The DSA is the California Division of the State Architect

including without limitation the DSA's Office of Construction Services, Office of Design Services and the Office of Regulatory Services; references to the DSA in the Contract Documents shall mean the DSA, its offices and its authorized employees and agents. The authority of the DSA over the Work and the performance thereof shall be as set forth in the Contract Documents and Title 24 of the California Code of Regulations.

- 1.15 Project Inspector.** The Project Inspector is the individual designated and employed by the District in accordance with the requirements of Title 24 of the California Code of Regulations. The Project Inspector shall be authorized to act on behalf of the District as provided for in the Contract Documents and in Title 24 of the California Code of Regulations, as the same may be amended from time to time.
- 1.16 Contract Document Terms.** The term "provide" means "provide complete in place" or to "furnish and install" such item. Unless otherwise provided in the Contract Documents, the terms "approved;" "directed;" "satisfactory;" "accepted;" "acceptable;" "proper;" "required;" "necessary" and "equal" shall mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the Architect. The term "typical" as used in the Drawings shall require the installation or furnishing of such item(s) of the Work designated as "typical" in all other areas similarly marked as "typical"; Work in such other areas shall conform to that shown as "typical" or as reasonably inferable therefrom.
- 1.17 Contractor's Superintendent.** The Contractor's Superintendent is the individual employed by the Contractor whose principal responsibility shall be the supervision and coordination of the Work; the Contractor's Superintendent shall not perform routine construction labor.
- 1.18 Record Drawings.** The Record Drawings are a set of the Drawings marked by the Contractor during the performance of the Work to indicate completely and accurately the actual as-built condition of the Work. The Record Drawings shall be sufficient for a capable and qualified draftsman to modify the Drawings to reflect and indicate the Work actually in place at Final Completion of the Work.
- 1.19 Construction Manager.** The Construction Manager is an independent contractor retained by the District and is authorized and empowered to act on behalf of the District as set forth in the Contract Documents. The District reserves the right to remove or replace the Construction Manager prior to completion of the Work without adjustment of the Contract Price or the Contract Time or otherwise affect, limit or restrict Contractor's obligations hereunder.
- 1.20 Construction Equipment.** "Construction Equipment" is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.
- 1.21 Site.** The Site is the physical area designated in the Contract Documents for Contractor's performance, construction and installation of the Work.
- 1.22 Field Clarifications.** A written or graphic document consisting of supplementary details, instructions or information issued on behalf of the District which clarifies or supplements the Contract Documents and which becomes a part of the Contract Documents upon issuance. Field Clarifications do not constitute an adjustment of the Contract Time or the Contract Price, unless a Change Order relating to a Field Clarification is authorized and issued under the Contract Documents.
- 1.23 Defective or Non-Conforming Work.** Defective or non-conforming Work is any Work which is unsatisfactory, faulty or deficient by: (a) not conforming to the requirements of the Contract

Documents; (b) not conforming to the standards of workmanship of the applicable trade or industry; (c) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents; or (d) damage occurring prior to Final Completion of all of the Work.

**1.24 Delivery.** The term “delivery” used in conjunction with any equipment, materials or other items to be incorporated into the Work shall mean the unloading and storage in a protected condition pending incorporation into the Work.

**1.25 Notice to Proceed.** The Notice to Proceed is the written notice issued by or on behalf of the District to the Contractor authorizing the Contractor to proceed with commencement of the Work and which establishes the date for commencement of the Contract Time.

**1.26 Progress Reports; Verified Reports.** Progress Reports, if required, are written reports prepared by the Contractor and periodically submitted to the District in the form and content as required by the Contract Documents. Verified Reports are periodic written reports prepared by the Contractor and submitted to the DSA; Verified Reports shall be in such form and content as required by the applicable provisions of Title 24 of the California Code of Regulations. A material obligation of the Contractor is the preparation of complete and accurate Progress Reports, if required, and Verified Reports as well as the timely submission of the same.

## ARTICLE 2: DISTRICT

### 2.1 Information Required of District.

**2.1.1 Surveys; Site Information.** Information, if any, concerning physical characteristics of the Site, including without limitation, surveys, soils reports, and utility locations, to be provided by the District are set forth in the Contract Documents. Information not provided by the District or necessary information in addition to that provided by the District concerning physical characteristics of the Site which is required shall be obtained by Contractor without adjustment to the Contract Price or the Contract Time.

**2.1.2 Permits; Fees.** Except as otherwise provided in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities which relate to the Work of the Contractor under the Contract Documents. If permits and fees are designated as the responsibility of the Contractor under the Contract Documents, the Contractor shall be solely responsible for obtaining the same; the cost of such permits or fees and any costs incurred by the Contractor in obtaining such permits shall be included within the Contract Price.

**2.1.3 Drawings and Specifications.** Except as otherwise provided for in the Contract Documents, the District shall furnish the Contractor, free of charge, the number of copies of the Drawings and the Specifications as set forth in the Special Conditions. All of the Drawings and the Specifications provided by the District to the Contractor remain the property of the District; the Contractor shall not use the Drawings or the Specifications in connection with any other work of improvement other than the Work of the Project.

**2.1.4 Furnishing of Information.** Information or services to be provided by the District under the Contract Documents shall be furnished by the District with reasonable promptness to avoid delay in the orderly progress of the Work. Information about existing conditions furnished by the District under the Contract Documents is obtained from sources believed to

be reliable, but the District neither guarantees nor warrants that such information is complete and accurate. The Contractor shall verify all information provided by the District. To the extent that the Contract Documents depict existing conditions on or about the Site, or the Work involves the renovation, removal or remodeling of existing improvements or the Work involves any tie-in or other connection with any existing improvements, the conditions and/or existing improvements depicted in the Contract Documents are as they are believed to exist. Contractor shall bear the risk of any variations between conditions or existing improvements depicted in the Contract Documents and those conditions or existing improvements actually encountered in the performance of the Work. Subject to the provisions of Article 4.2.3, the existence of any variations between conditions or existing improvements depicted in the Contract Documents and those actually encountered in the performance of the Work shall not result in any District liability therefor, nor shall any such variations result in an adjustment of the Contract Time or the Contract Price.

**2.2 District's Right to Stop the Work.** In addition to the District's right to suspend the Work or terminate the Contract pursuant to the Contract Documents, the District, may, by written order, direct the Contractor to stop the Work, or any portion thereof, until the cause for such stop work order has been eliminated if the Contractor. If the Contractor fails within seven (7) days to correct Work which is not in conformity and in accordance with the requirements of the Contract Documents, or (ii) otherwise fails to carry out the Work in conformity and accordance with the Contract Documents, the District reserves the right to remedy such action. The right of the District to stop the Work hereunder shall not be deemed a duty on the part of the District to exercise such right for the benefit of the Contractor or any other person or entity, nor shall the District's exercise of such right waive or limit the exercise of any other right or remedy of the District under the Contract Documents or at law.

### **2.3 Partial Occupancy or Use.**

**2.3.1 District's Right to Partial Occupancy.** The District may occupy or use any completed or partially completed portion of the Work, provided that: (i) the District has obtained the consent of, or is otherwise authorized by, public authorities with jurisdiction thereof, to so occupy or use such portion of the Work and (ii) the District and the Contractor have accepted, in writing, the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, utilities, damage to the Work, insurance and the period for correction of the Work and commencement of warranties required by the Contract Documents for such portion of the Work partially used or occupied by the District. If the Contractor and the District are unable to agree upon the matters set forth in (ii) above, the District may nevertheless use or occupy any portion of the Work, with the responsibility for such matters subject to resolution in accordance with the Contract Documents. Immediately prior to such partial occupancy or use of the Work, or portions thereof, the District, the Project Inspector, the Contractor and the Architect shall jointly inspect the portions of the Work to be occupied or to be used to determine and record the condition of the Work. Repairs, replacements or other corrective action noted in such inspection shall be promptly performed and completed by the Contractor so that the portion of the Work to be occupied or used by the District is in conformity with the requirements of the Contract Documents and the District's occupancy or use thereof is not impaired. The District's use or occupancy of the Work or portions thereof pursuant to the preceding shall not be deemed "completion" of the Work as that term is used in Public Contract Code §7107.

**2.3.2 No Acceptance of Defective or Nonconforming Work.** Unless otherwise expressly agreed upon by the District and the Contractor, the District's partial occupancy or use of the Work or any portion thereof, shall not constitute the District's acceptance of the Work not

complying with the requirements of the Contract Documents or which is otherwise defective.

**2.4 The Project Inspector.** In addition to the authority and rights of the Project Inspector as provided for elsewhere in the Contract Documents, all of the Work shall be performed under the observation of the Project Inspector. The performance of the duties of the Project Inspector under the Contract Documents shall not relieve or limit the Contractor's performance of its obligations under the Contract Documents.

**2.4.1 Access to Work.** The Contractor shall provide the Project Inspector with access to all parts of the Work at any time, wherever located and whether partially or completely fabricated, manufactured, furnished or installed. The Project Inspector shall have the authority to stop Work if the Work is not in conformity with the Contract Documents.

**2.4.2 Limitations on Project Inspector.** The Project Inspector does not have authority to interpret the Contract Documents or to modify the Work depicted in the Contract Documents. No Work inconsistent with the Contract Documents shall be performed solely on the basis of the direction of the Project Inspector, and the Contractor shall be liable to the District for the consequences of all Work performed on such basis.

### ARTICLE 3: ARCHITECT; CONSTRUCTION MANAGER

#### 3.1 Administration of the Contract.

**3.1.1 Role of the Architect and Construction Manager.** The Architect and the Construction Manager will provide administration of the Contract as described in the Contract Documents, and will be the District's representatives during construction until the time that Final Payment is due the Contractor under the Contract Documents. The Architect and Construction Manager will advise and consult with the District and the Project Inspector with respect to the administration of the Contract and the Work. The Architect is authorized to act on behalf of the District to the extent provided for in the Contract Documents; and shall have the responsibilities and powers established by law, including Title 24 of the California Code of Regulations. The Architect and Construction Manager are authorized to stop the Work whenever deemed necessary in the sole discretion of the Architect or the Construction Manager to insure that the Work is completed in accordance with the Contract Documents.

**3.1.2 Architect's Periodic Site Visits.** The Architect will visit the Site at intervals appropriate to the stage of construction 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. The Architect will not be required to make exhaustive or continuous Site inspections to check quality or quantity of the Work. On the basis of Site observations as an architect, the Architect will keep the District informed of the progress of the Work, and will endeavor to guard the District against defects and deficiencies in the Work.

**3.1.3 Contractor Responsibility for Construction Means, Methods and Sequences.** Neither the Architect or the Construction Manager will have control over or charge of and be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, these being solely the Contractor's responsibility. Neither the Architect nor Construction Manager will have control over or charge of and be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.



**3.1.4 Review of Applications for Payment.** In accordance with Article 8 hereof, the Architect and Construction Manager will review the Contractor's Applications for Progress Payments and for Final Payment, evaluate the extent of Work performed and the amount properly due the Contractor on such Application for Payment.

**3.1.5 Rejection of Work.** The Architect is authorized to reject Work which is defective or does not conform to the requirements of the Contract Documents. Whenever the Architect considers it necessary or advisable, for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspections or testing of the Work, whether or not such Work is fabricated, installed or completed. Neither this authority of the Architect nor a decision made in good faith by the Architect to exercise or not to exercise such authority shall give rise to a duty or responsibility to the Contractor, Subcontractors, Material Suppliers, their agents or employees, or other persons performing portions of the Work.

**3.1.6 Submittals.**

**3.1.6.1 Processing of Submittals Through Construction Manager.** Submittals required by the Contract Documents shall be prepared by or on behalf of the Contractor in accordance with the requirements of the Contract Documents. Submittals shall be transmitted by the Contractor to the Construction Manager for distribution by the Construction Manager to the Architect and the District. Upon completion of the Architect's review of a Submittal, the Construction Manager shall transmit the reviewed Submittal to the Contractor for the Contractor's distribution to its Subcontractor(s) and other affected parties.

**3.1.6.2 Architect's Review.** The Architect will review and approve or take other appropriate action upon the Contractor's Submittals, but only for the limited purpose of checking for general conformance with information given and the design concept expressed in the Contract Documents. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's Submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect's review of Submittals shall not constitute approval of safety measures, programs or precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item in a Submittal shall not indicate approval of an assembly of which the item is a component with the Submittal(s) required and relating to such assembly have been reviewed by the Architect.

**3.1.6.3 Time for Architect's Review.** The Architect's review of Submittals will be conducted promptly so as not to delay or hinder the progress of the Work or the activities of the Contractor, the District or the District's separate contractors while allowing sufficient time, in the Architect's reasonable professional judgment, to permit adequate review of Submittals. The foregoing notwithstanding, the Architect's review and return of Submittals will conform with the time limits and other conditions, if any, set forth in the Specifications or the Submittal Schedule if the Submittal Schedule is required by other provisions of the Contract Documents.

**3.1.7 Changes to the Work; Change Orders.** The Architect and Construction Manager will

prepare Change Orders, and with the written approval of the District, may authorize minor Changes in the Work which do not result in adjustment of the Contract Time or the Contract Price.

**3.1.8 Completion.** The Architect will conduct observations to determine the date(s) of Substantial Completion and the date(s) of Final Completion, will receive and forward to the District, for the District's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and will verify that the Contractor has complied with all requirements of the Contract Documents and is entitled to receipt of Final Payment.

**3.1.9 Interpretation of Contract Documents; Architect as Initial Arbiter of Disputes.** The Architect will interpret and decide matters concerning the requirements of the Contract Documents on written request of either the District or the Contractor. The Architect's response to such requests will be made with reasonable promptness and within the time limits agreed upon, if any. If no agreement is reached establishing the time for the Architect's review and response to requests under this Article 3.1.9, the Architect shall be afforded a fifteen (15) day period after receipt of such request to review and respond thereto. 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 and decisions, the Architect will endeavor to secure faithful performance by both the District and the Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith. The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. If there is any disagreement, dispute or other matter in controversy between the District and the Contractor, in addition to other requirements established by the Contract Documents or by law, the submission of the same to the Architect for its decision shall be a condition precedent to initiation of dispute resolution procedures.

**3.1.10 Request for Information.** If the Contractor encounters any condition which the Contractor believes, in good faith and with reasonable basis, is the result of an ambiguity, conflict, error or omission in the Contract Documents (collectively "the Conditions"), it shall be affirmative obligation of the Contractor to timely notify the Architect, in writing, of the Conditions encountered and to request information from the Architect necessary to address and resolve any such Conditions before proceeding with any portion of the Work affected or which may be affected by such Conditions. If the Contractor fails to timely notify the Architect in writing of any Conditions encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Conditions the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Price. In requesting information of the Architect to address and resolve any Conditions the Contractor shall act with promptness in submitting any such written request so as to allow the Architect a reasonable period of time to review, evaluate and respond to any such request, taking into account the then current status of the progress and completion of the Work and the actual or potential impact of any such Conditions upon the completion of the Work within the Contract Time. The Contract Time shall not be subject to adjustment in the event that the Contractor shall fail to timely request information from the Architect. The Architect's responses to any such Contractor request for information shall conform with the standards and time frame set forth in Article 3.1.9 of these General Conditions. The foregoing provisions notwithstanding, in the event that the Architect reasonably determines that any of Contractor's request(s) for information: (i) does not reflect adequate or competent supervision or coordination by the

Contractor or any Subcontractor; or (ii) does not reflect the Contractor's adequate or competent knowledge of the requirements of the Work or the Contract Documents; or (iii) is not justified for any other reason, Contractor shall be liable to the District for all costs incurred by the District associated with the processing, reviewing, evaluating and responding to any such request for information, including without limitation, fees of the Architect and any other design consultant to the Architect or the District. In responding to any of Contractor's request(s) for information, the Architect shall, in the response, indicate if the Architect has made the determination pursuant to the preceding sentence and, if so, the amount of costs to be borne by the Contractor for the processing, review, evaluation and response to the request for information. Thereafter, the District is authorized to deduct such amount from any portion of the Contract Price then or thereafter due the Contractor.

### **3.1.11 Detail Drawings and Instructions.**

**3.1.11.1 Architect's Additional Details.** In case of ambiguity, conflict, or lack of information, Architect shall furnish additional instructions by means of drawings or otherwise, necessary for proper execution of the Work. All such drawings and instructions shall be consistent with Contract Documents, true developments thereof, and reasonably inferable therefrom. Such additional instructions shall be furnished with reasonable promptness, but not more than fourteen (14) days, provided that Contractor informs Architect and District in writing of the relationship of the requested critical path of the Construction Schedule. Architect will furnish necessary additional details to more fully explain the Work, which details shall be deemed part of the Contract Documents.

**3.1.11.2 Contractor Notice of Impacts.** If the Contractor believes that detail drawings issued by the Architect reflects a change to the scope of work or additional work beyond that reflected in the Contract Documents or reasonably referable therefrom, the Contractor shall give written notice thereof to Architect and District within five (5) days of the receipt of same. If the Contractor does not give the Architect and District such written notice within five (5) days, the details shall be deemed to be reasonable development of the Work depicted in the Contract Documents without adjustment of the Contract Time or the Contract Price. If notice is given by the Contractor, the Contractor shall set forth in detail the extent of Contract Price or Contract Time adjustments resulting from such details along with the basis upon which the requested Contract Time/Contract Price adjustment is computed. The Architect will review any such notice and request for adjustment of the Contract Time/Contract Price and render the Architect's decision in accordance with the Contract Documents.

**3.2 Communications; Role of Construction Manager and Architect.** All communications regarding the Work, the performance thereof or the Contract Documents shall be in writing; verbal communications shall be reduced to writing. Communications between the Contractor and the District or the Architect shall be through the Construction Manager. Communications between separate contractors, if any, shall be through the Construction Manager. All written communications between the Contractor and any Subcontractor, Material Supplier or others directly or indirectly engaged by the Contractor to perform or provide any portion of the Work shall be available to the District, the Construction Manager and the Architect for review, inspection and reproduction as may be requested from time to time. Failure or refusal of the Contractor to permit the District, the Construction Manager or Architect to review, inspect or reproduce such written communications may be deemed a default of Contractor hereunder.

**3.3 Termination of Architect or Construction Manager; Substitute Architect or Construction Manger.** In case of termination of employment of the Architect or the Construction Manager,

the District shall appoint a substitute architect or substitute construction manager whose status under the Contract Documents shall be that of the Architect or the Construction Manager, as applicable.

## **ARTICLE 4: THE CONTRACTOR**

### **4.1 Contractor Review of Contract Documents.**

**4.1.1 Examination of Contract Documents.** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the District pursuant to the Contract Documents and shall at once report to the Architect any errors, inconsistencies or omissions discovered. If the Contractor performs any Work knowing, or with reasonable diligence should have known that, it involves an error, inconsistency or omission in the Contract Documents without prior notice to the Architect of the same, the Contractor shall assume full responsibility for such performance and shall bear all attributable costs for correction of the same.

**4.1.2 Field Measurements.** Prior to commencement of the Work, or portions thereof, the Contractor shall take field measurements and verify field conditions at the Site and shall carefully compare such field measurements and conditions and other information known to the Contractor with information provided in the Contract Documents. Errors, inconsistencies or omissions discovered shall be reported to the Architect at once.

**4.1.3 Dimensions; Layouts and Field Engineering.** Unless otherwise expressly provided, dimensions indicated in the Drawings are intended for reference only. The Drawings are intended to be diagrammatic and schematic in nature; the Contractor shall be solely responsible for coordinating the Work of the Contract Documents. All field engineering required for laying out the Work and establishing grades for earthwork operations shall be by the Contractor at its expense. Any field engineering or other engineering to be provided or performed by the Contractor under the Contract Documents and required or necessary for the proper execution or installation of the Work shall be provided and performed by an engineer duly registered under the laws of the State of California in the engineering discipline for such portion of the Work. Upon commencement of any item of the Work, the Contractor is responsible for dimensions of such item of Work and related Work; without adjustment of the Contract Time or Contract Price, the Contractor is responsible for making component parts of the Work fit together properly.

**4.1.4 Work in Accordance With Contract Documents.** The Contractor shall perform all of the Work in strict conformity with the Contract Documents and approved Submittals.

### **4.2 Site Investigation; Subsurface Conditions.**

**4.2.1 Contractor Investigation.** The Contractor shall be responsible for, and by executing the Agreement acknowledges, that it has carefully examined the Site and has taken all steps it deems reasonably necessary to ascertain all conditions which may effect the Work, or the cost thereof, including, without limitation, conditions bearing upon transportation, disposal, handling or storage of materials; availability of labor and materials; access to the Site; and the physical conditions and the character of equipment, materials, labor and services necessary to perform the Work. Any failure of the Contractor to do so will not relieve it from the responsibility for fully and completely performing all Work without adjustment to the Contract Price or the Contract Time. The District assumes no responsibility to the Contractor for any understandings or representations concerning conditions or characteristics of the

Site, or the Work, made by any of its officers, employees or agents prior to the execution of the Agreement, unless such understandings or representations are expressly set forth in the Agreement.

**4.2.2 Subsurface Data.** By executing the Agreement, the Contractor acknowledges that it has examined the boring data and other subsurface data available and satisfied itself as to the character, quality and quantity of surface and subsurface materials, including without limitation, obstacles which may be encountered in performance of the Work, insofar as this information is reasonably ascertainable from an inspection of the Site, review of available subsurface data and analysis of information furnished by the District under the Contract Documents. Subsurface data or other soils investigation report provided by the District hereunder are not a part of the Contract Documents. Information contained in such data or report regarding subsurface conditions, elevations of existing grades, or below grade elevations are approximate only and is neither guaranteed or warranted by the District to be complete and accurate. The Contractor shall examine all boring and other subsurface data to make its own independent interpretation of the subsurface conditions and acknowledges that its bid is based upon its own opinion of the conditions which may be encountered.

**4.2.3 Subsurface Conditions.** If the Work under the Contract Documents involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly and before the following conditions are disturbed, notify the Project Inspector, in writing, of any: (i) material that the Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I or Class II or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Contract Documents. If upon notice to the District of the conditions described above and upon the District's investigation thereof, the District determines that the conditions so materially differ or involve such hazardous materials which require an adjustment to the Contract Price or the Contract Time, the District shall issue a Change Order in accordance with Article 9 hereof. In accordance with California Public Contract Code §7104, any dispute arising between the Contractor and the District as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse the Contractor from the completion of the Work within the Contract Time and the Contractor shall proceed with all Work to be performed under the Contract Documents. The District reserves the right to terminate the Contract pursuant to Article 15.2 hereof should the District determine not to proceed because of any condition described in (i), (ii) or (iii) above.

### **4.3 Supervision and Construction Procedures.**

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

**4.3.2 Responsibility for the Work.** The Contractor shall be responsible to the District for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and all other persons performing any portion of the Work under a contract with

the Contractor. The Contractor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager, Project Inspector or the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

**4.3.3 Layouts.** The Contractor is solely responsible for laying-out the Work so that construction of the Work conforms to the requirements of the Contract Documents and so that all component parts of the Work are coordinated. The Contractor shall be responsible for maintenance and preservation of benchmarks, reference points and stakes for the Work. The cost of maintenance and preservation of benchmarks, reference points and stakes shall be included within the Contract Price. The Contractor shall be solely responsible for all loss or costs resulting from the loss, destruction, disturbance or damage of benchmarks, reference points or stakes.

**4.3.4 Construction Utilities.** The District will furnish and pay the costs of utility services for the Work as set forth in the Special Conditions; all other utilities necessary to complete the Work and to completely perform all of the Contractors' obligations shall be obtained by the Contractor without adjustment of the Contract Price. The Contractor shall furnish and install necessary or appropriate temporary distributions of utilities, including utilities furnished by the District. Any such temporary distributions shall be removed by the Contractor upon completion of the Work. The costs of all such utility services, including the installation and removal of temporary distributions thereof, shall be borne by the Contractor and included in the Contract Price.

**4.3.5 Existing Utilities; Removal, Relocation and Protection.** In accordance with California Government Code §4215, the District shall assume the responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site which are not identified in the Drawings, Specifications or other Contract Documents. Contractor shall be compensated for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Drawings, Specifications and other Contract Documents with reasonable accuracy and for equipment on the Site necessarily idled during such work. Contractor shall not be assessed Liquidated Damages for delay in completion of the Work when such delay is caused by the failure of the District or the District of the utility to provide for removal or relocation of such utility facilities. Nothing in this Article 4.3.5 shall be deemed to require the District 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, meters and junction boxes, on or adjacent to the Site. If the Contractor encounters utility facilities not identified by the District in the Drawings, Specifications, or other Contract Documents, the Contractor shall immediately notify, in writing, the District, the Project Inspector, the Architect, the Construction Manager and the utility owner. In the event that such utility facilities are owned by a public utility, the public utility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price.

**4.3.6 Conferences and Meetings.** A material obligation of the Contractor under the Contract Documents is the attendance at required meetings by the Contractor's supervisory personnel for the Work and the Contractor's management personnel as required by the Contract Documents or as requested by the District. The Contractor's personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of the Contractor and to bind the Contractor. The Contractor is solely responsible for arranging for

the attendance by Subcontractors, Material Suppliers at meetings and conferences relating to the Work as necessary, appropriate or as requested by the District.

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

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

**4.3.6.3 Special Meetings.** As deemed necessary or appropriate by the District, Special Meetings will be conducted with the participation of the Contractor, Subcontractors and other Project participants as requested by the District.

**4.3.6.4 Minutes of Meetings.** Following conclusion of the Pre-Construction Conference, Progress Meetings and Special Meetings, the Construction Manager will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless the Contractor notifies the Architect and the Construction Manager in writing of objections or corrections to minutes prepared hereunder within five (5) dates of the date of distribution of the minutes, the minutes as distributed shall constitute the official record of the meeting or conference. No objections or corrections of any Subcontractor or Material Supplier shall be submitted directly to the Architect or the Construction Manager; such objections or corrections shall be submitted to the Architect and the Construction Manager through the Contractor. If the Contractor timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next scheduled Progress Meeting.

**4.3.7 Temporary Sanitary Facilities.** At all times during Work at the Site, the Contractor shall obtain and maintain temporary sanitary facilities in conformity with applicable law, rule or regulation. The Contractor shall maintain temporary sanitary facilities in a neat and clean manner with sufficient toilet room supplies. Personnel engaged in the Work are not

permitted to use toilet facilities at the Site.

#### **4.3.8 Noise and Dust Control.**

**4.3.8.1 Noise Control.** The Contractor shall install noise reducing devices on construction equipment. Contractor shall comply with the requirements of the city and county having jurisdiction with regard to noise ordinances governing construction sites and activities. Construction Equipment noise at the Site shall be limited and only as permitted by applicable law, rule or regulation. If classes are in session at any point during the progress of the Work, and, in the District's reasonable discretion, the noise from any Work disrupts or disturbs the students or faculty or the normal operation of the college, at the District's request, the Contractor shall schedule the performance of all such Work around normal college hours or make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall such arrangements result in adjustment of the Contract Price or the Contract Time.

**4.3.8.2 Dust Control.** The Contractor shall be fully and solely responsible for maintaining and upkeeping all areas of the Site and adjoining areas, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to students and District personnel. Additionally, the Contractor shall take specific care to avoid deposits of airborne dust or airborne elements. Such protection devices, systems or methods shall be in accordance with the regulations set forth by the EPA and OSHA, and other applicable law, rule or regulation. Additionally, the Contractor shall be the sole party responsible to regularly and routinely clean up and remove any and all deposits of dust and other elements. Damage and/or any liability derived from the Contractor's failure to comply with these requirements shall be exclusively at the cost of the Contractor, including, without limitation, any and all penalties that may be incurred for violations of applicable law, rule or regulation, and any amounts expended by the District to pay such damages shall be due and payable to the District on demand. Contractor shall replace any damages property or part thereof and professionally clean any and all items that become covered or partially covered to any degree by dust or other airborne elements. If classes are in session at any point during the progress of Work, and, in the District's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from any Work disrupts or disturbs the students or faculty or the normal operation of the college, at the District's request, the Contractor shall schedule the performance of all such Work around normal college hours and make other arrangements so that the Work does not cause such disruption or disturbance. In no event shall such arrangements result in adjustment of the Contract Price or the Contract Time.

**4.3.8.3 Contractor Failure to Comply.** If the Contractor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of the Contract Documents, upon notice from the District, Architect, Project Inspector or Construction Manager to the Contractor, the Contractor shall take immediate action. Should the Contractor fail to respond with immediate and responsive action and not later than twenty-four (24) hours from such notification, the District shall have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all costs incurred by the District in connection with such actions shall be the sole responsibility of, and be borne by, the Contractor; the District may deduct such amounts from the Contract Price then or thereafter due the Contractor.



**4.3.9 Debris Recycling; Contractor Submittal of Debris Recycling Statement.** The Contractor and all Subcontractors shall maintain current, complete and accurate records of debris and other waste (collectively "Waste Materials") resulting from performance of the Work. The Contractor shall compile the records of the Contractor and all Subcontractors on a monthly basis. Based on such compilation, the Contractor shall, each month during performance of the Work, complete the form of Debris Recycling Statement (Attachment C to the Special Conditions) for itself and all Subcontractors performing Work at the Site. The Debris Recycling Statement must be executed by the Contractor's Superintendent, Construction Manager or other authorized employee; the completed/executed form of Debris Recycling Statement shall be submitted by the Contractor to the District each month during the Work concurrently with the Contractor's submission of its Applications for Progress Payment. During the Contract term, monthly records for each calendar year shall be compiled by the Contractor's Superintendent and submitted to the College's Project Manager, no later than January 15<sup>th</sup> of the following year.

#### **4.4 Labor and Materials.**

**4.4.1 Payment for Labor, Materials and Services.** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, Construction Equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work.

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

**4.4.3 Contractor's Superintendent.** Contractor shall employ a competent Superintendent who is fluent in spoken and written English along with necessary assistants who shall be in attendance at the Site at all times during the performance of Work at the Site. Before commencing the Work, Contractor shall designate in writing the name, qualifications, experience and references from owners and architects on previous projects for Contractor's proposed Superintendent who, on approval of District, shall have full authority to represent and act for Contractor. All directions given to the Superintendent shall be as binding as if given to Contractor. A facsimile of the signatures of the authorized representatives of Contractor shall be submitted to Architect and District. The Contractor's communications relating to the Work or the Contract Documents shall be through the Contractor's Superintendent. The Superintendent shall represent the Contractor and communications given to the Superintendent shall be binding as if given to the Contractor. The Contractor shall dismiss the Superintendent or any of his/her assistants if they are deemed, in the sole reasonable judgment of the District, to be unfit, incompetent or incapable of performing the functions assigned to them. In such event, the District shall have the right to approve of the replacement superintendent or assistant. Unless expressly excused by the District, the Contractor's Superintendent shall attend all Project meetings as the Contractor's representative.

#### 4.4.4 Prohibition on Harassment.

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

**4.4.4.2 Contractor's Adoption of Anti-Harassment Policy.** Contractor shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy. Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim. Contractor shall require that any Subcontractor or Sub-subcontractor performing any portion of the Work to adopt and implement policies in conformity with this Article 4.4.4.

**4.4.4.3 Prohibition on Harassment at the Site.** Contractor shall not permit any person, whether employed by Contractor, a Subcontractor, Sub-subcontractor, or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of the Work at or about the Site shall be subject to appropriate sanctions in accordance with the anti-harassment policy adopted and implemented pursuant to Article 4.4.4.2 above. Any person, performing or providing Work on or about the Site engaging in a prohibited form of harassment directed to any student, faculty member or staff of the District or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work. Upon the District's receipt of any notice or complaint that any person employed directly or indirectly by Contractor in performing or providing the Work has engaged in a prohibited form of harassment, the District will promptly undertake an investigation of such notice or complaint. In the event that the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District shall promptly notify the Contractor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the District's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, District shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor shall the Contract Price or the Contract Time be adjusted on account thereof. Contractor and the Surety shall defend, indemnify and hold harmless the District and its employees, officers, board of trustees, agents, and representatives from any and all claims, liabilities, judgments, awards, actions or causes of actions, including without limitation, attorneys' fees, which arise out of, or pertain in any manner to: (i) the assertion by any person dismissed from performing or providing work at the direction of the District pursuant to this Article

4.4.4.3; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of the Contractor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of the Contractor and the Surety under the preceding sentence are in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Contract.

**4.5 Taxes.** The Contractor shall pay, without adjustment of the Contract Price, all sales, consumer, use and other taxes for the Work or portions thereof provided by the Contractor under the Contract Documents.

**4.6 Permits, Fees and Notices; Compliance With Laws.**

**4.6.1 Payment of Permits, Fees.** The District shall secure and pay for the building permits, other permits, governmental fees, licenses and inspections necessary or required for the proper execution and completion of the Work, except as otherwise provided in the Special Conditions. If permits/approvals are designated in the Special Conditions as the Contractor's responsibility, the Contractor shall obtain such permits/approvals at its sole cost and expense without adjustment of the Contract Price. Fees, costs or other expenses associated with or arising in connection with Deferred Approval Items shall be the responsibility of the Contractor without adjustment of the Contract Price.

**4.6.2 Compliance With Laws.** The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and other orders of public authorities bearing on performance of the Work.

**4.6.3 Notice of Variation From Laws.** If the Contractor knows, or has reason to believe, that any portion of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, regulations or rules, the Contractor shall promptly notify the Architect, Construction Manager and the Project Inspector, in writing, of the same. If the Contractor performs Work knowing, or with reasonable diligence should have known, it to be contrary to laws, statutes, ordinances, building codes, rules or regulations applicable to the Work without such notice to the Architect and the Project Inspector, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs arising or associated therefrom, including without limitation, the removal, replacement or correction of the same.

**4.7 Submittals.**

**4.7.1 Purpose of Submittals.** Shop Drawings, Product Data, Samples and similar submittals (collectively "Submittals") are not Contract Documents. The purpose for submission of Submittals is to demonstrate, for those portions of the Work for which Submittals are required, the manner in which the Contractor proposes to provide or incorporate such item of the Work in conformity with the information given and the design concept expressed in the Contract Documents.

**4.7.2 Contractor's Submittals.**

**4.7.2.1 Prompt Submittals.** The Contractor shall review, approve and submit to the Architect or such other person or entity designated by the District, the number of copies of Submittals required by the Contract Documents. All Submittals required by the

Contract Documents shall be prepared, assembled and submitted by the Contractor to the Architect within the time frames set forth in the Submittal Schedule incorporated and made a part of the Approved Construction Schedule prepared and submitted by the Contractor pursuant to Article 7 of these General Conditions. Contractor's submission of Submittals in conformity with the Submittal Schedule is a material obligation of the Contractor. In the event of Contractor's failure or refusal to deliver Submittals to the Architect in accordance with the Submittal Schedule, the Contractor shall be subject to per diem assessments in the amount set forth in the Special Conditions for each day of delayed submission for any Submittal beyond the date set forth in the Submittal Schedule for Contractor's submission of such Submittal. Contractor and District acknowledge and agree that if Contractor shall fail to deliver Submittals in accordance with the Submittal Schedule, the District will incur costs and expenses not contemplated by the Contract Documents, the exact amount of which are difficult to ascertain and fix. Contractor and the District acknowledge and agree that the per diem assessment for delayed submission of Submittals set forth in the Special Conditions represents a reasonable estimate of costs and expenses the District will incur as a result of delayed submission of Submittals and that the same is not a penalty. Notwithstanding Contractor's submission of all required Submittals in accordance with the Submittal Schedule, in the event that the District or the Architect reasonably determines that all or any portion of such Submittals fail to comply with the requirements of Articles 4.7.2.2, 4.7.2.3 and 4.7.2.4 of these General Conditions and/or such Submittals are not otherwise complete and accurate so as to require re-submission, Contractor shall bear all costs associated with the review and approval of the second resubmitted Submittals, including without limitation Architect's fees incurred in connection therewith; provided that such costs are in addition to, and not in lieu of, any per diem assessments imposed under this Article 4.7.2.1 for Contractor's delayed submission of Submittals. In the event of the District's imposition of the per diem assessments due to the Contractor's delayed submission of Submittals or in the event of the District's assessment of costs and expenses incurred to review incomplete or inaccurate Submittals, the District may deduct the same from any portion the Contract Price then or thereafter due the Contractor. Submittals not required by the Contract Documents or which do not otherwise conform to the requirements of the Contract Documents may be returned without action. No adjustment to the Contract Time or the Contract Price shall be granted to the Contractor on account of its failure to make timely submission of any Submittal.

**4.7.2.2 Approval of Subcontractor Submittals.** All Submittals prepared by Subcontractors, of any tier, Material Suppliers, manufacturers or distributors shall bear the written approval of the Contractor thereto prior to submission to the Architect for review. Any Submittal not bearing the Contractor's written approval shall be subject to return to the Contractor for re-submittal in conformity herewith, with the same being deemed to not have been submitted. Any delay, impact or cost associated therewith shall be the sole and exclusive responsibility of the Contractor without adjustment to the Contract Time or the Contract Price.

**4.7.2.3 Verification of Submittal Information.** By approving and submission of Submittals, the Contractor represents to the District and Architect that the Contractor has determined and verified materials, field measurements, field construction criteria, catalog numbers and similar data related thereto and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents. Each Submittal shall include the following certification duly executed by the Contractor's Superintendent or Construction Manager for the Work:

“The Contractor has reviewed and approved the field dimensions and construction criteria of the attached Submittal. The Contractor has verified that the Submittal includes notations of any portion of the Work depicted in the Submittal which is not in strict conformity with the Contract Documents. The information in the attached Submittal has been reviewed and coordinated by the Contractor with information included in other Submittals.”

**4.7.2.4 Contractor Responsibility for Deviations.** The Contractor shall not be relieved of responsibility for correcting deviations from the requirements of the Contract Documents by the Architect's review of Submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submission of the Submittal and the Architect has given written approval to the specific deviation. A material obligation of the Contractor is its specific/detailed identification and notation on the transmittal cover-sheet of each submission of Submittals any deviation between the Work as indicated in the Contract Documents and as indicated in the Submittal. The Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the Architect's review thereof.

**4.7.2.5 No Performance of Work Without Architect Review.** The Contractor shall perform no portion of the Work requiring the Architect's review of Submittals until the Architect has completed its review and returned the Submittal to the Contractor indicating “No Exception Taken” or “Make corrections Noted (No Resubmissions Required)” to such Submittal. The Contractor shall not perform any portion of the Work forming a part of a Submittal or which is affected by a related Submittal until the entirety of the Submittal or other related Submittal has been fully processed. Such Work shall be in accordance with the final action taken by the Architect in review of Submittals and other applicable portions of the Contract Documents.

**4.7.3 Architect Review of Submittals.** The purpose of the Architect's review of Submittals and the time for the Architect's return of Submittals to the Contractor shall be as set forth elsewhere in the Contract Documents. If the Architect returns a Submittal as rejected or requiring correction(s) with re-submission, the Contractor, so as not to delay the progress of the Work, shall promptly thereafter resubmit a Submittal conforming to the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in accordance with the Architect's direction. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals. The Architect's review of the Submittals is for the limited purposes described in the Contract Documents.

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

## **4.8 Materials and Equipment.**

**4.8.1 Specified Materials, Equipment.** References in the Contract Documents to any specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number, with or without the words “or equal” shall be deemed to establish a minimum standard of quality or performance, and shall

not be construed as limiting competition.

**4.8.2 Approval of Substitutions or Alternatives.** The Contractor may propose to furnish alternatives or substitutes for a particular item specified in the Contract Documents, provided that such proposed substitution or alternative complies with the requirements of the Specifications relating to substitutions of specified items and the Contractor certifies to the Architect that the quality, performance capability and functionality (including visual and/or aesthetic effect) of the proposed alternative or substitute will meet or exceed the quality, performance capability and functionality of the item or process specified, and must demonstrate to the Architect that the use of the substitution or alternative is appropriate and will not delay completion of the Work or result in an increase to the Contract Price. The Contractor shall submit engineering, construction, dimension, visual, aesthetic and performance data to the Architect to permit its proper evaluation of the proposed substitution or alternative. If requested by the Architect, Contractor shall promptly furnish any additional information or data regarding a proposed substitution or alternative which the Architect deems reasonably necessary for the evaluation of the proposed substitution or alternative. The Contractor shall not provide, furnish or install any substitution or alternative without the Architect's review and final action on the proposed substitution or alternative; any alternative or substitution installed or incorporated into the Work without first obtaining the Architect's review and final action of the same shall be subject to removal pursuant to Article 12 hereof. The Architect's decision evaluating the Contractor's proposed substitutions or alternatives shall be final. Neither the Contract Time nor the Contract Price shall be increased on account of any substitution or alternative proposed by the Contractor and which is accepted by the Architect; provided, however, that in the event a substitution or alternative accepted by the Architect and purchase, fabrication and/or installation or such accepted substitution or alternative shall be less expensive than the originally specified item, the Contract Price shall be reduced by the actual cost savings realized by the Contractor's furnishing and/or installation of such approved substitution or alternative. The Contractor shall be solely responsible for all costs and fees incurred by the District to review a proposed substitution or alternative, including without limitation fees of the Architect, of the Architect's consultant(s) and/or governmental agencies to review and/or approve any proposed substitution or alternative. The Contractor shall be solely responsible for any increase in the cost of any accepted substitution or alternative or any Work affected by such alternative or substitution. The foregoing notwithstanding, all requests for the Architect's review and approval of any proposed substitution or alternative and all engineering, construction, dimension and performance data substantiating the equivalency of the proposed substitution or alternative shall be submitted by Contractor not later than fifteen (15) working days prior to bid opening; any request for approval of proposed alternatives or substitutions submitted thereafter may be rejected summarily. The foregoing process and time limits shall apply to any proposed substitution or alternative regardless of whether the substitute or alternate item is to be provided, furnished or installed by Contractor, any Subcontractor, any Sub-Subcontractor, Material Supplier or Manufacturer.

**4.8.3 "Sole Source" Products.** If any material, equipment, product or other item is designated in the Contract Documents as a "District Standard" or similar words/terms, the District shall be deemed to have made a finding that such material, equipment, product or other item is designated and specified to match other materials, equipment, products, or other item in use in a completed or to be completed work of improvement and not subject to substitution. If any material, equipment, or other item is identified in the Contract Documents as being the only source of the material, equipment or other item necessary to accomplish the intended result(s), such material, equipment or other item shall not be subject to substitution.

**4.8.4 Placement of Material and Equipment Orders.** Contractor shall, after award of the Contract, promptly and timely place all orders for materials and/or equipment necessary for completion of the Work so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Contractor shall require that any Subcontractor or Sub-Subcontractor performing any portion of the Work similarly place orders for all materials and/or equipment to be furnished by any such Subcontractor or Sub-Subcontractor in a prompt and timely manner so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Upon request of the District, Construction Manager or the Architect, the Contractor shall furnish reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, including without limitation, orders for materials and/or equipment to be provided, furnished or installed by any Subcontractor or Sub-Subcontractor.

**4.8.5 District's Right to Place Orders for Materials and/or Equipment.** Notwithstanding any other provision of the Contract Documents, in the event that the Contractor shall, upon request of the District or the Architect, fail or refuse, for any reason, to provide reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, or should the District determine, in its sole and reasonable discretion, that any orders for materials and/or equipment have not been placed in a manner so that such materials and/or equipment will be delivered to the Site so the Work can be completed without delay or interruption, the District shall have the right, but not the obligation, to place such orders on behalf of the Contractor. If the District exercises the right to place orders for materials and/or equipment pursuant to the foregoing, the District's conduct shall not be deemed to be an exercise, by the District, of any control over the means, methods, techniques, sequences or procedures for completion of the Work, all of which remain the responsibility and obligation of the Contractor. Notwithstanding the right of the District to place orders for materials and/or equipment pursuant to the foregoing, the election of the District to exercise, or not to exercise, such right shall not relieve the Contractor from any of Contractor's obligations under the Contract Documents, including without limitation, completion of the Work within the Contract Time and for the Contract Price. If the District exercises the right hereunder to place orders for materials and/or equipment on behalf of Contractor pursuant to the foregoing, Contractor shall reimburse the District for all costs and fees incurred by the District in placing such orders; such costs and fees may be deducted by the District from the Contract Price then or thereafter due the Contractor.

#### **4.9 Safety.**

**4.9.1 Safety Programs.** The Contractor shall be solely responsible for initiating, maintaining and supervising all safety programs required by applicable law, ordinance, regulation or governmental orders in connection with the performance of the Contract, or otherwise required by the type or nature of the Work. The Contractor's safety program shall include all actions and programs necessary for compliance with California or federally statutorily mandated workplace safety programs, including without limitation, compliance with the California Drug Free Workplace Act of 1990 (California Government Code §§8350 et seq.). Without limiting or relieving the Contractor of its obligations hereunder, the Contractor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs. Prior to commencement of Work at the Site, the Contractor shall provide the Architect, Project Inspector, the Construction Manager and District with the Contractor's proposed safety program for the Work for the Construction Manager's review. The Architect, the Construction Manager and the Project Inspector are authorized to enforce the Contractor's obligation to implement the safety program accepted by the Construction Manager.

**4.9.2 Safety Precautions.** The Contractor shall be solely responsible for initiating and maintaining reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and (iii) other property or items at the site of the Work, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall take adequate precautions and measures to protect existing roads, sidewalks, curbs, pavement, utilities, adjoining property and improvements thereon (including without limitation, protection from settlement or loss of lateral support) and to avoid damage thereto. Without adjustment of the Contract Price or the Contract Time, the Contractor shall repair, replace or restore any damage or destruction of the foregoing items as a result of performance or installation of the Work.

**4.9.3 Safety Signs, Barricades.** The Contractor shall erect and maintain, as required by existing conditions and conditions resulting from performance of the Contract, reasonable safeguards for safety and protection of property and persons, including, without limitation, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Districts and users of adjacent sites and utilities.

**4.9.4 Safety Notices.** The Contractor shall give or post all notices required by applicable law and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**4.9.5 Safety Coordinator.** The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents and the implementation and maintenance safety precautions and programs. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Project Inspector and the Architect.

**4.9.6 Emergencies; First Aid.** In an emergency affecting safety of persons or property, the Contractor shall act, to prevent threatened damage, injury or loss. The Contractor shall maintain stocked emergency first aid kits at the Site which comply with applicable law, rule or regulation.

**4.9.7 Hazardous Materials.**

**4.9.7.1 General.** In the event that the Contractor, any Subcontractor or anyone employed directly or indirectly by them shall use, at the Site, or incorporate into the Work, any material or substance deemed to be hazardous or toxic under any law, rule, ordinance, regulation or interpretation thereof (collectively "Hazardous Materials"), the Contractor shall comply with all laws, rules, ordinances or regulations applicable thereto and shall exercise all necessary safety precautions relating to the use, storage or disposal thereof.

**4.9.7.2 Prohibition on Use of Asbestos Construction Building Materials ("ACBMs").** Notwithstanding any provision of the Drawings or the Specifications to the contrary, it is the intent of the District that ACBMs not be used or incorporated into any portion of the Work. In the event that any portion of the Work depicted in the Drawings or the Specifications shall require materials or products which the Contractor knows, or should



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

**4.9.7.3 Disposal of Hazardous Materials.** Contractor shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about Site resulting from the Contractor's performance of Work and other activities. The Contractor's obligations hereunder shall include without limitation, the transportation and disposal of any Hazardous Materials in strict conformity with any and all applicable laws, regulations, orders, procedures or ordinances.

#### **4.10 Maintenance of Documents.**

**4.10.1 Documents at Site.** The Contractor shall maintain at the Site: (i) one record copy of the Drawings, Specifications and all addenda thereto; (ii) Change Orders approved by the District and all other modifications to the Contract Documents; (iii) Submittals reviewed by the Architect; (iv) Record Drawings; (v) Material Safety Data Sheets ("MSDS") accompanying any materials, equipment or products delivered or stored at the Site or incorporated into the Work; and (vi) all building and other codes or regulations applicable to the Work, including without limitation, Title 24, Part 2 of the California Code of Regulations. During performance of the Work, all documents maintained by Contractor at the Site shall be available to the District, the Construction Manager, the Architect, the Project Inspector and DSA for review, inspection or reproduction. Upon completion of the Work, all documents maintained at the Site by the Contractor pursuant to the foregoing shall be assembled and transmitted to the Architect for delivery to the District.

**4.10.2 Maintenance of Record Drawings.** During its performance of the Work, the Contractor shall maintain Record Drawings consisting of a set of the Drawings which are marked to indicate all field changes made to adapt the Work depicted in the Drawings to field conditions, changes resulting from Change Orders and all concealed or buried installations,

including without limitation, piping, conduit and utility services. All buried or concealed items of Work shall be completely and accurately marked and located on the Record Drawings. The Record Drawings shall be clean and all changes, corrections and dimensions shall be marked in a neat and legible manner in a contrasting color. Record Drawings relating to the Structural, Mechanical, Electrical and Plumbing portions of the Work shall indicate without limitation, circuiting, wiring sizes, equipment/member sizing and shall depict the entirety of the as built conditions of such portions of the Work. The Record Drawings shall be continuously maintained by the Contractor during the performance of the Work. At any time during the Contractor's performance of the Work, upon the request of the District, the Project Inspector or the Architect, the Contractor shall make the Record Drawings maintained here under available for the District's review and inspection. The District's review and inspection of the Record Drawings during the Contractor's performance of the Work shall be only for the purpose of generally verifying that Contractor is continuously maintaining the Record Drawings in a complete and accurate manner; any such inspection or review shall not be deemed to be the District's approval or verification of the completeness or accuracy thereof. The failure or refusal of the Contractor to continuously maintain complete and accurate Record Drawings or to make available the Record Drawings for inspection and review by the District may be deemed by the District to be Contractor's default of a material obligation hereunder. Without waiving, restricting or limiting any other right or remedy of the District for the Contractor's failure or refusal to continuously maintain the Record Drawings, the District may, upon reasonably determining that the Contractor has not, or is not, continuously maintaining the Record Drawings in a complete and accurate manner, take appropriate action to cause the continuous maintenance of complete and accurate Record Drawings, in which event all fees and costs incurred or associated with such action shall be charged to the Contractor and the District may deduct the amount of such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. In accordance with Article 8.4.2 of these General Conditions, prior to receipt of the Final Payment, Contractor shall deliver the Record Drawings to the Construction Manager for transmittal of the District.

**4.11 Use of Site.** The Contractor shall confine operations at the Site to areas permitted by law, ordinances or permits, subject to any restrictions or limitations set forth in the Contract Documents. The Contractor shall not unreasonably encumber the Site or adjoining areas with materials or equipment. The Contractor shall be solely responsible for providing security at the Site with all such costs included in the Contract Price. The District shall at all times have access to the Site.

**4.12 Clean-Up.** The Contractor shall at all times keep the Site and all adjoining areas free from the accumulation of any waste material or rubbish caused or generated by performance of the Work. Without limiting the generality of the foregoing, Contractor shall maintain the Site in a "broom-clean" standard on a daily basis. In the event that the Work of the Contract Documents includes painting and/or the installation of floor covering, prior to commencement of any painting operations or the installation of any flooring covering, the area and adjoining areas of the Site where paint is to be applied or floor covering is to be installed shall be in a "broom-clean" condition. Prior to completion of the Work, Contractor shall remove from the Site all rubbish, waste material, excess excavated material, tools, Construction Equipment, machinery, surplus material and any other items which are not the property of the District under the Contract Documents. At completion of the Work, the Contractor shall clean the building interior and exterior, including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal surfaces, areas where debris, dust and similar items have collected, clean and polish all glass, plumbing fixtures, finish hardware, metal/wood/stone finishes. As directed by the Construction Manager, District or Architect, the Contractor shall remove temporary fencing, barricades, planking, temporary sanitary facilities, temporary utility distributions and other

temporary facilities. Upon completion of the Work, the Site and all adjoining areas shall be left in a neat and broom clean condition satisfactory to District. The Project Inspector or Construction Manager shall be authorized to direct the Contractor's clean-up obligations hereunder. If the Contractor fails to clean up as provided for in the Contract Documents, the District may do so, and all costs incurred in connection therewith shall be charged to the Contractor; the District may deduct such costs from any portion of the Contract Price then or thereafter due the Contractor.

- 4.13 Access to the Work.** The Contractor shall provide the DSA, the District, the Construction Manager, the Project Inspector, the Architect and the Architect's consultant(s) with access to the Work, whether in place, preparation and progress and wherever located.
- 4.14 Information and Facilities/Services for the Project Inspector.** The Contractor shall furnish the Project Inspector access to the Work for obtaining such information as may be necessary to keep the Project Inspector fully informed respecting the progress, quality and character of the Work and materials, equipment or other items incorporated therein. The Contractor shall provide, without adjustment of the Contract Price, for use by the Project Inspector, the District and Construction Manager the facilities, equipment, furnishings and services set forth in the Special Conditions. If the Contractor does not provide the facilities, furnishings, equipment and services set forth in the Special Conditions, or fails to pay timely any charges or fees arising out of the use of the same, the District may, as applicable, procure facilities, furnishings, equipment and services required by the Contract Documents or pay outstanding charges. Contractor shall reimburse the District for all costs, including the District's administrative costs, incurred by the District pursuant to the preceding sentence; in lieu of the Contractor's reimbursement and at the sole and exclusive discretion of the District, such costs may be deducted by the District from any portion of the Contract Price or thereafter due the Contractor.
- 4.15 Patents and Royalties.** The Contractor and the Surety shall defend, indemnify and hold harmless the District and its agents, employees and officers from any claim, demand or legal proceeding arising out of or pertaining, in any manner, to any actual or claimed infringement of patent rights in connection with performance of the Work under the Contract Documents.
- 4.16 Cutting and Patching.** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make the component parts thereof fit together properly. The Contractor shall not damage or endanger any portion of the Work, or the fully or partially completed construction of the District or separate contractors by cutting, patching, excavation or other alteration. When modifying new Work or when installing Work adjacent to an existing structure/facility, the Contractor shall match, as closely as conditions of the Site and materials will allow, the finishes, textures and colors of the existing structure/facility and refinish elements of the existing structure/facility. The Contractor shall not cut, patch or otherwise alter the construction by the District or separate contractor without the prior written consent of the District or separate contractor thereto, which consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold consent to the request of the District or separate contractor to cut, patch or otherwise alter the Work.
- 4.17 Encountering of Hazardous Materials.** In the event the Contractor encounters Hazardous Materials at the Site which have not been rendered harmless or for which there is no provision in the Contract Documents for containment, removal, abatement or handling of such Hazardous Materials, the Contractor shall immediately stop the Work in the affected area, but shall diligently proceed with the Work in all other unaffected areas. Upon encountering such Hazardous Materials, the Contractor shall immediately notify the Project Inspector and the Architect, in writing, of such condition. The Contractor shall proceed with the Work in such

affected area only after such Hazardous Materials have been rendered harmless, contained, removed or abated. In the event such Hazardous Materials are encountered, the Contractor shall be entitled to an adjustment of the Contract Time to the extent that the Work is stopped and Substantial Completion of the Work is affected thereby. In no event shall there be an adjustment to the Contract Price solely on account of the Contractor encountering such Hazardous Materials.

#### **4.18 Wage Rates; Employment of Labor.**

**4.18.1 Determination of Prevailing Rates.** Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2 of the California Labor Code at §§1770 et seq., the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the prevailing rate for holiday and overtime work in the locality in which the Work is to be performed. Holidays shall be as defined in the collective bargaining agreement applicable to each particular craft, classification or type of worker employed under the Contract. Per diem wages include employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided in California Labor Code §1773.8, apprenticeship or other training programs authorized by California Labor Code §3093, and similar purposes when the term “per diem wages” is used herein. Holiday and overtime work, when permitted by law, shall be paid for at the rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. The Contractor shall post, at appropriate and conspicuous locations on the Site, a schedule showing all determined general prevailing wage rates.

**4.18.2 Payment of Prevailing Rates.** There shall be paid each worker of the Contractor, or any Subcontractor, of any tier, engaged in the Work, not less than the general prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor, of any tier, and such worker.

**4.18.3 Prevailing Rate Penalty.** The Contractor shall, as a penalty, forfeit not more than Fifty Dollars (\$50.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier, in connection with the Work. The amount of the penalty for failure to pay applicable prevailing wage rates shall be determined and assessed in accordance with the standards established pursuant to Labor Code §1775(a)(2). The amount of the penalty shall be determined based on consideration of both of the following: (i) whether the failure of the Contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the Contractor or Subcontractor; and (ii) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations. The penalty may not be less than ten dollars (\$10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the Contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor. The penalty may not be less than twenty dollars (\$20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Contractor or Subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned. The penalty may not be less than thirty dollars (\$30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1. When the

penalty amount due hereunder is collected from the Contractor or Subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that Contractor or Subcontractor shall be satisfied before applying that amount to the penalty imposed on that Contractor or Subcontractor hereunder. The difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

**4.18.4 Payroll Records.** Pursuant to California Labor Code §1776, the Contractor and each Subcontractor, of any tier, shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each person employed for the Work. The payroll records shall be certified and available for inspection at all reasonable hours at the principal office of the Contractor on the following basis: (i) a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request; (ii) a certified copy of all payroll records shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations; (iii) a certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, Subcontractors and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor; (iv) the Contractor shall file a certified copy of the payroll records with the entity that requested such records within ten (10) days after receipt of a written request; (v) any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any Subcontractor, of any tier, performing a part of the Work shall not be marked or obliterated. The Contractor shall inform the District of the location of payroll records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change or location and address. In the event of noncompliance with the requirements of this Article 4.18.4, the Contractor shall have ten (10) days in which to comply, subsequent to receipt of written notice specifying in what respects the Contractor must comply herewith. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to the District, forfeit Twenty-Five Dollars (\$25.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from any portion of the Contract Price then or thereafter due the Contractor. The Contractor is solely responsible for compliance with the foregoing provisions.

#### **4.18.5 Hours of Work.**

**4.18.5.1 Limits on Hours of Work.** Pursuant to California Labor Code §1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to California Labor Code §1811, the time of service of any worker employed at any time by the Contractor or by a Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any

one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of Contractor or any Subcontractor, of any tier, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1½) times the basic rate of pay.

**4.18.5.2 Penalty for Excess Hours.** The Contractor shall pay to the District a penalty of Twenty-five Dollars (\$25.00) for each worker employed on the Work by the Contractor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

**4.18.5.3 Contractor Responsibility.** Any Work performed by workers necessary to be performed after regular working hours or on Sundays or other holidays shall be performed without adjustment to the Contract Price or any other additional expense to the District. The Contractor shall be responsible for costs incurred by the District which arise out of Work performed by the Contractor at times other than regular working hours and regular working days. Upon determination of such costs, the District may deduct such costs from the Contract Price then or thereafter due the Contractor.

#### **4.18.6 Apprentices.**

**4.18.6.1 Employment of Apprentices.** Any apprentices employed to perform any of the Work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code §3077 who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code §§3070 et seq. are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

**4.18.6.2 Apprenticeship Certificate.** When the Contractor or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade, the Contractor and such Subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the Work for a certificate approving the Contractor or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected, provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of Apprenticeship. The Joint Apprenticeship Committee or Committees, subsequent to approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or such Subcontractor in order to comply with California Labor Code §1777.5. The Contractor and Subcontractors shall submit contract award information to the applicable Joint Apprenticeship Committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the Joint Apprenticeship Committee

or Committees, administering the apprenticeship standards of the crafts or trades in the area of the site of the Work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local Joint Apprenticeship Committees provided they are already covered by the local apprenticeship standards.

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

**4.18.6.4 Exemption From Ratios.** The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions are met: (i) unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%) or; (ii) the number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen, or; (iii) the Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis, or; (iv) if assignment of an apprentice to any Work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman.

When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

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

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

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



adhere to and comply with the foregoing provisions.

**4.19 Assignment of Antitrust Claims.** Pursuant to California Government Code §4551, the Contractor and its Subcontractor(s), of any tier, hereby offers and agrees to assign to the District all rights, title and interest in and to all causes of action they may have under Section 4 of the Clayton Act, (15 U.S.C. §15) or under the Cartwright Act (California Business and Professions Code §§16700 et seq.), arising from purchases of goods, services or materials hereunder or any Subcontract. This assignment shall be made and become effective at the time the District tenders Final Payment to the Contractor, without further acknowledgment by the parties. If the District receives, either through judgment or settlement, a monetary recovery in connection with a cause of action assigned under California Government Code §§4550 et seq., the assignor thereof shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the Contract Price, less the expenses incurred by the District in obtaining that portion of the recovery. Upon demand in writing by the assignor, the District shall, within one year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose: and (i) the District has not been injured thereby; or (ii) the District declines to file a court action for the cause of action.

**4.20 Limitations Upon Site Activities.** Except in the circumstances of an emergency, no construction activities shall be permitted at or about the Site except during the District's hours and days set forth in the Special Conditions. Work performed outside of the hours and days noted in the Special Conditions will not result in adjustment of the Contract Time or the Contract Price; unless Work outside of the hours and days noted in the Special Conditions is expressly authorized by the District.

**4.21 Labor Compliance Program ("LCP").** Pursuant to Labor Code §1771.7, the District has established a Labor Compliance Program. Unless otherwise expressly provided in the Contract Documents, the LCP is applicable to the entirety of the Work. A material obligation of the Contractor awarded the Contract is its strict compliance with all applicable provisions and requirements of the LCP and its strict enforcement of such provisions and requirements on its Subcontractors and others under the direction or control of the Contractor relating to the Work or the Project. A copy of the LCP is available for review and reproduction in the District's administrative office.

**4.21.1 Pre-Construction Conference.** In addition to the matters included in the scope of the Pre-Conference, as set forth in Article 4.3.6.1 of the General Conditions, the Pre-Construction conference will include a discussion of the subject matters indicated in the Pre-Construction Conference portion of the LCP, including general requirements of the LCP, measures for compliance with, and enforcement of, LCP requirements, and penalties for failure to comply. The Contractor awarded the Contract and each Subcontractor identified by such Contractor in its Subcontractors List submitted with its Bid Proposal. The foregoing notwithstanding, if the District reasonably determines that individuals or entities in addition to the Contractor and its listed Subcontractor are necessary attendees at the Pre-Construction conference, the Contractor is responsible for measures necessary to secure the attendance of such other persons or entities at the Pre-Construction conference.

**4.21.2 Maintenance and Weekly Submission of Certified Payroll Records.** The Contractor and each of its Subcontractors shall maintain accurate, complete and current payroll records as required by the LCP. During the progress of the Work, until Final Payment is due, the

Contractor and its Subcontractors shall maintain and submit Certified Payroll Records on a weekly basis. No later than the 5:00 P.M. on each Monday during the Work, the Contractor shall submit to the Construction Manager Certified Payroll Records for the Contractor and its Subcontractors for all persons providing or performing any Work in the immediately preceding week. The Certified Payroll Records maintained and submitted hereunder shall be in strict conformity with requirements established in the LCP. A material obligation of the Contractor under the Contract Documents is the Contractor's and its Subcontractor's strict compliance with requirements of the LCP relating to maintenance and submission of Certified Payroll Records. The Contractor's submittal of weekly Certified Payroll Records in strict conformity with requirements of the LCP is an express condition precedent to the District's obligation to disburse any Progress Payment to the Contractor and the Contractor's entitlement to receipt of any Progress Payment.

**4.21.3 District Audit of Certified Payroll Records.** Pursuant to the LCP, the District shall, as appropriate or necessary conduct audits of Certified Payroll Records. If upon conducting such audits, the District determines that the Contractor or its Subcontractors have committed violations of the LCP, the Contractor and/or its Subcontractors shall be subject to all penalties, assessments and other remedies set forth in the LCP or by operation of law for such violations.

**4.21.4 Contractor's Rights Upon Determination of Violation.** If upon audit of Certified Payroll Records, the District determines that the Contractor has violated, or failed to comply with, applicable provisions of the LCP, the Contractor shall be subject to the penalties, assessments and other remedies set forth in the LCP for the Contractor's violation of, or failure to comply with, the LCP. To the extent applicable, the Contractor shall be entitled to contest or appeal such determination, as set forth in the LCP, provided that the Contractor strict complies with all applicable provisions of applicable law and the LCP relating to the initiation and completion of proceeding to contest or appeal a determination that the Contractor has committed a violation of, is has failed to comply with, the LCP.

**4.21.5 LCP Not Exclusive.** The LCP is not the exclusive source of Contractor's obligations relating to the payment of prevailing wages and compliance with apprenticeship standards. A material obligation of the Contractor under the Contract Documents is the Contractor's compliance with all applicable laws, codes, regulations, rules and orders relating to the employment of labor, working conditions, and payments to laborers for Work performed or provided by laborers.

**4.22 State Audit.** Pursuant to and in accordance with the provisions of Government Code §8546.7, or any amendments thereto, all books, records and files of the District, the Contractor, or any Subcontractor relating to the Work or the performance of work involving the expenditure of public funds in excess of Ten Thousand Dollars (\$10,000), including, but not limited to, the administration thereof, shall be subject to the examination and audit by the State Auditor of the State of California, at the request of District or as part of any audit of District, for a period of three (3) years after Final Payment is made under this Contract. Contractor shall preserve and cause to be preserved such books, records and files for the audit period. Upon request of the District, the Contractor shall make all such books, records or files available for review, inspection and/or reproduction.

## ARTICLE 5: SUBCONTRACTORS

**5.1 Subcontracts.** Any Work performed for the Contractor by a Subcontractor shall be pursuant to a written agreement between the Contractor and such Subcontractor which specifically

incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required under Article 6 of these General Conditions and the termination provisions of Article 15, and obligates the Subcontractor to assume toward the Contractor all the obligations and responsibilities of the Contractor which by the Contract Documents the Contractor assumes toward the District, the Project Inspector, DSA, the Construction Manager and the Architect. The foregoing notwithstanding, no contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the District, unless the Contract is terminated and District, in writing, elects to assume the Subcontract. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to Article 15.1 hereof, subject to the prior rights of the Surety obligated under a bond relating to the Contract. The Contractor shall provide to the District copies of all executed Subcontracts and Purchase Orders to which Contractor is a party within thirty (30) days after Contractor's execution of the Agreement. During performance of the Work, the Contractor shall, from time to time, as and when requested by the District, the Architect or the Construction Manager provide the District with copies of any and all Subcontracts or Purchase Orders relating to the Work and all modifications thereto. The Contractor's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders in accordance with the two preceding sentences is Contractor's default of a material term of the Contract Documents.

## **5.2 Substitution of Listed Subcontractor.**

**5.2.1 Substitution Process.** Any request of the Contractor to substitute a listed Subcontractor will be considered only if such request is in strict conformity with this Article 5.2 and California Public Contract Code §4107. All costs incurred by the District, including without limitation, costs of the Project Inspector, the Architect, the Construction Manager or attorneys fees in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs may be deducted by the District from the Contract Price then or thereafter due the Contractor.

**5.2.2 Responsibilities of Contractor Upon Substitution of Subcontractor.** The District's consent to Contractor's substitution of a listed Subcontractor shall not relieve Contractor from its obligation to complete the Work within the Contract Time and for the Contract Price. The substitution of a listed Subcontractor shall not, under any circumstance, result in, or give rise to any to any increase of the Contract Price or the Contract Time on account of such substitution. In the event of the District's consent to the substitution of a listed Subcontractor, the Architect shall determine the extent to which, if any, revised or additional Submittals will be required of the newly substituted Subcontractor. In the event that the Architect determines that revised or additional Submittals are required of the newly substituted Subcontractor, the Architect shall promptly notify the Contractor, in writing, of such requirement. In such event, revised or additional Submittals shall be submitted to Architect not later than thirty (30) days following the date of the Architect's written notice to the Contractor pursuant to the foregoing sentence; provided that if in the reasonable and good faith judgment of the Architect, the progress of the Work or completion of the Work requires submission of additional or revised Submittals by the newly substituted Subcontractor in less than thirty (30) days, the Architect shall so state in its written notice to the Contractor. In the event that the revised or additional Submittals are not submitted by Contractor within thirty (30) days, or such earlier time as determined by the Architect pursuant to the preceding sentence, following the Architect's written notice of the requirement for revised or additional Submittals, Contractor shall be subject to the per diem assessments for late Submittals as set forth in Article 4.7.2.1 of these General Conditions. Any revised or additional Submittals required pursuant to this Article

5.2.2 shall conform to the requirements of Article 4.7 of these General Conditions. Contractor shall reimburse the District for all fees and costs, including without limitation fees of the Construction Manager, Architect and/or any design consultant to the Architect or the District and DSA fees, incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to this Article 5.2.2; the District may deduct such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. In the event that additional or revised Submittals are required pursuant to this Article 5.2.2, such requirement shall not result in an increase to the Contract Time or the Contract Price.

- 5.3 Subcontractors' Work.** Whenever the Work of a Subcontractor is dependent upon the Work of the Contractor or another Subcontractor, the Contractor shall require the Subcontractor to: (a) coordinate its Work with the dependent Work; (b) provide necessary dependent data and requirements; (c) supply and/or install items to be built into the dependent Work of others; (d) make appropriate provisions for dependent Work of others; (e) carefully examine and understand the portions of the Contract Documents (including Drawings, Specifications and Field Clarifications) and Submittals relating to the dependent Work; and (f) examine the existing dependent Work and verify that the dependent Work is in proper condition for the Subcontractor's Work. If the dependent Work is not in a proper condition, the Subcontractor shall notify the Contractor in writing and not proceed with the Subcontractor's Work until the dependent Work has been corrected or replaced and is in a proper condition for the Subcontractor's Work.
- 5.4 Subcontractors' Compliance With LCP.** As applicable, each Subcontractor performing Work shall comply with the LCP. A material obligation of the Contractor is its enforcement of Subcontractor obligations relating to the LCP; failure of the Contractor to strictly enforce such Subcontractor obligations is a material obligation of the Contractor under the Contract Documents.

## ARTICLE 6: INSURANCE; INDEMNITY; BONDS

- 6.1 Workers' Compensation Insurance; Employer's Liability Insurance.** The Contractor shall purchase and maintain Workers' Compensation Insurance as will protect the Contractor from claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Contractor shall purchase and maintain Employer's Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee's employment by Contractor. The Employer's Liability Insurance required of Contractor hereunder may be obtained by Contractor as a separate policy of insurance or as an additional coverage under the Workers' Compensation Insurance required to be obtained and maintained by Contractor hereunder. The limits of liability for the Employer's Liability Insurance required hereunder shall be as set forth in the Special Conditions.
- 6.2 Commercial General Liability and Property Insurance.** The Contractor shall purchase and maintain Commercial General Liability and Property Insurance covering the types of claims set forth below which may arise out of or result from Contractor's operations under the Contract Documents and for which the Contractor may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor's employees; (ii) claims for damages insured by usual personal injury liability coverage which are sustained (a) by a person as a result of an offense directly or indirectly related to employment of

such person by the Contractor, or (b) by another person; (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; (v) contractual liability insurance applicable to the Contractor's obligations under the Contract Documents; and (vi) Completed Operations.

**6.3 Builder's Risk "All-Risk" Insurance.** The Contractor shall obtain Builders Risk insurance covering the full insurable value of the Work from risks of loss, damage or destruction of Work in progress or in place at the Site prior to Final Acceptance including without limitation coverage for losses resulting from the perils of fire, malicious mischief, vandalism, and collapse. The Builder's Risk Insurance Policy shall include coverage for seismic risks if so indicated in the Special Conditions.

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

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

**6.4.2 Required Qualifications of Insurers.** The Contractor and Subcontractors' policies of Commercial General Liability and Property/Casualty insurance and the Contractor's Builders Risk insurance will be accepted by the District only if the insurer(s) are: (a) A.M. Best rated A- or better; (b) A.M. Best Financial Size Category VII or higher; and (c) authorized under California law to transact business in the State of California and authorized to issue insurance policies in the State of California. If at any time during performance of the Work, the insurer(s) issuing a policy of insurance covering Commercial General Liability, Property/Casualty or Builder Risk is/are not A.M. Best rated A- or better and is/are not A.M. Best Financial Size Category VII or higher, the Contractor or Subcontractor, as applicable shall within thirty (30) days of the District's written notice of the insufficiency of an insurer to the Contractor, obtain insurance coverage(s) from alternative insurer(s) who is/are then A.M. Best rated A- or better and who is/are A.M. Best Financial Size Category VII or higher. If the Contractor fails to deliver Certificate(s) of Insurance from an alternative insurer(s) meeting or exceeding the A.M. Best rating and A.M. Best Financial Size Category set forth above, within thirty (30) days of the date of the District's issuance of a written notice pursuant to the preceding sentence, in addition to any other right or remedy of the District under the Contract Documents or arising by operation of law, the District may withhold disbursement of any Progress Payment otherwise due hereunder until the Contractor has delivered such Certificate(s) of Insurance from an alternative insurer(s).

**6.5 Evidence of Insurance; Subcontractor's Insurance.**

**6.5.1 Certificates of Insurance.** Prior to commencing the Work, Contractor shall deliver to the District Certificates of Insurance evidencing the insurance coverages required by the Contract Documents. Failure or refusal of the Contractor to so deliver Certificates of Insurance may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents, and thereupon the District may proceed to

exercise any right or remedy provided for under the Contract Documents or at law. The Certificates of Insurance and the insurance policies required by the Contract Documents shall contain a provision that coverages afforded under such policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the District. The insurance policies required of Contractor hereunder shall also name the District, the Architect and the Construction Manager as additional insureds as their interests may appear. Should any policy of insurance be canceled before Final Acceptance of the Work by the District and the Contractor fails to immediately procure replacement insurance as required, the District reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by the District in connection therewith from any sum then or thereafter due the Contractor under the Contract Documents. The Contractor shall, from time to time, furnish the District, when requested, with satisfactory proof of coverage of each type of insurance required by the Contract Documents; failure of the Contractor to comply with the District's request may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents.

**6.5.2 Subcontractors' Insurance.** Contractor shall require that every Subcontractor, of any tier, performing or providing any portion of the Work obtain and maintain the policies of insurance set forth in Articles 6.1 and 6.2 of these General Conditions; the coverages and limits of liability of such policies of insurance to be obtained and maintained by Subcontractors shall be as set forth in the Special Conditions. The policies of insurance to be obtained and maintained by Subcontractors hereunder are in addition to, and not in lieu of, Contractor obtaining and maintaining such policies of insurance. Each of the policies of insurance obtained and maintained by a Subcontractor hereunder shall conform with the requirements of this Article 6. Upon request of the District, Contractor shall promptly deliver to the District Certificates of Insurance evidencing that the Subcontractors have obtained and maintained policies of insurance in conformity with the requirements of this Article 6. Failure or refusal of the Contractor to provide the District with Subcontractors' Certificates of Insurance evidencing the insurance coverages required hereunder is a material default of Contractor hereunder.

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

**6.7 Contractor's Insurance Primary.** All insurance and the coverages thereunder required to be obtained and maintained by Contractor hereunder, if overlapping with any policy of insurance maintained by the District, shall be deemed to be primary and non-contributing with any policy maintained by the District and any policy or coverage thereunder maintained by District shall be deemed excess insurance. To the extent that the District maintains a policy of insurance

covering property damage arising out of the perils of fire or other casualty covered by the Contractor's Builder's Risk Insurance or the Comprehensive General Liability Insurance of the Contractor or any Subcontractor, the District, Contractor and all Subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurance coverages required herein shall be included in the Contract Price.

**6.8 Indemnity.** Unless arising solely out of the active negligence, gross negligence or willful misconduct the District or the Architect, the Contractor shall indemnify, defend and hold harmless the Indemnified Parties who are: (i) the District and its Board of Trustees, officers, employees, agents and representatives (including the Project Inspector); (ii) the Architect and its consultants for the Work and their respective agents and employees; and (iii) the Construction Manager and its agents and employees. The Contractor's obligations hereunder includes indemnity, defense and hold harmless of the Indemnified Parties from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation attorneys fees and costs which arise, in whole or in part, from the Work, the Contract Documents or the acts, omissions or other conduct of the Contractor, any Subcontractor or any person or entity engaged by them for the Work. The Contractor's obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; (iv) Stop Notice claims asserted by any person or entity in connection with the Work; and (v) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions or other conduct of Contractor, any of Contractor's Subcontractors, of any tier, or any other person or entity employed directly or indirectly by Contractor in connection with the Work and their respective agents, officers or employees. The obligations of the Contractor, as set forth in (v) above shall include, without limitation losses, costs, expenses, damages and other claims asserted by any other Contractor to the District in connection with the Work or in connection with a work of improvement related to or affected by the Work. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability subject to Contractor's obligations hereunder, and such action or proceeding names any of the Indemnified Parties as a party thereto, the Contractor shall, at its sole cost and expense, defend the named Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the named Indemnified Parties. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are subject to, or bound by, Contractor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Contractor shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Contractor's obligations hereunder are binding upon Contractor's Performance Bond Surety and these obligations shall survive notwithstanding Contractor's completion of the Work or the termination of the Contract.

**6.9 Payment Bond; Performance Bond.** Prior to commencement of the Work, the Contractor shall furnish a Performance Bond as security for Contractor's faithful performance of the Contract and a Labor and Material Payment Bond as security for payment of persons or entities performing work, labor or furnishing materials in connection with Contractor's performance of the Work under the Contract Documents. Unless otherwise stated in the Special Conditions, the amounts of the Performance Bond and the Payment Bond required hereunder shall be one hundred percent (100%) of the Contract Price. Said Labor and Material Payment Bond and Performance Bond shall be in the form and content set forth in the Contract Documents. The failure or refusal of the Contractor to furnish either the Performance Bond or the Labor and Material Payment Bond in strict conformity with this Article 6.9 may be deemed by the District as a default by the Contractor of a material obligation hereunder. Upon request of the Contractor,

the District may consider and accept, but is not obligated to do so, multiple sureties on such bonds. The Surety on any bond required under the Contract Documents shall be: (i) an Admitted Surety Insurer as that term is defined in California Code of Civil Procedure §995.120; (ii) A.M. Best rated A- or better; and (iii) A.M. Best Financial Size Category VII or better. The Contractor's delivery of Bonds issued by a Surety who does not meet or exceed each of the criteria set forth above will be rejected.

## ARTICLE 7: CONTRACT TIME

**7.1 Substantial Completion of the Work Within Contract Time.** Unless otherwise expressly provided in the Contract Documents, the Contract Time is the period of time, including authorized adjustments thereto, allotted in the Contract Documents for achieving Substantial Completion of the Work. The date for commencement of the Work is the date established by the Notice to Proceed issued by the District pursuant to the Agreement, which shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible. The date of Substantial Completion is the date certified by the Architect and the Project Inspector as such in accordance with the Contract Documents.

### 7.2 Progress and Completion of the Work.

**7.2.1 Time of Essence.** Time limits stated in the Contract Documents are of the essence. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing and achieving Substantial Completion of the Work. The Contractor shall employ and supply a sufficient force of workers, material and equipment, and prosecute the Work with diligence so as to maintain progress, to prevent Work stoppage and to achieve Substantial Completion of the Work within the Contract Time.

**7.2.2 Substantial Completion.** Substantial Completion is that stage in the progress of the Work when the Work is complete in accordance with the Contract Documents so the District can occupy or use the Work for its intended purpose. Substantial Completion shall be determined by the Architect, the Construction Manager and the Project Inspector upon request by the Contractor in accordance with the Contract Documents. The good faith and reasonable determination of Substantial Completion by the Project Inspector, the Construction Manager and the Architect shall be controlling and final.

### 7.2.3 Correction or Completion of the Work After Substantial Completion.

**7.2.3.1 Punchlist.** Upon achieving Substantial Completion of the Work, the District, The Project Inspector, the Construction Manager, the Architect and the Contractor shall jointly review the Work and prepare a comprehensive list of items of the Work to be corrected or completed by the Contractor ("the Punchlist"). The exclusion of, or failure to include, any item on the Punchlist shall not alter or limit the obligation of the Contractor to complete or correct any portion of the Work in accordance with the Contract Documents.

**7.2.3.2 Time for Completing Punchlist Items.** In addition to setting forth items for correction or completion pursuant to Article 7.2.3.1, the Construction Manager, if any, Contractor and Architect shall, after the jointly review, establish a reasonable time for Contractors' completion of all Punchlist items. If mutual agreement is not reached for the Contractor's completion of Punchlist items, the Architect shall determine such time, and in such event, the time determined by the Architect shall be final and binding upon the District and Contractor so long as the Architect's determination is made in good



faith. The Contractor shall promptly and diligently proceed to complete all Punchlist items within the time established. In the event that the Contractor shall fail or refuse, for any reason, to complete all Punchlist items within the time established, Contractor shall be subject to assessment of Liquidated Damages in accordance with Article 7.4 hereof. The foregoing notwithstanding, if the Contractor fails or refuses to complete all Punchlist items, the District may in its sole and exclusive discretion and without further notice to Contractor, elect to cause the completion of all remaining Punchlist items provided, however that such election by the District is in addition to and not in lieu of any other right or remedy of the District under the Contract Documents or at law. If the District elects to complete Punchlist items of the Work, pursuant to the foregoing, Contractor shall be responsible for all costs incurred by the District in connection herewith and the District may deduct such costs from the Contract Price then or thereafter due the Contractor, if these costs exceed the remaining Contract Price due to the Contractor, the Contractor and the Performance Bond Surety are liable to District for any such excess costs

**7.2.4 Final Completion.** Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, the performance of all correction or completion items noted upon Substantial Completion, and the Contract has been otherwise fully performed by the Contractor. Final Completion shall be determined by the Architect and the Project Inspector upon request of the Contractor. The good faith and reasonable determination of Final Completion by the Project Inspector and the Architect shall be controlling and final.

**7.2.5 Contractor Responsibility for Multiple Inspections.** In the event the Contractor shall request determination of Substantial Completion or Final Completion by the Project Inspector and the Architect and it is determined by the Project Inspector and the Architect that the Work does not then justify certification of Substantial Completion or Final Completion and re-inspection is required at a subsequent time to make such determination, the Contractor shall be responsible for all costs of such reinspection, including without limitation, the fees of the Architect and the salary of the Project Inspector. The District may deduct such costs from the Contract Price then due or thereafter due to the Contractor.

**7.2.6 Final Acceptance.** Final Acceptance of the Work shall occur upon approval of the Work by the District's Board of Trustees; such approval shall be submitted for adoption at the next regularly scheduled meeting of the District's Board of Trustees after the determination of Final Completion. The commencement of any warranty or guarantee period under the Contract Documents shall be deemed to be the date upon which the District's Board of Trustees approves of the Final Acceptance of the Work.

### 7.3 Construction Schedule.

**7.3.1 General Construction Schedule Requirements.** Unless otherwise provided in the Special Conditions, the Construction Schedules required under this Article 7 shall; (i) be prepared utilizing the then most recent edition of Primavera Suretrak Project Manager or Primavera Project Planner; (ii) indicate the date(s) for commencement and completion of various portions of the Work including without limitation, procurement, fabrication and delivery of major items, materials or equipment; (iii) indicate manpower and other resources required for completion of each Construction Schedule activity; (iv) indicate costs for completion of each Construction Schedule activity; (v) identify each Submittal required by the Contract Documents, the date for the Contractor's submission of each Submittal and the date for the return of the reviewed Submittal to the Contractor; (vi) no Site activity shall reflect a

duration of less than one (1) or more than fifteen (15) working days; (vii) no more than twenty five percent (25%) of the total number of activities shown on any Construction Schedule shall be critical path activities or near critical path activities; "near critical path" is defined as float less than ten (10) working days; (viii) indicate major milestones, including without limitation, development of Punchlists and completion of Punchlists, equipment start-up and testing, close-out activities; and (ix) shall incorporate an activity code structure sufficient to allow future sorting/grouping by responsibility, Site area/location, CSI divisions and Milestones. Failure by the Contractor to include any element of the Work required by the Contract Documents or completion of the Work shall not excuse the Contractor from completing all work required within the Contract Time, notwithstanding District's, Construction Manager's and Architect's acceptance of any Construction Schedule prepared by the Contractor.

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

**7.3.3 Three (3) Week Look-Ahead Schedule; One (1) Week As Built Schedule.** A combined three (3) week Look-Ahead Schedule for the three (3) week period immediately following each weekly Progress Meeting with a one (1) week As-Built Schedule for the previous week shall be prepared by the Contractor and submitted by the Contractor to the Construction Manager for review and approval at each weekly Progress Meeting. The Contractor's preparation and submittal of the Three (3) Week Look-Ahead Schedule; One (1) Week As Built Schedule described above are material obligations of the Contractor; failure or refusal of the Contractor to strictly comply with the foregoing shall be a basis for the District's exercise of the default termination procedures set forth in the Contract Documents.

**7.3.4 Unanticipated Unusually Severe Weather Conditions.** The Construction Schedule and all subsequent Construction Schedule Updates shall incorporate a critical path activity titled "Remaining Inclement Weather Days" which shall be the last activity in each Construction Schedule prior to the activity titled "Substantial Completion". The Remaining Inclement Weather Days activity shall have an initial duration equal to the total number of allowed "rain days" TBD. The Contractor shall apply in writing to the District to use an Inclement Weather Day only when a critical path activity on the then current Updated Construction Schedule has been delayed because of unanticipated unusually severe weather conditions. If, at Substantial Completion, there are inclement weather days still remaining, the Substantial Completion day shall not be adjusted. If, additional inclement weather days are required, the District shall adjust the Substantial Completion date accordingly.

**7.3.5 Construction Schedules; Conditions Precedent To Progress Payment Disbursements.** In addition to, and not in lieu of conditions precedent set forth elsewhere in the Contract Documents relating to the District's disbursement of Progress Payments, the Contractor's preparation and submission of the Construction Schedule, Construction Schedule Updates and the Three (3) Week Look-Ahead Schedule; One (1) Week As Built Schedule in accordance with the Contract Documents requirements are conditions precedent

to the District's obligation to disburse any Progress Payment to the Contractor.

**7.3.6 Contractor Schedule Compliance Obligations.** If in the sole reasonable judgment of the District: (i) the Contractor's progress of Work is materially behind that indicated in the then current Construction Schedule or (ii) the Contractor's progress of Work will not result in the Contractor's achievement of Substantial Completion within the Contract Time or the Contractor's completion of Milestones/Phases of the Work as required by the Contract Documents, the Contractor shall take the action(s) described herein, as directed or authorized by the District. Unless the actions of the District, Construction Manager, Architect or Project Inspector are the sole causative factors resulting in delayed progress of the Work or the inability to achieve Substantial Completion within the Contract Time, the Contractor's actions hereunder shall not result in adjustment of the Contract Time or the Contract Price. Actions to be directed or authorized by the District include, without limitation, the Contractor's (i) increase of labor resources (whether on-Site or off-Site); (ii) increase the number of working hours per shift, increase the number of shifts per working day, increase the number of working days and/or increase Construction Equipment at the Site; and/or (iii) re-sequence Work activities to achieve maximum concurrent performance and completion of multiple Work activities.

**7.4 Adjustment of Contract Time.** If Substantial Completion is delayed, adjustment, if any, to the Contract Time on account of such delay shall be in accordance with this Article 7.4.

**7.4.1 Excusable Delays.** If Substantial Completion of the Work is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such reasonable period of time as determined by the Architect; Excusable Delays shall not result in any increase in the Contract Price. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of the Contractor, any Subcontractor, Material Supplier or other person directly or indirectly engaged by the Contractor in performance of any portion of the Work. Excusable Delays include unanticipated and unavoidable labor disputes, unusual and unanticipated delays in transportation of equipment, materials or Construction Equipment reasonably necessary for completion and proper execution of the Work, unanticipated unusually severe weather conditions or DSA directive to stop the Work. Neither the financial resources of the Contractor or any person or entity directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor's notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor's request to adjust the Contract Time directly and adversely impacted the critical path of the Work as indicated in the Approved Construction Schedule or the most recent updated Approved Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay. The foregoing provisions notwithstanding, if the Special Conditions set forth a number of "Rain Days" to be anticipated during performance of the Work, the Contract Time shall not be adjusted for rain related unusually severe weather conditions until and unless the actual number of Rain Days during performance of the Work shall exceed those noted in the Special Conditions and such additional Rain Days shall have directly and adversely impacted the critical path of the Work as depicted in the Approved Construction Schedule or the most recent updated Approved

Construction Schedule relative to the date(s) of such additional Rain Days.

**7.4.2 Compensable Delays.** If Substantial Completion of the Work is delayed and such delay is caused by the acts or omissions of the District, the Architect, the Inspector of Record, or separate contractor employed by the District (collectively "Compensable Delays"), upon Contractor's request and notice, in strict conformity with Articles 7 and 9 of these General Conditions, the Contract Time will be adjusted by Change Order for such reasonable period of time as determined by the Architect and the District. In accordance with California Public Contract Code §7102, if the Contractor's progress is delayed by any of the events described in the preceding sentence, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom, provided that the District is liable for the delay, the delay is unreasonable under the circumstances involved and the delay was not within the reasonable contemplation of the District and the Contractor at the time of execution of the Agreement. In such event, Contractor's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or Construction Equipment directly resulting from such delay, and shall exclude indirect or other consequential damages. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents, including without limitation, Articles 9 and 14 of these General Conditions.

**7.4.3 Unexcusable Delays.** Unexcusable Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in Articles 7.4.1 and 7.4.2 above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcusable Delays.

**7.4.4 Adjustment of Contract Time.**

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

**7.4.4.1.1 Contractor Notice of Adjustment of Contract Time.** The Contract Time shall be subject to adjustment only if the Contractor provides notice of an adjustment of the Contract Time and all supporting substantiation and documentation of the basis and extent of the requested Contract Time adjustment in strict conformity to Article 9.6 of these General Conditions.

**7.4.4.1.2 Time Impact Evaluation.** The supporting substantiation and documentation of the basis and extent of Contract Time adjustments required by the provisions of Article 9.6 shall include, without limitation, a complete Time Impact Evaluation ("TIE") of the factors justifying an adjustment of the Contract Time and the extent of such adjustment of the Contract Time.

**7.4.4.2 Limitations Upon Adjustment of Contract Time on Account of Delays.** Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the

number of days from the commencement of the first delay to the cessation of the delay which ends last. If an Unexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcusable Delay. In addition to the foregoing limitations upon extension of the Contract Time, no adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless such delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated Construction Schedule as of the date on which such delay first occurs. The District shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the District shall deny any request by the Contractor for an adjustment of the Contract Time for any delay which does not actually and directly impact Work or Work activities on the critical path of the then current and updated Approved Construction Schedule.

**7.5 Liquidated Damages.** Should the Contractor neglect, fail or refuse to: (i) submit the Construction Schedule within the time set forth in the Contract Documents; (ii) submit Submittals in accordance with Submittal Schedule incorporated into the Construction Schedule; (iii) achieve Substantial Completion of the Work within the Contract Time, (subject to adjustments authorized under the Contract Documents); or (iv) to complete Punchlist items within the time established pursuant to the Contract Documents, the Contractor agrees to pay to the District the amount of per diem Liquidated Damages set forth in the Special Conditions, not as a penalty but as Liquidated Damages. The Liquidated Damages amounts set forth in the Special Conditions are agreed upon by and between the Contractor and the District because of the difficulty of fixing the District's actual damages in the event of the Contractor's delayed submission of the Preliminary Construction Schedule, delayed submission of Submittals, delayed Substantial Completion or delayed completion of Punchlist items. The Contractor and the District specifically agree that said amounts are reasonable estimates of the District's damages in such event, and that such amounts do not constitute a penalty. Liquidated Damages may be deducted by the District from the Contract Price then or thereafter due the Contractor. The Contractor and the Surety shall be liable to the District for any Liquidated Damages exceeding any amount of the Contract Price then held or retained by the District. In the event that the Contractor shall fail or refuse to complete Punchlist items and the District elects to exercise its right to cause completion or correction of such items pursuant to Article 7.2.3.2 hereof, the District's assessment of Liquidated Damages pursuant to the foregoing shall be in addition, and not in lieu of, the District's right to charge Contractor with the cost of completing or correcting such items of the Work, as provided for under Article 7.2.3.2. The Contractor and the District acknowledge and agree that the provisions of this Article 7.5 are reasonable under the circumstances existing at the time of the Contractor's execution of the Agreement.

**7.6 District Right to Take-Over Work.** Unless caused by the District, Architect, Construction Manager or the Project Inspector, if the Contractor fails or refuses, for any reason and at any time, to furnish adequate materials, labor, equipment or services to maintain progress of the Work in accordance with the then current Construction Schedule after twenty-four (24) hours advance written notice from the Construction Manager to the Contractor of its failure or refusal, the District may thereafter furnish or cause to be furnish such materials, labor, equipment or services necessary to maintain progress of the Work in accordance with the then current Construction Schedule. All costs, expenses or other charges (whether direct, indirect and administrative) incurred by the District in furnishing such materials, labor, equipment or services shall be at the sole cost of the Contractor and the District may deduct the same from the Contract Price then or thereafter due the Contractor. The District's exercise of rights pursuant

to the foregoing shall not be deemed a waiver or limitation of any other right or remedy of the District under the Contract Documents.

## **ARTICLE 8: CONTRACT PRICE**

**8.1 Contract Price.** The Contract Price is the amount stated in the Agreement as such, and subject to any authorized adjustments thereto in accordance with the Contract Documents, is the total amount payable by the District to the Contractor for performance of the Work under the Contract Documents. The District's payment of the Contract Price to the Contractor shall be in accordance with the Contract Documents.

**8.2 Cost Breakdown.** Within fifteen (15) days of the execution of the Agreement by Contractor, Contractor shall furnish, on forms provided by the District, a detailed estimate and complete Cost Breakdown of the Contract Price. The Cost Breakdown shall be subject to review and approval by the Construction Manager, Architect and District of the form and content thereof. In the event that the District shall reasonably object to any portion of the Cost Breakdown, within ten (10) days of the District's receipt of the Cost Breakdown, the District shall notify the Contractor, in writing of the District's objection(s) to the Cost Breakdown. Within five (5) days of the date of the District's written objection(s), Contractor shall submit a revised Cost Breakdown to the District, Architect and the Construction Manager for review and acceptance. The foregoing procedure for the preparation, review and approval of the Cost Breakdown shall continue until the District, Architect and the Construction Manager have approved of the entirety of the Cost Breakdown. Once the Cost Breakdown is accepted by the District, Architect and the Construction Manager, the Cost Breakdown shall not be thereafter modified or amended by the Contractor without the prior consent and approval of the District, Architect and the Construction Manager, which may be granted or withheld in their sole reasonable discretion.

### **8.3 Progress Payments.**

**8.3.1 Applications for Progress Payments.** During the Contractor's performance of the Work, the Contractor shall submit monthly, on the first working day of each month, to the Project Inspector, Construction Manager and the Architect, Applications for Progress Payments, on forms approved by the District, setting forth an itemized estimate of Work completed in the preceding month for the purpose of the District's making of Progress Payments thereon. Values utilized in the Applications for Progress Payments shall be based upon the District accepted Cost Breakdown pursuant to Article 8.2 above and such values shall be only for determining the basis of Progress Payments to Contractor, and shall not be considered as fixing a basis for adjustments, whether additive or deductive, to the Contract Price, or for determining the extent of Work actually completed.

**8.3.2 Initial Progress Payment Meeting.** Prior to submitting any Application for Progress Payment and for the purpose of expediting review of Application for Progress Payments and disbursement of Progress Payments, Contractor agrees to meet with the Project Inspector, Construction Manager and Architect to review and discuss each of the Contractor's Proposed Applications for Progress Payment. If any item submitted for payment is disputed during this review, Contractor agrees to use its best efforts to resolve the disputed items with Project Inspector, Construction Manager and Architect before formally submitting the Application for Progress Payment. The Architect, the Construction Manager and District specifically reserve the right to dispute any item included in Contractor's Application for Progress Payment, regardless of whether such item was identified as disputed in the initial review process provided for herein.

**8.3.3 District's Review of Applications for Progress Payments.** In accordance with Public Contract Code §20104.50, upon receipt of an Application for Progress Payment, the District shall cause the same to be reviewed by the Project Inspector, the Construction Manager, if one is designated by the District, and the Architect, as soon as is practicable after receipt of such Application for Progress Payment. Such review shall be for the purpose of determining that the Application for Progress Payment is a proper Progress Payment request. For purposes of this Article 8.3.2, an Application for Progress Payment shall be deemed "proper" only if it is submitted on the form approved by the District, with all of the requested information of such form of Application for Progress Payment completely and accurately provided by the Contractor and such completed Application for Progress Payment is accompanied by: (i) a Certification, executed under penalty of perjury by the Contractor's Superintendent and/or Construction Manager, that all weekly Certified Payroll Records for the Contractor and all Subcontractors required to submit weekly Certified Payroll Records under the LCP for the period of time covered by the Application for Progress Payment have been completed and submitted in strict conformity with the LCP; (ii) Certified Payrolls of the any Subcontractors, of any tier, (who are not required under the LCP to submit Certified Payroll Records on weekly basis) for laborers performing any portion of the Work for which a Progress Payment is requested; (iii) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §3262 of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment requested; (iv) duly completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code §3262 of the Contractor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment received by the Contractor under the prior Application for Progress Payment; (v) an updated Construction Schedule in accordance with Article 7.3.5 of the General Conditions and applicable provisions of the Specifications relating to the Contractor's updates to the Construction Schedule; (vi) for the first (1<sup>st</sup>) Application for Progress Payment, a certification that the Preliminary Construction Schedule conforming to requirements of the Contract Documents has been prepared and submitted by the Contractor; for subsequent Applications for Progress Payment a certification by the Contractor that it has continuously maintained, or caused to maintained, the Record Drawings reflecting the actual as-built conditions of the Work performed be for which the Progress Payment is requested, it being understood that such certification is subject to verification by the District, Architect, Project Inspector or the Construction Manager prior to disbursement of the Progress Payment; and (vii) completed/executed form of Debris Recycling Statement. In accordance with Public Contract Code §20104.50, an Application for Progress Payment determined by the District not to be a proper Application for Progress Payment shall be returned by the District to the Contractor as soon as is practicable after receipt of the same from the Contractor, but in no event not more than seven (7) days after the District's receipt thereof. The District's return of any Application for Progress Payment pursuant to the preceding sentence shall be accompanied by a written document setting forth the reason(s) why the Application for Progress Payment is not proper.

**8.3.4 Review of Applications for Progress Payments.** Upon receipt of an Application for Progress Payment, the Architect, Construction Manager and the Project Inspector shall inspect and verify the Work to determine whether it has been performed in accordance with the terms of the Contract Documents and to determine the portion of the Application for Progress Payment which is properly due to the Contractor under the terms of the Contract Documents.

**8.3.5 District's Disbursement of Progress Payments**

**8.3.5.1 Timely Disbursement of Progress Payments.** In accordance with Public Contract Code §20104.50, within thirty (30) days after the District's receipt of a proper Application for Progress Payment, there shall be paid, by District, to Contractor a sum equal to ninety percent (90%) of the value of the Work indicated in the Application for Progress Payment which is actually in place as of the date of the Application for Progress Payment and as verified and approved by the Project Inspector and the Architect and the pro rata portion of the Contractor's overhead, supervision and general conditions costs and profit for that month; provided, however, that the District's obligation to disburse any Progress Payment shall be subject to the District's receipt of all documents set forth in Article 8.3.3 above, each and all of which are conditions precedent to the District's obligation to disburse Progress Payments. If an Application for Progress Payment is determined not to be proper due to the failure or refusal of the Contractor to submit documents with the Application for Progress Payment, as required by Article 8.3.2, or incompleteness or inaccuracies in any such documents submitted or if it is reasonably determined that the Record Drawings have not been continuously maintained to reflect the actual as built conditions of the Work completed in the period for which the Progress Payment is requested, the thirty (30) day period hereunder for the District's timely disbursement of a Progress Payment shall be deemed to commence on the date that the District is actually in receipt of documents not submitted with the Application for Progress Payment, or corrections to documents with the Application for Progress Payment so as to render them complete and accurate, or the date upon which the Contractor accurately and fully completes preparation of the Record Drawings relating to the Work for which the Progress Payment is requested.

**8.3.5.2 Untimely Disbursement of Progress Payments.** In accordance with Public Contract Code §20104.50, in the event that the District shall fail to make any Progress Payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Progress Payment, the District shall pay the Contractor interest on the undisputed amount of such Application for Progress Payment equal to the legal rate of interest set forth in California Code of Civil Procedure §685.010(a). The foregoing notwithstanding, in the event that the District shall determine that any Application for Progress Payment is not proper, pursuant to Article 8.3.3 above, and the District does not return such Application for Progress Payment within the seven (7) day period provided for in Article 8.3.3, the period of time for the District's disbursement of the Progress Payment on such Application for Progress Payment without incurring the interest liability shall be reduced by the number of days exceeding the seven (7) day return period.

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

**8.3.5.4 No Waiver of Defective or Non-Conforming Work.** The approval of any Application for Progress Payment or the disbursement of any Progress Payment to the Contractor shall not be deemed nor constitute acceptance of defective Work or Work not in conformity with the Contract Documents.

**8.3.6 Progress Payments for Changed Work.** The Contractor's Applications for Progress Payment may include requests for payment on account of Changes in the Work which have been properly authorized and approved by the Project Inspector, the Architect and all other



governmental agencies with jurisdiction over such Change in accordance with the terms of the Contract Documents and for which a Change Order has been issued. Except as provided for herein, no other payment shall be made by the District for Changes in the Work.

### **8.3.7 Materials or Equipment Not Incorporated Into the Work.**

**8.3.7.1 Limitations Upon Payment.** Except as expressly provided for herein, no payments shall be made by the District on account of any item of the Work, including without limitation, materials or equipment which, at the time of the Contractor's submittal of an Application for Progress Payment, has/have not been incorporated into and made a part of the Work.

**8.3.7.2 Materials or Equipment Delivered and Stored at the Site.** The District may, in its sole and exclusive discretion, make payment for materials or equipment not yet incorporated into the Work if, at or prior to the time of the Contractor's submittal of a an Application for Progress Payment incorporating therein a request for payment of such materials or equipment if all of the following are complied with: (i) the materials or equipment have been delivered to the Site; (ii) adequate arrangements, reasonably satisfactory to the District, have been made by the Contractor to store and protect such materials or equipment at the Site including without limitation, insurance reasonably satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage if such coverage is not afforded under the policy of Builder's Risk insurance obtained by the District pursuant to the Contract Documents; and (iii) the establishment of procedures reasonably satisfactory to the District by which title to such materials or equipment will be vested in the District upon the District's payment therefor. The Contractor acknowledges that the discretion to make, or not to make, payment for materials or equipment delivered or stored at the site of the Work pursuant to the preceding sentence shall be exercised exclusively by the District; the District's exercise of discretion not to make payment for materials or equipment delivered or stored at the Site, but not yet incorporated into the Work shall not be deemed the District's default hereunder. In the event that the District shall elect to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements of (ii) and (iii) of this Article 8.3.6.2 shall be borne solely and exclusively by the Contractor and no payment shall be made by the District on account of such costs and expenses.

**8.3.7.3 Materials or Equipment Not Delivered or Stored at the Site.** No payments shall be made by the District for materials or equipment to be incorporated into the Work where such materials or equipment have not been delivered or stored at the Site. The foregoing notwithstanding, the District may, in its sole and exclusive discretion, elect to make payment for materials or equipment not incorporated into the Work and which are not delivered or stored at the Site at or prior to the time of the Contractor's submittal of an Application for Progress Payment incorporating therein a request for payment of such materials or equipment provided that each and all of the following have been complied with: (i) adequate arrangements, reasonably satisfactory to the District, have been made by the Contractor to store and protect such materials or equipment which include without limitation, insurance reasonably satisfactory to the District, covering and protecting against the risk of loss, destruction, theft or other damage to such materials or equipment while in storage if coverage for the same is not afforded under the policy of Builder's Risk insurance obtained by the District pursuant to the Contract Documents; and (ii) the establishment of procedures reasonably satisfactory to

the District by which title to such materials or equipment will be vested in the District upon the District's payment therefor. The Contractor acknowledges that the discretion to make, or not to make, payment for such materials or equipment pursuant to the preceding sentence shall be exercised exclusively by the District; the District's exercise of discretion not to make payment for such materials or equipment shall not be deemed the District's default hereunder. In the event that the District shall elect to make payment for materials or equipment not at the Site, the costs and expenses incurred to comply with the requirements of (i) and (ii) of this Article 8.3.7.3 shall be borne solely and exclusively by the Contractor and no payment shall be made by the District on account of such costs and expenses.

**8.3.7.4 Materials or Equipment in Fabrication or Transit.** The provisions of this Article 8.3.7 notwithstanding, the District shall not make any payment on account of any materials or equipment which are in the process of being fabricated or which are in transit to the Site of or other storage location.

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

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

**8.3.10 Substitute Security for Retention.** In accordance with the provisions of California Public Contract Code §22300, eligible and equivalent securities may be substituted for any monies withheld by the District to ensure the Contractor's performance under the Contract Documents at the request and expense of the Contractor and in conformity with the provisions of California Public Contract Code §22300. The foregoing and the provisions of California Public Contract Code §22300 notwithstanding, failure of the Contractor to request the substitution of eligible and equivalent securities for monies to be withheld by the District prior to the Contractor's submission of its first Application for Progress Payment shall be deemed a waiver of such right.

## **8.4 Final Payment.**

**8.4.1 Application for Final Payment.** When the Contractor has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, the Contractor shall submit an Application for Final Payment on such form as approved by the District. Thereupon, the Architect and the Project Inspector will promptly make a final inspection of the Work and when the Architect and the Project Inspector find the Work acceptable under the Contract Documents and that the Contract has been fully performed by the Contractor, the Architect and the Project Inspector will thereupon promptly approve the

Application for Final Payment, stating that to the best their knowledge, information and belief, the Work has been completed in accordance with the terms of the Contract Documents. The Final Payment shall include the remaining balance of the Contract Price and any retention from Progress Payments previously withheld by the District.

**8.4.2 Conditions Precedent to Disbursement of Final Payment.** Neither Final Payment nor any remaining Contract Price shall become due until the Contractor submits to the District each and all of the following, the submittal of which are conditions precedent to the District's obligation to disburse the Final Payment: (i) an affidavit or certification by the Contractor that payrolls, bills for materials and other indebtedness incurred in connection with the Work for which the District or the District's property may or might be responsible or encumbered have been paid or otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after the Contractor's receipt of Final Payment is currently in effect; (iii) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover any period following Final Payment as required by the Contract Documents; (iv) consent of the Surety on the Labor and Material Payment Bond and Performance Bond, to Final Payment if required; (v) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of the Contractor, Subcontractors of any tier and Material Suppliers in accordance with California Civil Code §3262, with each of the same stating that there are, or will be, no claims for additional compensation after disbursement of the Final Payment; (vi) Operations and Maintenance manuals and separate warranties provided by any manufacturer or distributor of any materials or equipment incorporated into the Work; (vii) the Record Drawings; (viii) the form of Guarantee included in the Contract Documents duly executed by an authorized representative of the Contractor; (ix) any and all other items or documents required by the Contract Documents to be delivered to the District upon completion of the Work; (x) the completion and submittal of all reports required by the Contract Documents, including without limitation, verified reports required by applicable provisions of the California Code of Regulations; and (xi) if required by the District, such other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, stop notices, claims, security interest or encumbrances arising out of the Contract to the extent and in such form as may be required by the District.

**8.4.3 Disbursement of Final Payment.** Provided that the District is then in receipt of all documents and other items in Article 8.4.2 above as conditions precedent to the District's obligation to disburse Final Payment, not later than sixty (60) days following Final Acceptance the District shall disburse the Final Payment to the Contractor. Pursuant to California Public Contract Code §7107, if there is any dispute between the District and the Contractor at the time that disbursement of the Final Payment is due, the District may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute.

**8.4.4 Waiver of Claims.** The Contractor's acceptance of the Final Payment is a waiver and release by the Contractor of any and all claims against the District for compensation or otherwise in connection with the Contractor's performance of the Contract.

**8.4.5 Claims Asserted After Final Payment.** Any lien, stop notice or other claim filed or asserted after the Contractor's acceptance of the Final Payment by any Subcontractor, of any tier, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Contractor who further agrees to indemnify, defend and hold harmless the District and its officers, agents, representatives and employees from and against any claims, demands or judgments arising

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

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

**8.6 Payments to Subcontractors.** The Contractor shall pay all Subcontractors for and on account of Work of the Contract performed by such Subcontractors in accordance with the terms of their respective subcontracts and as provided for pursuant to California Public Contract Code §10262, the provisions of which are deemed incorporated herein by this reference. In the event of the Contractor's failure to make payment to Subcontractors in conformity with California Public Contract Code §10262, the provisions of California Public Contract Code §10253 shall

apply; by this reference, the provisions of California Public Contract Code §10253 are incorporated herein in its entirety, except that the references in said Section 10253 to “the director” shall be deemed to refer to the District. The Contractor shall timely make payment of retention due Subcontractors in accordance with Public Contract Code §7107.

## **8.7 Computerized Job Cost Reporting System.**

**8.7.1 Job Cost Reporting.** The Contractor and each Subcontractor with a Subcontract valued at Five Hundred Thousand Dollars (\$500,000) or greater shall maintain a computerized job cost reporting system conforming to the requirements set forth herein. The computer program(s) utilized by the Contractor and applicable Subcontractors shall be subject to the review and acceptance by the District. The job cost reporting systems for the Work shall be updated in regular intervals of not less than one (1) calendar month.

**8.7.2 Job Cost Reporting System Requirements.** The computerized job cost programs utilized by the Contractor and applicable Subcontractors shall conform and comply with generally accepted accounting principles applied in a consistent manner and with recognized and generally accepted construction industry accounting standards, guidelines and procedures. The job cost reporting system format and configuration shall follow the general format of the District approved Cost Breakdown and budgets established for each line item shall be traceable to a bid estimate of costs. The job cost reporting systems utilized by the Contractor and applicable Subcontractors shall be capable of: (a) providing overall cost status on a monthly and cumulative basis; (b) providing comparative analysis of the original budgeted costs, actual costs, remaining budget, and projected cost of completion; the job cost reporting system shall be capable of providing comparative analysis for individual line items and the totality of the Work reflected in the job cost report and; (c) tracking adjustments to original budget amounts for Changes to the Work (including, without limitation, issued, pending and potential Change Orders).

**8.7.3 Job Cost System Information.** Upon request of the District or the Construction Manager, the Contractor and applicable Subcontractors shall make available written job cost reports and provide the District and the Construction Manager with the electronic files of the then current or requested job cost report. The Contractor’s obligations hereunder are material.

## **ARTICLE 9: CHANGES**

**9.1 Changes in the Work.** The District, at any time, by written order, may make Changes within the general scope of the Work under the Contract Documents or issue additional instructions, require additional Work or direct deletion of Work. The Contractor shall not proceed with any Change involving an increase or decrease in the Contract Price or the Contract Time without prior written authorization from the District. The foregoing notwithstanding, the Contractor shall promptly commence and diligently complete any Change to the Work subject to the District's written authorized issued pursuant to the preceding sentence; the Contractor shall not be relieved or excused from its prompt commencement and diligent completion of any Change subject to the District's written authorization by virtue of the absence or inability of the Contractor and the District to agree upon the extent of any adjustment to the Contract Time or the Contract Price on account of such Change. The issuance of a Change Order pursuant to this Article 9 in connection with any Change authorized by the District under this Article 9.1 shall not be deemed a condition precedent to Contractor's obligation to promptly commence and diligently complete any such Change authorized by the District hereunder. The District's right to make Changes shall not invalidate the Contract nor relieve the Contractor of any liability or

other obligations under the Contract Documents. Any requirement of notice of Changes in the scope of Work to the Surety shall be the responsibility of the Contractor. Changes to the Work depicted or described in the Drawings or the Specifications shall be subject to approval by the DSA. The District may make Changes to bring the Work or the Project into compliance with environmental requirements or standards established by state or federal statutes and regulations enacted after award of the Contract.

**9.2 Oral Order of Change in the Work.** Any oral order, direction, instruction, interpretation, or determination from the District, the Project Inspector or the Architect which in the opinion of the Contractor causes any change to the scope of the Work, or otherwise requires an adjustment to the Contract Price or the Contract Time, shall be treated as a Change only if the Contractor gives the Architect and the Project Inspector written notice within ten (10) days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to address the order, direction, instruction, interpretation or determination giving rise to Contractor's notice. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice within ten (10) days of such order, direction, instruction, interpretation or determination shall be deemed Contractor's waiver of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of such order, direction, instruction, interpretation or determination. The written notice shall state the date, circumstances, extent of adjustment to the Contract Price or the Contract Time, if any, requested, and the source of the order, directions, instructions, interpretation or determination that the Contractor regards as a Change. Unless the Contractor acts in strict accordance with this procedure, any such order, direction, instruction, interpretation or determination shall not be treated as a Change and the Contractor hereby waives any claim for any adjustment to the Contract Price or the Contract Time on account thereof.

**9.3 Contractor Submittal of Data.** Within ten (10) days after receipt of a written order directing a Change in the Work or furnishing the written notice regarding any oral order directing a Change in the Work, the Contractor shall submit to the Architect, the Project Inspector, the Construction Manager and the District a detailed written statement setting forth the general nature of the Change, the amount of any adjustment to the Contract Price on account thereof, properly itemized and supported by sufficient substantiating data to permit evaluation of the same, and the extent of adjustment of the Contract Time, if any, required by such Change. No claim or adjustment to the Contract Price or the Contract Time shall be allowed if not asserted by the Contractor in strict conformity herewith or if asserted after Final Payment is made under the Contract Documents.

**9.4 Adjustment to Contract Price and Contract Time on Account of Changes to the Work.**

**9.4.1 Adjustment to Contract Price.** Adjustments to the Contract Price due to Changes in the Work shall be determined by application of one of the following methods, in the following order of priority:

**9.4.1.1 Mutual Agreement.** By negotiation and mutual agreement, on a lump sum basis, between the District and the Contractor on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change. Upon request of the District or the Architect, the Contractor shall provide a detailed estimate of increase or decrease in costs directly associated with performance of the Change along with cost breakdowns of the components of the Change and supporting data and documentation. The Contractor's estimate of increase or decrease in costs pursuant to the foregoing, if

requested, shall be in sufficient detail and in such form as to allow the District, the Project Inspector and the Architect to review and assess the completeness and accuracy thereof. The Contractor shall be solely responsible for any additional costs or additional time arising out of, or related in any manner to, its failure to provide the estimate of costs within the time specified in the request of the District or the Architect for such estimate.

**9.4.1.2 Determination by the District.** By the District, whether or not negotiations are initiated pursuant to Article 9.4.1.1 above, based upon actual and necessary costs incurred by the Contractor as determined by the District on the basis of the Contractor's records. In the event that the procedure set forth in this Article 9.4.1.2 is utilized to determine the extent of adjustment to the Contract Price on account of Changes to the Work, promptly upon determining the extent of adjustment to the Contract Price, the District shall notify the Contractor in writing of the same; the Contractor shall be deemed to have accepted the District's determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor shall notify the District, the Architect and the Project Inspector, in writing, not more than fifteen (15) days from the date of the District's written notice, of any objection to the District's determination. Failure of the Contractor to timely notify the District, the Architect and the Project Inspector of Contractor's objections to the District's determination of the extent of adjustment to the Contract Price shall be deemed Contractor's acceptance of the District's determination and a waiver of any right or basis of the Contractor to thereafter protest or otherwise object to the District's determination. Notwithstanding any objection of the Contractor to the District's determination of the extent of any adjustment to the Contract Price pursuant to this Article 9.4.1.2, Contractor shall, pursuant to Article 9.7 below, diligently proceed to perform and complete any such Change.

**9.4.1.3 Basis for Adjustment of Contract Price.** If Changes in the Work require an adjustment of the Contract Price pursuant to Articles 9.4.1.1 or 9.4.1.2 above, the basis for adjustment of the Contract Price shall be as follows:

**9.4.1.3.1 Labor.** Contractor shall be compensated for the costs of labor actually and directly utilized in the performance of the Change. Such labor costs shall be limited to field labor for which there is a prevailing wage rate classification. Wage rates for labor shall not exceed the prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Change. Use of a labor classification which would increase labor costs associated with any Change shall not be permitted. Labor costs shall exclude costs incurred by the Contractor in preparing estimate(s) of the costs of the Change, in the maintenance of records relating to the costs of the Change, coordination and assembly of materials and information relating to the Change or performance thereof, or the supervision and other overhead and general conditions costs associated with the Change or performance thereof.

**9.4.1.3.2 Materials and Equipment.** Contractor shall be compensated for the costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs of materials and equipment may include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are available for materials necessarily used in the performance of Changes, they shall be credited to the District. If materials and/or equipment necessarily used in the

performance of Changes are obtained from a supplier or source owned in whole or in part by the Contractor, compensation therefor shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable opinion of the District, the costs asserted by the Contractor for materials and/or equipment in connection with any Change is excessive, or if the Contractor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and the District's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. The District may elect to furnish materials and/or equipment for Changes to the Work, in which event the Contractor shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

**9.4.1.3.3 Construction Equipment.** Contractor shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by the Contractor from the Architect, the Project Inspector and the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. The Contractor shall not be entitled to an allowance or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of \$500.00 or less. Construction Equipment costs claimed by the Contractor in connection with the performance of any Change to the Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Architect, the Project Inspector and the District, the allowable rate for the use of Construction Equipment in connection with Changes to the Work shall constitute full compensation to the Contractor for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by the Contractor incidental to the use of such Construction Equipment.

**9.4.1.3.4 Mark-up on Costs of Changes to the Work.** In determining the cost to the District and the extent of increase to the Contract Price resulting from a Change adding to the Work, the allowance for mark-ups on the costs of the Change for all overhead (including home office and field overhead), general conditions costs and profit associated with the Change shall not exceed the percentage set forth in the Special Conditions, regardless of the number of Subcontractors, of any tier, performing any portion of any Change to the Work. If a Change to the Work



reduces the Contract Price, no profit, general conditions or overhead costs shall be paid by the District to the Contractor for the reduced or deleted Work. In such event, the adjustment to the Contract Price shall be the actual cost reduction realized by the reduced or deleted Work multiplied by the percentage set forth in the Special Conditions for mark-ups on the cost of a Change adding to the scope of the Work.

**9.4.1.3.5 Contractor Maintenance of Records.** In the event that Contractor shall be directed to perform any Changes to the Work pursuant to Article 9.1 or 9.2, or should the Contractor encounter conditions which the Contractor, pursuant to Article 9.6, believes would obligate the District to adjust the Contract Price and/or the Contract Time, Contractor shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that more than one Change to the Work is performed by the Contractor in a calendar day, Contractor shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. In the event that any Subcontractor, of any tier, shall provide or perform any portion of any Change to the Work, Contractor shall require that each such Subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by Contractor's Superintendent or Contractor's authorized representative; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, complete and relate only to the Change referenced therein. All records maintained by a Subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such Subcontractor's authorized representative or Superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District, the Architect or the Project Inspector upon request. In the event that Contractor shall fail or refuse, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Contract Price on account of any Change to the Work is determined pursuant to this Article, the District's reasonable good faith determination of the extent of adjustment to the Contract Price on account of such Change shall be final, conclusive, dispositive and binding upon Contractor. Contractor's obligation to maintain records hereunder is in addition to, and not in lieu of, any other Contractor obligation under the Contract Documents with respect to Changes to the Work.

**9.4.2 Adjustment to Contract Time.** In the event of any Change(s) to the Work pursuant to this Article 9, the Contract Time shall be extended or reduced by Change Order for a period of time commensurate with the time reasonably necessary to perform such Change. In the event that any Change shall require an extension of the Contract Time, the Contractor shall not be subject to Liquidated Damages for such period of time. If completion of the Work is delayed by causes for which the District is responsible and the delay is unreasonable under the circumstances involved, and not within the contemplation of the Contractor and the District at the time of execution of the Agreement, the Contractor shall not be precluded from the recovery of damages arising therefrom.

**9.4.3 Addition or Deletion of Alternate Bid Item(s).** If the Bid for the Work includes proposal(s) for Alternate Bid Item(s), during Contractor's performance of the Work, the District may elect, pursuant to this Article to add any such Alternate Bid Item(s) if the same did not form a basis for award of the Contract or delete any such Alternate Bid Item(s) if the

same formed a basis for award of the Contract. If the District elects to add or delete any such Alternate Bid Item(s) pursuant to the foregoing, the cost or credit for such Alternate Bid Item(s) shall be as set forth in the Contractor's Bid. If any Alternate Bid Item is added or deleted from the Work pursuant to the foregoing, the Contract Time shall be adjusted by the number of days allocated for the added or deleted Alternate Bid Item in the Contract Documents; if days are not allocated for any Alternate Bid Item added or deleted pursuant to the foregoing, the Contract Time shall be equitably adjusted.

**9.5 Change Orders.** If the District approves of a Change, a written Change Order prepared by the Architect on behalf of the District shall be forwarded to the Contractor describing the Change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of such Change. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Any claim or item relating to any Change incorporated into a Change Order not presented by the Contractor for inclusion in the Change Order shall be deemed waived. The Contractor shall execute the Change Order prepared pursuant to the foregoing; once the Change Order has been prepared and forwarded to the Contractor for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, the Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof. The Contractor's attempted or purported modification or amendment of any such Change Order, without the prior approval of the District, shall not be binding upon the District; any such unapproved modification or amendment to such Change Order shall be null, void and unenforceable. Unless otherwise expressly provided for in the Contract Documents or in the Change Order, any Change Order issued hereunder shall be binding upon the District only upon action of the District's Board of Trustees approving and ratifying such Change Order. In the event of any amendment or modification made by the Contractor to a Change Order for which there is no prior approval by the District, in accordance with the provisions of this Article 9.5, unless otherwise expressly stated in its approval and ratification of such Change Order, any action of the Board of Trustees to approve and ratify such Change Order shall be deemed to be limited to the Change Order as prepared by the Architect; such approval and ratification of such Change Order shall not be deemed the District's approval and ratification of any unapproved amendment or modification by the Contractor to such Change Order. Change Orders shall be issued on the form of Change Order and the content thereof, as attached to the Special Conditions.

**9.6 Contractor Notice of Changes.** If the Contractor should claim that any instruction, request, the Drawings, the Specifications, action, condition, omission, default, or other situation obligates the District to increase the Contract Price or to extend the Contract Time, the Contractor shall notify the District, Construction Manager, Project Inspector and the Architect, in writing, of such claim within ten (10) days from the date of its actual or constructive notice of the factual basis supporting the same. The District shall consider any such claim of the Contractor only if sufficient supporting documentation is submitted with the Contractor's notice to the District, Construction Manager, Project Inspector and the Architect. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to the address such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the District's review and evaluation) within ten (10) days of its actual or constructive knowledge of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation for which the Contractor believes there should an adjustment of the Contract Time or the Contract Price shall be deemed Contractor's

waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of any such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. In the event that the District determines that the Contract Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with the Contractor's written notice under this Article 9.6, any such adjustment shall be determined in accordance with the provisions of Articles 9.4.1 and 9.4.2.

- 9.7 Disputed Changes.** In the event of any dispute or disagreement between the Contractor and the District or the Architect regarding the characterization of any item as a Change to the Work or as to the appropriate adjustment of the Contract Price or the Contract Time on account thereof, the Contractor shall promptly proceed with the performance of such item of the Work, subject to a subsequent resolution of such dispute or disagreement in accordance with the terms of the Contract Documents. The Contractor's failure or refusal to so proceed with such Work may be deemed to be Contractor's default of a material obligation of the Contractor under the Contract Documents.
- 9.8 Emergencies.** In an emergency affecting the safety of life, or of the Work, or of property, the Contractor, without special instruction or prior authorization from the District or the Architect, is permitted to act at its discretion to prevent such threatened loss or injury. Any compensation claimed by the Contractor on account of such emergency work shall be submitted and determined in accordance with this Article 9.
- 9.9 Minor Changes in the Work.** The Architect may order minor Changes in the Work not involving an adjustment in the Contract Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by written order and shall be binding on the District and the Contractor. The Construction Manager or the Project Inspector may direct the Contractor to perform Changes provided that each such Change does not result in an increase of more than \$500.00 to the Contract Price and no adjustment of the Contract Time. The Contractor shall carry out such orders promptly.
- 9.10 Unauthorized Changes.** Any Work beyond the extent of Work shown on the Contract Documents, or any extra Work performed or provided by the Contractor without notice to the Architect, the Construction Manager and the Project Inspector in the manner and within the time set forth in Articles 9.2 or 9.6 shall be considered unauthorized and at the sole expense of the Contractor. Work so done will not be measured or paid for, no extension to the Contract Time will be granted on account thereof and any such Work may be ordered removed at the Contractor's sole cost and expense. The failure of the District to direct or order removal of such Work shall not constitute acceptance or approval of such Work nor relieve the Contractor from any liability on account thereof.

## ARTICLE 10: SEPARATE CONTRACTORS

- 10.1 District's Right to Award Separate Contracts.** The District reserves the right to perform construction or operations related to the Project with the District's own forces or to award separate contracts in connection with other portions of the Project or other construction or operations at or about the Site. If the Contractor claims that delay or additional cost is involved because of such action by the District, the Contractor shall seek an adjustment to the Contract Price or the Contract Time as provided for in the Contract Documents. Failure of the Contractor to request such an adjustment of the Contract Time or the Contract Price in strict conformity with the provisions of the Contract Documents applicable thereto shall be deemed a waiver of the same.

- 10.2 District's Coordination of Separate Contractors.** The District shall provide for coordination of the activities of the District's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the District in reviewing their respective Construction Schedules when directed to do so. The Contractor shall make any revisions to the Approved Construction Schedule for the Work hereunder deemed necessary after a joint review and mutual agreement. The Construction Schedules shall then constitute the Construction Schedules to be used by the Contractor, separate contractors and the District until subsequently revised.
- 10.3 Mutual Responsibility.** The Contractor shall afford the District and separate contractors' reasonable opportunity for storage of their materials and equipment and performance of their activities at the Site and shall connect and coordinate the Contractor's Work, construction and operations with theirs as required by the Contract Documents.
- 10.4 Discrepancies or Defects.** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the District or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and the Project Inspector any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to do report shall constitute an acknowledgment that the District's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then discoverable by the Contractor's reasonable diligence.

## ARTICLE 11: TESTS AND INSPECTIONS

### 11.1 Tests; Inspections; Observations.

**11.1.1 Contractor's Notice.** If the Contract Documents, laws, ordinances or any public authority with jurisdiction over the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved, the Contractor shall give the Architect, the Construction Manager and the Project Inspector written notice of the readiness of such Work for observation, testing or inspection at least two (2) working days prior to the time for the conducting of such test, inspection or observation. If inspection, testing or observation is by authority other than the District, the Contractor shall inform the Project Inspector and the Construction Manager not less than two (2) working days prior to the date fixed for such inspection, test or observation. The Contractor shall not cover up any portion of the Work subject to tests, inspections or observations prior to the completion and satisfaction of the requirements of such test, inspection or observation. In the event that any portion of the Work subject to tests, inspection or approval shall be covered up by Contractor prior to completion and satisfaction of the requirements of such tests, inspection or approval, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary for performing such tests, inspection or approval without adjustment of the Contract Price or the Contract Time on account thereof.

**11.1.2 Cost of Tests and Inspections.** Except as set forth below, the District will pay for fees, costs and expenses to complete the initial tests/inspections of portions of the Work as required by law, code or regulation, provided that such tests/inspections are conducted and completed at a location within a one hundred (100) mile radius of the Site. The foregoing notwithstanding, if the portion(s) of the Work subject to tests/inspections is/are not ready for such test/inspection at the time indicated in the Contractor's notice under Article 11.1.1 or if upon completion of such test/inspection, the portion(s) of the Work subject to such test/inspection do not meet or exceed the minimum requirements of such test/inspection, the

Contractor shall be solely responsible for the payment of all fees, costs or expenses arising out of or related in any manner to subsequent tests/inspections of such portion(s) of the Work. Notwithstanding the District's payment of fees, costs or expenses for conducting initial tests/inspections, if any actions or failures to act of the Contractor or person or entity providing or performing Work under the direction or control of the Contractor require tests/inspections to be conducted over a period of more than eight (8) hours per day by any single person or on weekends/holidays, the Contractor shall be solely responsible for the payment of fees, costs or expenses which result from test/inspection services which exceed eight (8) hours per day by any single person or on weekends/holidays. If any tests/inspections are conducted outside a one hundred (100) mile radius of the Site, the Contractor shall be solely responsible for all costs, fees or expenses to conduct and complete such tests/inspections conducted at such location, including without limitation, costs to complete such tests/inspections and travel, meal and related expenses.

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

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

**11.2 Delivery of Certificates.** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager.

**11.3 Timeliness of Tests, Inspections and Approvals.** Tests or inspections required and conducted pursuant to the Contract Documents shall be made or arranged by Contractor to avoid delay in the progress of the Work. Neither the Contract Time nor Contract Price shall be adjusted on account of the failure of the Contractor to timely arrange for the conduct of required tests/inspections and the Contractor shall be liable to the District for all consequences of such failures, including without limitation, the assessment of Liquidated Damages for delayed Substantial Completion of the Work resulting from such failure of the Contractor.

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## ARTICLE 12: UNCOVERING AND CORRECTION OF WORK

### 12.1 Inspection of the Work.

**12.1.1 Access to the Work.** All Work and all materials and equipment forming a part of the Work or incorporated into the Work are subject to inspection by the District, the Construction Manager, the Architect and the Project Inspector for conformity with the Contract Documents.

The Contractor shall, at its cost and without adjustment to the Contract Price or the Contract Time, furnish any facilities necessary for sufficient and safe access to the Work for purposes of inspection by the District, the Construction Manager, the Architect, the Project Inspector, DSA or any other public or quasi-public authority with jurisdiction over the Work or any portion thereof.

**12.1.2 Limitations Upon Inspections.** Inspections, tests, measurements, or other acts of the Architect, the Construction Manager and the Project Inspector hereunder are for the sole purpose of assisting them in determining that the Work, materials, equipment, progress of the Work, and quantities generally comply and conform with the requirements of the Contract Documents. These acts or functions shall not relieve the Contractor from performing the Work in full compliance with the Contract Documents. No inspection by the Architect or the Project Inspector shall constitute or imply acceptance of Work inspected. Inspection of the Work hereunder is in addition to, and not in lieu of, any other testing, inspections or approvals of the Work required under the Contract Documents.

**12.2 Uncovering of Work.** If any portion of the Work is covered contrary to the request of the Architect, the Construction Manager, the Project Inspector or the requirements of the Contract Documents, it must, if required by the Architect or the Project Inspector, be uncovered for observation by the Architect, Construction Manager and the Project Inspector and be replaced at the Contractor's expense without adjustment of the Contract Time or the Contract Price.

**12.3 Rejection of Work.** Prior to the District's Final Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work which is defective or not in conformity with the Contract Documents may be rejected by the District, the Construction Manager the Architect or the Project Inspector and the Contractor shall correct such rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Architect or the Project Inspector or even if they failed to observe the defective or non-conforming Work, materials or equipment.

**12.4 Correction of Work.** The Contractor shall promptly correct any portion of the Work rejected by the District, the Construction Manager, the Architect or the Project Inspector for failing to conform to the requirements of the Contract Documents, or which is determined by them to be defective, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby. The Contractor shall bear all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the District or separate contractors, caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective. If the Contractor fails or refuses to correct Work deemed defective or non-conforming pursuant to the foregoing, such failure or refusal shall be deemed the Contractor's default in performance of a material obligation of the Contractor hereunder. In such event, the Contractor's Performance Bond Surety shall be liable for the costs to correct such defective or non-conforming Work and/or securing the performance of an alternative contractor to complete such corrective Work.

- 12.5 Removal of Non-Conforming or Defective Work.** The Contractor shall, at its sole cost and expense, remove from the Site all portions of the Work which are defective or are not in accordance with the requirements of the Contract Documents which are neither corrected by the Contractor nor accepted by the District.
- 12.6 Failure of Contractor to Correct Work.** If the Contractor fails to commence to correct defective or non-conforming Work within 3 days of notice of such condition and promptly thereafter complete the same within a reasonable time, the District may correct it in accordance with the Contract Documents. If the Contractor does not proceed with correction of such defective or non-conforming Work within the time fixed herein, the District may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage after written notice, the District may sell such materials 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 Contractor, including without limitation compensation for the Architect's services, attorneys fees and other expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Price shall be reduced by the deficiency. If payments of the Contract Price then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and the Surety shall promptly pay the difference to the District.
- 12.7 Acceptance of Defective or Non-Conforming Work.** The District may, in its sole and exclusive discretion, elect to accept Work which is defective or which is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable.

## ARTICLE 13: WARRANTIES

- 13.1 Workmanship and Materials.** The Contractor warrants to the District that all materials and equipment furnished under the Contract Documents shall be new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract Documents. All Work shall be of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If required by the Architect or the District, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Any Work, or portion thereof not conforming to these requirements, including substitutions or alternatives not properly approved in accordance with the Contract Documents may be deemed defective. Where there is an approved substitution of, or alternative to, material or equipment specified in the Contract Documents, the Contractor warrants to the District that such installation, construction, material, or equipment will equally perform the function and have the quality of the originally specified material or equipment. The Contractor expressly warrants the merchantability, the fitness for use, and quality of all substitute or alternative items in addition to any warranty given by the manufacturer or supplier of such item.
- 13.2 Warranty Work.** If, within one year after the date of Final Acceptance, or such other time frame set forth elsewhere in the Contract Documents, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, or otherwise contrary to the warranties contained in the Contract Documents, the Contractor shall commence all necessary corrective action not more than seven (7) days after receipt of a written notice from the District to do so, and to thereafter diligently complete the same. In the event that Contractor shall fail or refuse to commence correction of any such item within said seven (7) day period or to diligently prosecute such corrective actions to completion, the District may, without further notice to Contractor, cause such corrective Work to be performed and completed. In such event,

Contractor and Contractor's Performance Bond Surety shall be responsible for all costs in connection with such corrective Work, including without limitation, general administrative overhead costs of the District in securing and overseeing such corrective Work. Nothing contained herein shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract Documents. The obligations of the Contractor hereunder shall be in addition to, and not in lieu of, any other obligations imposed by any special guarantee or warranty required by the Contract Documents, guarantees or warranties provided by any manufacturer of any item or equipment forming a part of, or incorporated into the Work, or otherwise recognized, prescribed or imposed by law. Neither the District's Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor or the Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein.

**13.3 Guarantee.** Upon completion of the Work, Contractor shall execute and deliver to the District the form of Guarantee included within the Contract Documents. The Contractor's execution and delivery of the form of Guarantee is an express condition precedent to any obligation of the District to disburse the Final Payment to the Contractor.

**13.4 Survival of Warranties.** The provisions of this Article 13 shall survive the Contractor's completion of Work under the Contract Documents, the District's Final Acceptance or the termination of the Contract.

## ARTICLE 14: SUSPENSION OF WORK

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

**14.2 Adjustments to Contract Price and Contract Time.** In the event the District shall order suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by the District; provided however that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any such adjustment of the Contract Price shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit, all of which will remain as reflected in the Cost Breakdown submitted by the Contractor pursuant to the Contract Documents. In the event of the District's suspension of the Work, the Contract Time shall be equitably adjusted.

## ARTICLE 15: TERMINATION

### 15.1 Termination for Cause.

**15.1.1 District's Right to Terminate.** The District may terminate the Contract upon the occurrence of any one or more of the following events of the Contractor's default: (i) if the



Contractor refuses or fails to prosecute the Work with diligence as will insure Substantial Completion of the Work within the Contract Time, or if the Contractor fails to substantially Complete the Work within the Contract Time; (ii) if the Contractor becomes bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to reorganize or for protection under any bankruptcy or similar laws, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract Documents within 10 days of receipt of a request for such assurance from the District; (iii) if the Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment; (iv) if the Contractor repeatedly fails to make prompt payments to any Subcontractor, of any tier, or Material Suppliers or others for labor, materials or equipment; (v) if the Contractor disregards laws, ordinances, rules, codes, regulations, orders applicable to the Work or similar requirements of any public entity having jurisdiction over the Work; (vi) if the Contractor disregards proper directives of the Architect, the Project Inspector or District under the Contract Documents; (vii) if the Contractor performs Work which deviates from the Contract Documents and neglects or refuses to correct such Work; or (viii) if the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents. Once the District determines that sufficient cause exists to justify the action, the District may terminate the Contract without prejudice to any other right or remedy the District may have, after giving the Contractor and the Surety at least seven (7) days advance written notice of the effective date of termination. The District shall have the sole discretion to permit the Contractor to remedy the cause for the termination without waiving the District's right to terminate the Contract, or otherwise waiving, restricting or limiting any other right or remedy of the District under the Contract Documents or at law.

**15.1.2 District's Rights Upon Termination.** In the event that the Contract is terminated pursuant to this Article 15.1, the District may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude the Contractor from the site. The District may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor without liability to the Contractor. In exercising the District's right to prosecute the completion of the Work, the District may also take possession of all materials and equipment stored at the site of the Work or for which the District has paid the Contractor but which are stored elsewhere, and finish the Work as the District deems expedient. In exercising the District's right to prosecute the completion of the Work, the District shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work and the District shall not be required to obtain the lowest figure for completion of the Work. In the event that the District takes bids for remedial Work or completion of the Work, the Contractor shall not be eligible for the award of such contract(s).

**15.1.3 Completion by the Surety.** In the event that the Contract is terminated pursuant to this Article 15.1, the District may demand that the Surety take over and complete the Work. The District may require that in so doing, the Surety not utilize the Contractor in performing and completing the Work. Upon the failure or refusal of the Surety to take over and begin completion of the Work within twenty (20) days after demand therefor, the District may take over the Work and prosecute it to completion as provided for above.

**15.1.4 Assignment and Assumption of Subcontracts.** The District shall, in its sole and exclusive discretion, have the option of requiring any Subcontractor or Material Supplier to perform in accordance with its Subcontract or Purchase Order with the Contractor and assign

the Subcontract or Purchase Order to the District or such other person or entity selected by the District to complete the Work.

**15.1.5 Costs of Completion.** In the event of termination under this Article 15.1, the Contractor shall not be entitled to receive any further payment of the Contract Price until the Work is completed. If the unpaid balance of the Contract Price as of the date of termination exceeds the District's direct and indirect costs and expenses for completing the Work, including without limitation, attorneys' fees and compensation for additional professional and consultant services, such excess shall be used to pay the Contractor for the cost of the Work performed prior to the effective date of termination with a reasonable allowance for overhead and profit. If the District's costs and expenses to complete the Work exceed the unpaid Contract Price, the Contractor and/or the Surety shall pay the difference to the District.

**15.1.6 Contractor Responsibility for Damages.** The Contractor and the Surety shall be liable for all damage sustained by the District resulting from, in any manner, the termination of Contract under this Article 15.1, including without limitation, attorneys' fees, and for all costs necessary for repair and completion of the Work over and beyond the Contract Price.

**15.1.7 Conversion to Termination for Convenience.** In the event the Contract is terminated under this Article 15.1, and it is determined, for any reason, that the Contractor was not in default under the provisions hereof, the termination shall be deemed a Termination for Convenience of the District and thereupon, the rights and obligations of the District and the Contractor shall be determined in accordance with Article 15.2 hereof.

**15.1.8 District's Rights Cumulative.** In the event the Contract is terminated pursuant to this Article 15.1, the termination shall not affect or limit any rights or remedies of the District against the Contractor or the Surety. The rights and remedies of the District under this Article 15.1 are in addition to, and not in lieu of, any other rights and remedies provided by law or otherwise under the Contract Documents. Any retention or payment of monies to the Contractor by the District shall not be deemed to release the Contractor or the Surety from any liability hereunder.

**15.2 Termination for Convenience of the District.** The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate the Contract in whole or in part when it is in the interest of, or for the convenience of, the District. In such case, the Contractor shall be entitled to payment for: (i) Work actually performed and in place as of the effective date of such termination for convenience of the District, with a reasonable allowance for profit and overhead on such Work, and (ii) reasonable termination expenses for reasonable protection of Work in place and suitable storage and protection of materials and equipment delivered to the site of the Work but not yet incorporated into the Work, provided that such payments exclusive of termination expenses shall not exceed the total Contract Price as reduced by payments previously made to the Contractor and as further reduced by the value of the Work as not yet completed. The Contractor shall not be entitled to profit and overhead on Work which was not performed as of the effective date of the termination for convenience of the District. The District may, in its sole discretion, elect to have subcontracts assigned pursuant to Article 15.1.4 above after exercising the right hereunder to terminate for the District's convenience.

## ARTICLE 16: MISCELLANEOUS

**16.1 Governing Law.** This Contract shall be governed by and interpreted in accordance with the laws of the State of California.

- 16.2 Marginal Headings; Interpretation.** The titles of the various Articles of these General Conditions and elsewhere in the Contract Documents are used for convenience of reference only and are not intended to, and shall in no way, enlarge or diminish the rights or obligations of the District or the Contractor and shall have no effect upon the construction or interpretation of the Contract Documents. The Contract Documents shall be construed as a whole in accordance with their fair meaning and not strictly for or against the District or the Contractor.
- 16.3 Successors and Assigns.** Except as otherwise expressly provided in the Contract Documents, all terms, conditions and covenants of the Contract Documents shall be binding upon, and shall inure to the benefit of the District and the Contractor and their respective heirs, representatives, successors-in-interest and assigns.
- 16.4 Cumulative Rights and Remedies; No Waiver.** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not in lieu of or otherwise a limitation or restriction of duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the District shall constitute a waiver of a right or remedy afforded it under the Contract Documents or at law nor shall such an action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.
- 16.5 Severability.** In the event any provision of the Contract Documents shall be deemed illegal, invalid, unenforceable and/or void, by a court or any other governmental agency of competent jurisdiction, such provision shall be deemed to be severed and deleted from the Contract Documents, but all remaining provisions hereof, shall in all other respects, continue in full force and effect.
- 16.6 No Assignment by Contractor.** The Contractor shall not sublet or assign the Contract, or any portion thereof, or any monies due thereunder, without the express prior written consent and approval of the District, which approval may be withheld in the sole and exclusive discretion of the District. The District's approval to such assignment shall be upon such terms and conditions as determined by the District in its sole and exclusive discretion.
- 16.7 Gender and Number.** Whenever the context of the Contract Documents so require, the neuter gender shall include the feminine and masculine, the masculine gender shall include the feminine and neuter, the singular number shall include the plural and the plural number shall include the singular.
- 16.8 Independent Contractor Status.** In performing its obligations under the Contract Documents, the Contractor is an independent contractor to the District and not an agent or employee of the District. Nothing contained herein shall be deemed or construed as creating a relationship of employer and employee between the District and the Contractor or any Subcontractors, employees of the Contractor or Subcontractors or their respective agents and representatives. Neither the Contractor, Subcontractors nor any employees of the Contractor or Subcontractors are entitled to any rights or privileges of District employees.
- 16.9 Notices.** Except as otherwise expressly provided for in the Contract Documents, all notices which the District or the Contractor may be required, or may desire, to serve on the other, shall be effective only if delivered by personal delivery or by postage prepaid, First Class Certified Return Receipt Requested United States Mail, addressed to the District or the Contractor at their respective address set forth in the Contract Documents, or such other address(es) as either the District or the Contractor may designate from time to time by written notice to the other in conformity with the provisions hereof. In the event of personal delivery, such notices

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

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

**16.11 Dispute Resolution; Arbitration.**

**16.11.1 Claims Under \$375,000.00.** Claims between the District and the Contractor of \$375,000.00 or less shall be resolved in accordance with the procedures established in Part 3, Chapter 1, Article 1.5 of the California Public Contract Code, §§20104 et seq.; provided however that California Public Contract Code §20104.2(a) shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the District of such claim or extend the time for the giving of such notice as provided in the Contract Documents. The term "claims" as used herein shall be as defined in California Public Contract Code §20104(b)(2).

**16.11.2 Government Code Claim Requirements.** Pursuant to Government Code §930.6, any claim, demand, dispute, disagreement or other matter in controversy asserted by the Contractor against the District for money or damages, including, without limitation, a demand for arbitration, except for those subject to resolution pursuant to Article 16.11.1, shall be deemed a "suit for money or damages" and shall be subject to the provisions of Government Code §§945.4, 945.6 and 946. Notwithstanding the resolution of disputes pursuant to the arbitration provisions set forth in Article 16.11.3 any claim, demand, dispute, disagreement or other matter in controversy between the Contractor and the District seeking money or damages in excess of \$375,000 shall first be presented to the District and acted upon or deemed rejected by the District in accordance with California Government Code section 900, et seq., as a condition precedent to the Contractor's commencement of arbitration proceedings. Any arbitration proceeding pursuant to Article 16.11.3 commenced by the Contractor without first complying with the foregoing provisions of the Government Code shall be stayed pending the Contractor's compliance with the foregoing provisions of the Government Code.

**16.11.3 Arbitration.** Except as provided in Article 16.11.1, any other claims, disputes, disagreements or other matters in controversy between the District and the Contractor arising out of, or related, in any manner, to the Contract Documents, or the interpretation, clarification or enforcement thereof shall be resolved by arbitration conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the AAA closest to the Site. The award rendered by the Arbitrator(s) ("Arbitration Award") shall be final and binding upon the District and the Contractor only if the Arbitration Award is supported by law and substantial evidence pursuant to California Code of Civil Procedure §1296, including findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296 and Rule R-43 of the AAA Construction Industry Arbitration Rules. The District and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the Arbitration

Award if, after review of the Arbitration Award, the Court determines either that the Arbitration Award is: (i) not supported by substantial evidence; (ii) not accompanied by findings of fact and conclusions of law; or (iii) based on an error of law. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. In the event more than one Demand for Arbitration is made by either the District or the Contractor, all such controversies shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and the Contractor. The Contractor's Surety, a Subcontractor or Material Supplier to the Contractor and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements with the Contractor, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the District and the Contractor, in which case an appropriate severance order shall be issued by the Arbitrator(s). The expenses and fees of the Arbitrator(s) shall be divided equally among the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys' fees, witness fees and other cost and expense incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator(s) may award arbitration costs, including Arbitrators' fees but excluding attorneys' fees, to the prevailing party. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.

**16.11.4 Inapplicability to Bid Bond.** The provisions of this Article 16.11 shall not be applicable to disputes, disagreements or enforcement of rights or obligations under the Bid Bond; all claims, disputes and actions to enforce rights or obligations under the Bid Bond shall be adjudicated only by judicial proceedings commenced in a court of competent jurisdiction.

**16.12 Capitalized Terms.** Except as otherwise expressly provided, capitalized terms used in the Contract Documents shall have the meaning and definition for such term as set forth in the Contract Documents.

**16.13 Attorneys Fees.** Except as expressly provided for in the Contract Documents, or authorized by law, neither the District nor the Contractor shall recover from the other any attorneys fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder.

**16.14 Waiver of Special/Consequential Damages.** Notwithstanding any right conferred by law or arising by operation of law, by executing the Agreement, the Contractor expressly waives and relinquishes any and all right or entitlement to assert or recover any damages, losses or liabilities from the District which are in the nature of special or consequential damages, losses or liabilities arising out of or related in any manner to the District's breach or default of its obligations under the Contract Documents.

**16.15 Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause

required by law to be inserted in the Contract Documents is deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause are included herein, and if through mistake, or otherwise, any such provision or clause is not inserted or if not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.

**16.16 Days.** Unless otherwise expressly stated, references to “days” in the Contract Documents shall be deemed to be calendar days.

**16.17 Prohibited Interests.** No employee of the District, who is authorized in such capacity on behalf of the District to negotiate, make, accept or approve, or to take part in negotiating, making, accepting or approving any architectural, engineering, inspection, construction or material supply contract or subcontract in connection with the Work shall become directly or indirectly financially interested in the Work or any part thereof.

**16.18 Entire Agreement.** The Contract Documents contain the entire agreement and understanding between the District and the Contractor concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements or amendments, whether written or oral. No amendment or modification to any provision of the Contract Documents shall be effective or enforceable except by an agreement in writing executed by the District and the Contractor.

**END OF SECTION**

**SPECIAL CONDITIONS**

1. **Application of Special Conditions** These Special Conditions are a part of the Contract Documents for the Work generally described as: **PROPOSAL No.: 14-01, BUILDING 2000, LIBRARY RENOVATION PROJECT, LAS POSITAS COLLEGE.**

2. **Drawings and Specifications** The number of sets of the Drawings and Specifications which the District will provide the Contractor, pursuant to Article 2.1.3 of the General Conditions will be mutually agreed upon and reasonable at the District's discretion and will not exceed 10 sets. Additional sets of the Drawings and Specifications may be obtained by the Contractor from the District at the cost of reproduction.

3. **Insurance**

3.1 Insurance Requirements for Contractor Minimum coverage amounts for each policy of insurance required of the Contractor shall be as follows:

Workers Compensation Insurance	In accordance with applicable law
Employers Liability Insurance	\$1,000,000
Commercial General Liability Insurance (including coverage for bodily injury, death, property damage and motor vehicle liability)	
Per Occurrence	\$2,000,000
Aggregate	\$2,000,000
 Builder's Risk	 Full value of the Work; seismic coverage is not required

3.2 Insurance Requirements for Subcontractors Minimum coverage amounts for each policy of insurance to be obtained and maintained by each Subcontractor to the Contractor shall be as follows:

Workers Compensation Insurance	In accordance with applicable law
Employers Liability Insurance	\$1,000,000
Commercial General Liability Insurance (including coverage for bodily injury, death, property damage and motor vehicle liability)	
Per Occurrence	\$1,000,000
Aggregate	\$2,000,000

4. **Contract Time, Liquidated Damages**

4.1 Contract Time The Contract Time for the Contractor's Substantial Completion of the Work is **Two Hundred Eighty-Nine (289) calendar days** after the date for commencement of the Work as set forth in the Notice to Proceed issued by or on behalf of the District to the Contractor.

**4.1.1 Project Timeline**

	<u>Construction Start</u>	<u>Complete</u>
Buildings 700, 900 and 1700	Feb 15, 2014	May 15, 2014
Buildings 1310/1320	Apr 15, 2014	Aug 1, 2014
Building 2000	Jun 1, 2014	Dec 1, 2014

**4.2 Liquidated Damages**

**4.2.1 Delayed Submission of Preliminary Construction Schedule** If the Contractor fails to submit the Contractor’s Preliminary Construction Schedule within the time established in the General Conditions, the Contractor shall be subject to assessment of Liquidated Damages in the amount of **Two Thousand Five Hundred Dollars (\$2,500.00 USD)** per day from the date the Preliminary Construction Schedule is required to be submitted until submission thereof to the District.

**4.2.2 Delayed Substantial Completion** If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time as indicated in 4.1.1, including adjustments thereto in accordance with the Contract Documents, the Contractor shall be subject to assessment of Liquidated Damages in the amount of **Two Thousand Five Hundred Dollars (\$2,500.00 USD)** per day from the scheduled date of Substantial Completion until Substantial Completion is achieved.

**4.2.3 Delayed Completion of Punchlist Items** If the Contractor fails to complete all Punchlist Items noted upon Substantial Completion within the time established for completion of all Punchlist Items, the Contractor shall be subject to assessment of Liquidated Damages in the amount of **Two Thousand Five Hundred Dollars (\$2,500.00)** per day from the scheduled date of completion until all Punchlist Items are completed.

**4.2.4 District Withhold of Liquidated Damages; Performance Bond Surety** If the Contractor is subject to assessment of Liquidated Damages for delayed Substantial Completion and/or delay completion of Punchlist Items, the District may withhold such assessments from the Contract Price then or thereafter due the Contractor. If the assessment of Liquidated Damages exceeds the then remaining balance of the Contract Price, the Contractor and the Surety issuing the Performance Bond shall be jointly and severally liable to the District for such amounts.

**4.3 Notice of Delay** The Contractor shall notify the Construction Manager, in writing, of all anticipated delays resulting from events described in Pursuant to Articles 7 and 9 of the General Conditions.

**5. CM At-Risk Fee** The term “CM At-Risk Fee” means the price the CM/Contractor has included in the Bid Proposal represents all costs for the following items incurred in performing the Construction Work:

- A. Salaries, or other compensation, of the CM officers, executives or other supervisory personnel at the CM Home Office.
- B. All expenses of the CM in connection with the maintaining and operating of its Home Office of CM other than field office of the Project.
- C. Any part of the CM capital expenses, including interest on the CM capital employed for the Work.
- D. Except as specifically provided elsewhere in the Contract Documents, rental costs of machinery and equipment.
- E. Profit, overhead or general expenses of any kind, except as may be expressly included elsewhere in the Contract Documents, including Home Office supervision of all subcontracted work.



- F. Payments made by CM to its employees or personnel on account of merit bonuses.
- G. All salaries, cost and expenses incurred by CM in estimating and preparing estimates, administration of the Construction Work and all other cost data and preparation required by the District; exclusive of the time involving the CM field forces engaged in the actual field performance of the Construction Work.
- H. All cost and expenses of purchasing and expediting all purchase orders, exclusive of the time involving the CM field forces engaged in the actual field performance of the Construction Work.
- I. All cost and expenses of supervision and administration of progress and cost control by executives above the level of Project Manager.
- J. General accounting, auditing and billing to District, Subcontractors and purchase orders, payment of voucher costs, and payment of labor taxes and insurance.
- K. Supervision of insurance and taxation matters.
- L. All travel expenses of CM officers and executives, and relocation costs of personnel involved in the Project.
- M. All expenses paid or incurred for purchase or rental of office equipment, stationery, stamps and office supplies of any kind or nature whatsoever in the Home Office.
- N. All costs of any business licenses required by CM and all dues, assessments and contributions paid or payable to CM technical or trade associations.
- O. All cost of insurance on tools and equipment owned or furnished by CM, taxes assessed against property and equipment of CM which is not to be incorporated into the Project; taxes, on gross income, except gross receipts tax, profit and net income of CM; and interest or money borrowed or furnished by CM.
- P. All cost of Subcontractor performance or payment bonds, or insurance in lieu thereof.
- Q. Storage costs at yards owned and leased by CM except any yard leased by CM on a short-term basis solely for purposes of the Project, with District's prior written approval.
- R. All costs incurred by CM in violation of any terms, provision or agreement set forth in the Contract Documents.
- S. Consultations with the District and its Design Professionals, and other consultants engaged by the District with respect to the Construction Work.

**6. Facilities/Services for Project Inspector** Pursuant to Article 4.14 of the General Conditions, during the Work, the Contractor shall provide/furnish a separate and secured office for use by the Inspector of Record.

**7. District Provided Temporary Utilities** Pursuant to Article 4.3.4 of the General Conditions, during the Contractor's performance of the Work; the District will provide utility services and a point of connection for electrical power and domestic potable water. The connection and placement, relocation and removal of temporary distributions of the electrical power and domestic potable water utility service provided by the District will be by the Contractor at its cost and expense without adjustment of the Contract Price. The Contractor may use the temporary electrical power and domestic potable water service furnished by the District provided that: (a) the District may discontinue, limit or condition use of such services by a Contractor if the District reasonably determines that the Contractor has wasted such utilities, and (b) the District shall not be liable to the Contractor, nor shall the Contract Time or the Contract Price be increased if any District provided temporary utility service is discontinued or disrupted for any reason other than the District's non-payment of undisputed utility charges.

**8. Mark-Ups on Changes to the Work** In the event of Changes to the Work, pursuant to Article 9 of the General Conditions, the mark-up for all overhead (including home and field office overhead), general conditions costs and profit, shall not exceed the percentage of allowable direct actual costs for performance of the Change as set forth below. For the portion of any Change performed by Subcontractors of any tier, the percentage mark-up on allowable actual direct labor and

materials costs incurred by all Subcontractors of any tier shall be Twelve Percent (12%). In addition, for the portion of any Change performed by a Subcontractor of any tier, the Contractor may add an amount equal to Five Percent (5%) of the allowable actual direct labor and materials costs of Subcontractors performing the Change. For the portion of any Change performed by the Contractor's own forces, the mark-up on the allowable actual direct labor and materials costs of such portion of a Change shall be Fifteen Percent (15%).

- 9. Asbestos and Other Hazardous Materials Certification** Upon completion of the Work and as an additional express condition precedent to the District's obligation to disburse the Final Payment to the Contractor, the Contractor's duly authorized representative shall deliver to the District the completed and executed form of Asbestos and Other Hazardous Materials Certification included as Attachment A to the Special Conditions; the signature of the Contractor's representative shall be notarized by a California Notary Public.
- 10. Debris Recycling Statement** The District's form of Debris Recycling Statement is attached to these Special Conditions as Attachment B. The Contractor shall complete, execute and submit the Debris Recycling Statement in accordance with applicable provisions of the Contract Documents, under General Conditions, Supervision and Construction Procedures, Section 4.3.9.
- 11. Additional Definitions** In addition to terms defined elsewhere in the Contract Documents, the following terms used in the Contract Documents are defined as set forth herein.
- 11.1 Owner** Unless otherwise expressly provided, references to the "Owner" shall be deemed references to the District, as that term is defined in the Contract Documents.
- 11.2 Contractor** Unless otherwise expressly provided, references to the "Contractor" shall be deemed references to the CM/Contractor.
- 11.3 CM At Risk Fee** The price the CM/Contractor has included in the Bid Proposal that represents all costs incurred in performing the Construction Work.
- 11.4 Inspector; Inspector of Record; IOR; Owner's Inspector** Unless otherwise expressly provided, references to Inspector, Inspector of Record, IOR or Owner's Inspector shall be deemed references to the Project Inspector as that term is defined in the Contract Documents.
- 11.5 Contract Sum** Unless otherwise expressly provided, the terms "Contract Price" and "Contract Sum" are synonymous.
- 11.6 Campus** Unless otherwise expressly provided, the term "Campus" shall be deemed to refer to the District's Chabot College campus.

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**ASBESTOS AND OTHER HAZARDOUS MATERIALS CERTIFICATION  
(ATTACHMENT A TO SPECIAL CONDITIONS)**

This Asbestos and Other Hazardous Materials Certification form is part of the Contract made by and between the CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT and \_\_\_\_\_ (“Contractor”) for the work of improvement commonly referred to as **PROPOSAL No.: 14-01, BUILDING 2000, LIBRARY RENOVATION PROJECT, LAS POSITAS COLLEGE.** (hereinafter referred to as the “Project”).

To the best of my knowledge, information and belief, in completing the Work of the Project, no materials, equipment or other items furnished, installed or incorporated into the Project contains, or in itself be composed of, any asbestos, polychlorinated biphenyl (PCB), any material listed by the federal or state EPA or federal or state health agencies as a hazardous material, or defined as being hazardous under federal or state laws, rules or regulations.

The undersigned is duly authorized to complete, execute and submit this Asbestos and Other Hazardous Materials Certification on behalf of the Contractor. The undersigned has personal knowledge of the substantive representations set forth hereinabove or has made appropriate diligent inquiry to ascertain that the substantive representations set forth hereinabove are complete, true and accurate and do not omit material facts rendering such representations to be false or misleading.

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

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2014 at \_\_\_\_\_.  
(City and State)

\_\_\_\_\_  
Name of Contractor (Print or Type)

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Subscribed and sworn before me  
this \_\_\_\_ day of \_\_\_\_\_, 2014

Notary Public in and for the State of California

My Commission Expires:

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Chabot – Las Positas Community College District  
**Construction & Demolition**  
**DEBRIS RECYCLING STATEMENT**  
**(Attachment B to Special Conditions)**

Project Name / Location: _____			
_____ Demolition	_____ Construction		
Contractor Name: _____			
Contact Name: _____		Phone: _____	Fax: _____
Anticipated Start Date: _____		Anticipated Completion Date: _____	
Statement Date: _____			
For the period between: _____ / _____ and _____ / _____			
Month	Year	Month	Year

Please indicate estimated quantities by matter, the proposed processing method and the vendor selected. Weight tag required as verification.

	Estimated Amount (Tons or Yards)			
Material	Recycled	Salvaged	Landfilled	Vendor or Facility Selected
Asphalt				
Concrete				
Brick/Masonry Tile				
Corrugated Cardboard				
Dirt/Clean Full				
Drywall				
Padding – Carpet Foam				
Building Materials (doors, windows, cabinets, fixtures)				
Scrap Metals				
Mixed Recyclable Debris				
Other				
Un-painted wood/Pallets				
Green Waste/Yard Waste				
Garbage – Painted Wood-Trash				

If no materials are targeted for recycling, reuse or salvage, please state why: \_\_\_\_\_

The undersigned certifies that she/he is authorized to execute this Debris Recycling Statement on behalf of the above-identified Contractor. The undersigned further certifies that she/he has personal knowledge of the foregoing, or has made reasonable inquiry to ascertain, that the foregoing is true, complete and correct.

Submitted by: \_\_\_\_\_ Date: \_\_\_\_\_

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## GUARANTEE

**District :** CHABOT-LAS POSITAS COMMUNITY COLLEGE DISTRICT  
**PROJECT:** PROPOSAL No.: 14-01, BUILDING 2000, LIBRARY RENOVATION  
**PROJECT, LAS POSITAS COLLEGE**

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

The Contractor hereby warrants and guarantees to the District that all work, materials, equipment and workmanship provided, furnished or installed by or on behalf of Contractor in connection with the above-referenced Project (the "Work") have been provided, furnished and installed in strict conformity with the Contract Documents for the Work, including without limitation, the Drawings and the Specifications. Contractor further warrants and guarantees that all work, materials, equipment and workmanship as provided, furnished and/or installed are fit for use as specified and fulfill all applicable requirements of the Contract Documents including without limitation, the Drawings and the Specifications. Contractor shall, at its sole cost and expense, repair, correct and/or replace any or all of the work, materials, equipment and/or workmanship of the Work, together with any other items which may be affected by any such repairs, corrections or replacement, that may be unfit for use as specified or defective within a period of one (1) year from the date of the District's Final Acceptance of the Work, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the Contractor's failure and/or refusal to comply with the provisions of this Guarantee, within the period of time set forth in the Contract Documents after the District's issuance of the Notice to the Contractor of any defect(s) in the Work, materials, equipment or workmanship, Contractor authorizes the District, without further notice to Contractor, to repair, correct and/or replace any such defective item at the expense of the Contractor. The Contractor shall reimburse the District for all costs, expenses or fees incurred by the District in providing or performing such repairs, corrections or replacements within ten (10) days of the District's presentation of a demand to the Contractor for the same.

The provisions of this Guarantee and the provisions of the Contract Documents for the Work relating to the Contractor's Guarantee(s) and warranty(ies) relating to the Work shall be binding upon the Contractor's Performance Bond Surety and all successors or assigns of Contractor and/or Contractor's Performance Bond Surety.

The provisions of this Guarantee are in addition to, and not in lieu of, any provisions of the Contract Documents for the Work relating to the Contractor's guarantee(s) and warranty(ies) or any guarantee(s) or warranty(ies) provided by any material supplier or manufacturer of any equipment, materials or other items forming a part of, or incorporated into the Work, or any other guarantee or warranty obligation of the Contractor, prescribed, implied or imposed by law.

The undersigned individual executing this Guarantee on behalf of Contractor warrants and represents that he/she is duly authorized to execute this Guarantee on behalf of Contractor and to bind Contractor to each and every provision hereof.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typewritten or handwritten name)

\_\_\_\_\_  
(Title)



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