Item 3.1
Time has been set aside for the public to address the Board of Trustees on items that are NOT ON THE AGENDA, but those items will not be acted upon by the Board at this meeting. ALL speakers must submit a “Request to Speak” form (located on the information table at the meeting) prior to this portion of the meeting and will be recognized by the President of the Board. Five minutes will be allotted to each speaker and not more than 20 minutes on any subject.

SANTA CLARITA COMMUNITY COLLEGE DISTRICT
BOARD OF TRUSTEES

SPECIAL MEETING

BOARD MEETING ROOM – HASLEY HALL (HSLH-137)
College of the Canyons
26455 Rockwell Canyon Road ~ Santa Clarita, California 91355

3:00 p.m.
Wednesday, December 10, 2008

The Meeting will begin at 3:00 pm (public welcome).

1. PRELIMINARY FUNCTIONS
   1.1 Call to Order/Establishment of a Quorum

2. PHYSICAL PLANT, FACILITIES and CONSTRUCTION
   2.1 Approval of Award of Contract for Design/Build of Fine Arts Expansion Project ACTION

   2.2 Approval of Resolution 2008/09-08: To Adopt Certain Findings and Approve Energy Service Contracts for Installation of Photovoltaic Panels with Chevron Energy Solutions Company at the Valencia and Canyon Country Campuses ACTION

3. GENERAL
   3.1 Comments by Members of the Audience on Any Item NOT ON THE AGENDA

4. ANNOUNCEMENT OF NEXT MEETING –
   Wednesday, January 21, 2009, Business Meeting, Closed Session at 5:00 pm, Open Session at 6:30 pm, Board Meeting Room, Hasley Hall (HSLH-137), College of the Canyons.

AND ADJOURNMENT

If you need a disability-related modification or accommodation (including auxiliary aids or services) to participate in the public meeting, or if you need an agenda in an alternate form, please contact the Chancellor’s Office at College of the Canyons at least 24 hours before the scheduled meeting.
BACKGROUND / ANALYSIS:
The Fine Arts Expansion will provide 20,371 assignable square footage of space that will house the expansions of the Media, Arts (Painting, Drawing and Sculpture), Photography and Graphics programs. Included are 3 computer labs, a large lecture room, 10 classrooms, a 2-D drawing classroom, a life/drawing classroom, 2 conference rooms and 12 office spaces.

Per AB 1000, the District adopted a Design/Build Resolution at the January 17, 2007 Board Meeting which authorized District staff to complete the design and construction of the Fine Arts Expansion Project ("Project") using the design/bid/build approach. This entails the District’s retention of a Design Consultant to develop scope, materials, equipment and other Project requirements, with the completion of the Design Documents and construction of the Project being completed by a Design-Build Entity ("DBE"). The Design/Build methodology makes the DBE responsible for the design and construction, thereby theoretically limiting the potential liability to the District for design shortfalls and increased construction costs.

There is a two-step process for the District’s selection and retention of the DBE: (i) pre-qualification of DBEs; and (ii) pre-qualified DBEs’ submittal of responses to the Design/Build RFP. In late June and early July, the District issued the Pre-Qualification Application to over 20 DBEs. Five responses were received to the Pre-Qualification Application and based upon the criteria set forth in the Pre-Qualification Application, all five responding DBEs were deemed qualified to submit a response to the RFP.

(Continued)

FISCAL IMPLICATIONS:
This is a GO Bond-funded project, funds for which can only be used towards Bond-listed projects. Funds for this project are included in the FY08/09 Adopted Budget.

RECOMMENDATIONS:
Move approval of contract for the Design/Build of the Fine Arts Expansion Project to Klassen Corporation in the amount of $10,782,236.
Background/Analysis (cont'd):

In October, the District issued the RFP to the Pre-Qualified DBEs; responses to the RFP were submitted to the District on November 18, 2008. The results of the response are as follows:

<table>
<thead>
<tr>
<th>DBE</th>
<th>Bid Amount</th>
<th>Project Completion Date</th>
<th>Proposed Savings</th>
<th>Total Bid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harbor/PMSM</td>
<td>$12,400,000</td>
<td>May, 2011</td>
<td>No</td>
<td>$12,400,000</td>
</tr>
<tr>
<td>Carrier Johnson/Heery</td>
<td>$14,367,121</td>
<td>November, 2010</td>
<td>No</td>
<td>$14,367,121</td>
</tr>
<tr>
<td>PBWS/Kemp</td>
<td>$11,765,694</td>
<td>October, 2010</td>
<td>Yes</td>
<td>$10,265,694</td>
</tr>
<tr>
<td>Klassen/Klassen</td>
<td>$12,422,667</td>
<td>July, 2010</td>
<td>Yes</td>
<td>$10,782,236</td>
</tr>
<tr>
<td>Flewelling Moody/ Lundgren</td>
<td>$12,897,500</td>
<td>September, 2010</td>
<td>No</td>
<td>$12,897,500</td>
</tr>
</tbody>
</table>

District staff reviewed and evaluated the responses to the RFP and after additional interviews with three of the entities (PBWS/Kemp, Klassen and F&M/Lundgren) have determined the DBE submitting the proposal that is the most advantageous to the District. The Board of Trustees is requested to approve award of the DBE Contract to Klassen Corporation in the amount of $10,782,236 inclusive of several of the proposed design savings submitted in the RFP as the DBE submitting the most advantageous proposal to the District. Copies of the contract are available upon request from the Chancellor’s Office.
AGREEMENT FOR DESIGN-BUILD SERVICES

THIS AGREEMENT FOR DESIGN-BUILD SERVICES ("Agreement") is made this 10th day of December, 2008, in the City of Santa Clarita, County of Los Angeles, State of California, by and between SANTA CLARITA COMMUNITY COLLEGE DISTRICT, a California Community College District hereinafter "District" and KLASSEN CORPORATION ("DBE").

WITNESSETH, that the District and the DBE in consideration of the mutual covenants contained herein agree as follows:

1. **The Work.** Within the Contract Time and for the Contract Price, subject to adjustments thereto pursuant to the Contract Documents, the DBE shall perform and provide all necessary labor, materials, tools, equipment, utilities, services and transportation to complete in a workmanlike manner all of the obligations of the DBE set forth in the Contract Documents in connection with the work of improvement commonly referred to as the College of the Canyons Fine Arts Building Addition ("Project"). DBE shall provide all services and complete all Work covered by the Contract Documents, including without limitation, completion of Design Documents for the Project, obtaining DSA approval/permit for construction of the Project and Project construction.

2. **Contract Time.** The will issue separate Notices to Proceed to the DBE directing commencement of design services and commencement of construction services. The DBE shall complete the Design Documents for the Project and submit the same to the District for review and comment by January 23, 2009. The DBE shall achieve Substantial Completion of the Project by June 30, 2010. The DBE acknowledges and agrees that the DBE shall be subject to Liquidated Damages set forth in the Contract Documents if the DBE fails or refuses, for any reason, to complete Design Services by the Design Documents Completion Date or to complete Construction Services by the Substantial Completion Date.

3. **Contract Price.** The District shall pay the DBE as full consideration for the DBE’s full, complete and faithful performance of the DBE’s obligations under the Contract Documents, subject to adjustments of the Contract Price in accordance with the Contract Documents, the Contract Price of Ten Million Seven Hundred Eighty Two Thousand Two Hundred Thirty Six Dollars ($10,782,236). The Contract Price is allocated between the Design Services and the Construction Services as follows: Six Hundred Fifty Six Thousand Four Hundred Twenty Nine Dollars ($656,429) is allocated for completion of the Design Services ("the Design Services Contract Price") and Ten Million One Hundred Twenty Five Thousand Eight Hundred Seven Dollars ($10,125,807) is allocated for completion of the Construction Services ("the Construction Services Contract Price"). District and DBE acknowledge and agree that the Contract Price includes the following Alternate Items:

<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Modify sewer line connection to existing manhole</td>
<td>($11,100)</td>
</tr>
<tr>
<td>2</td>
<td>Eliminate cantilevered slab on first floor west elevation</td>
<td>($120,000)</td>
</tr>
<tr>
<td>3</td>
<td>Remove second floor planter; replace with architectural roofing</td>
<td>($3,500)</td>
</tr>
<tr>
<td>4</td>
<td>Delete round windows</td>
<td>($20,000)</td>
</tr>
<tr>
<td>5</td>
<td>Remove sunshades, reduce window size and location to</td>
<td>($1,081,372)</td>
</tr>
</tbody>
</table>
4. **Liquidated Damages.** If the DBE fails to complete the Design Documents by the Design Documents Completion Date or to achieve Substantial Completion by the Substantial Completion Date, including adjustments thereto authorized by the Contract Documents, the DBE shall be subject to assessment of Liquidated Damages set forth below. Failure of the DBE to complete Punchlist items noted upon Substantial Completion within the time established to complete the Punchlist items will result in the District’s assessment of Liquidated Damages set forth below.

4.1. **Liquidated Damages for Delayed Completion of Design Documents.** If the DBE fails to complete the Design Documents by the Design Documents Completion Date, the DBE shall be subject to assessment of Liquidated Damages in the amount of One Hundred Dollars ($100) per day per Submittal until the Design Documents are completed.

4.2. **Liquidated Damages for Delayed Submission of Submittals.** If the DBE fails to prepare and submit Submittals in accordance with the Construction Schedule, the DBE shall be subject to assessment of Liquidated Damages in the amount of One Hundred Dollars ($100) per day per Submittal until the required Submittal is submitted.

4.3. **Liquidated Damages for Delayed Substantial Completion of the Work.** If the DBE fails to achieve Substantial Completion of the Work within the Contract Time, including adjustments thereto in accordance with the Contract Documents, the DBE shall be subject to assessment of Liquidated Damages in the amount of One Hundred Dollars ($100) per day from the scheduled date of Substantial Completion until Substantial Completion is achieved.

4.4. **Delayed Completion of Punchlist Items.** If the DBE fails to complete all Punchlist Items noted upon Substantial Completion of the Work within the time established for completion of all Punchlist Items, the DBE shall be subject to assessment of Liquidated Damages in the amount of One Hundred Dollars ($100) per day from the scheduled date of completion of all Punchlist Items until all Punchlist Items are completed.

4.5. **District Withhold of Liquidated Damages; Performance Bond Surety.** If the DBE is assessed Liquidated Damages pursuant to the foregoing, the District may withhold such Liquidated Damages from the Contract Price then or thereafter due the DBE.
Liquidated Damages assessed pursuant to the foregoing exceeds the then remaining balance of the DBE Price, the DBE and the Surety issuing the Performance Bond shall be jointly and severally liable to the District for such amount exceeding the Contract Price.

5. **Insurance Policies Coverages.** The DBE shall obtain and maintain policies of insurance conforming to the requirements set forth in the Contract Documents and in the minimum coverage amount for each such policy of insurance, as set forth below.

5.1. **DBE Professional Liability Insurance.** The minimum coverage amount for the DBE’s Professional Liability insurance policy is Two Million Dollars ($2,000,000) per claim and Two Million Dollars ($2,000,000) in the aggregate.

5.2. **DBE Builders Risk Insurance.** The DBE’s Builder’s Risk Insurance shall be in the minimum coverage amount equal to the Construction Services Contract Price set forth above.

5.3. **DBE and Subcontractor Insurance Coverage Amounts.** The DBE and all Subcontractors shall obtain and maintain the following minimum coverage amounts for the following policies of insurance:

5.3.1. **Workers Compensation Insurance.** The minimum coverage amount of the Workers Compensation Insurance policy shall be in accordance with the Laws.

5.3.2. **Employers Liability Insurance.** The minimum coverage amount of the Employers Liability insurance policy shall be One Million Dollars ($1,000,000).

5.3.3. **Commercial General Liability Insurance.** The minimum coverage amount of the Commercial General Liability insurance policy shall be Two Million Dollars ($2,000,000) per occurrence and Four Million Dollars ($4,000,000).

6. **Mark-Up On Direct Costs of Changes.** The allowable mark-up for general administrative and overhead costs, supervision, bond/insurance premium charges on the direct costs of a Change shall be fifteen percent (15%)

7. **Hours and Days of Work at the Site.** The DBE’s construction activities at the Site shall be limited to the hours of 7:00 A.M. and 4:00 P.M. Mondays through Fridays, except for District holiday days.

8. **Notices.** Notices from the DBE and the District to the other shall be addressed as follows:

    If to the District:
    
    Vice President, Physical Plant & Facilities Planning  
    Santa Clarita Community College District  
    College of the Canyons  
    26445 Rockwell Canyon Road  
    Santa Clarita, California 91355

    If to the DBE:
    
    Jerry D. Klassen  
    President & CEO  
    Klassen Corporation  
    2021 Westwind Drive  
    Bakersfield, CA 93301

9. **DBE Provided Facilities/Services.** During construction of the Project, the DBE shall obtain and/or provide for the use of the District, Project Inspector and the Consulting Architect during
Project construction for activities relating to the Project, the following facilities and services. All of the following shall be provided by the DBE without adjustment of the Contract Price hereunder.

9.1. Facilities. The DBE shall provide work, labor, materials and services necessary to: (i) remove and relocate an existing District owned re-locatable trailer from its existing location on the College of the Canyons campus to a location within the Site of Project construction; and (ii) complete re-installation of the re-locatable trailer at the District designated location at the Site, including without limitation, the re-establishment of the existing utilities in the trailer.

9.2. Services. The DBE shall obtain, provide and pay for services consisting of telephone, fax, internet service charges; bottled water/coffee services; consumable office supplies, including without limitation, fax/printer toner cartridges; and miscellaneous office supplies. The DBE shall connect to any/all necessary utilities at the points of connection designated by the District and shall distribute those utilities at the sole cost of the DBE. Usage costs of electricity, gas and water shall be paid for by the District.

10. The Contract Documents. The documents forming a part of the Contract Documents consist of this Agreement and the following, all of which are component parts of the Contract Documents.

- Request for Proposals and Proposal Instructions
- Proposal and Documents Submitted with Proposal
- DBE Certification
- Subcontractors List
- Non-Collusion Affidavit
- Bid Bond
- Bid Addendum No. 1
- Agreement
- Performance Bond
- Labor and Materials Payment Bond
- Drug-Free Workplace Certification
- Certification of Workers Compensation Insurance
- General Conditions
- Specifications
- Drawings
- Labor Compliance Program
- Bridging Documents

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

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

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

“DISTRICT”
SANTA CLARITA COMMUNITY COLLEGE DISTRICT
By: __________________________________
Dr. Dianne G. Van Hook
Chancellor

“DBE”
KLASSEN CORPORATION
By: __________________________________
Jerry D. Klassen
President & CEO
(CORPORATE SEAL)
ARTICLE 1: DEFINITIONS; GENERAL

1.1 District.
1.2 DBE.
1.3 Architect.
1.4 Consulting Architect.
1.5 Bridging Documents.
1.6 Design Services.
1.7 Construction Services.
1.8 The Work.
1.9 The Project.
1.10 Surety.
1.11 Subcontractors; Sub-Subcontractors.
1.12 Material Supplier.
1.13 Drawings and Specifications.
1.14 Special Conditions; Supplemental Conditions.
1.15 Contract Documents.
1.16 Intent and Correlation of Contract Documents.
   1.16.1 Work of the Contract Documents.
   1.16.2 Technical Terms.
   1.16.3 Conflict in Contract Documents.
1.17 Shop Drawings; Samples; Product Data (“Submittals”).
1.18 Division of State Architect (“DSA”).
1.19 Project Inspector.
1.20 Contract Document Terms.
1.21 DBE’s Superintendent.
1.22 Record Drawings.
1.23 Construction Equipment.
1.24 Site.
1.25 Field Clarifications.
1.26 Defective or Non-Conforming Work.
1.27 Delivery.
1.28 Notice to Proceed.
1.29 Progress Reports; Verified Reports.
1.30 Laws

ARTICLE 2: DISTRICT

2.1 Information Required of District.
   2.1.1 Surveys; Site Information.
   2.1.2 Permits; Fees.
   2.1.3 Drawings and Specifications.
   2.1.4 Furnishing of Information.
2.2 District’s Right to Stop the Work.
2.3 Partial Occupancy or Use.
   2.3.1 District’s Right to Partial Occupancy.
   2.3.2 No Acceptance of Defective or Nonconforming Work.
2.4 The Project Inspector.
   2.4.1 Access to Work.
   2.4.2 Limitations on Project Inspector.

ARTICLE 3: CONSULTING ARCHITECT AND CONTRACT ADMINISTRATION

3.1 Administration of the Contract.
   3.1.1 Role of the Consulting Architect.
   3.1.2 Consulting Architect’s Periodic Site Observations.
   3.1.3 DBE Responsibility for Construction Means, Methods and Sequences.
   3.1.4 Review of Applications for Payment.
   3.1.5 Rejection of Work.
   3.1.6 Submittals.
   3.1.6.1 Processing of Submittals.
   3.1.6.2 Consulting Architect’s Review.
   3.1.6.3 Time for Consulting Architect’s Review.
   3.1.7 Changes to the Work; Change Orders.
   3.1.8 Completion.
   3.1.9 Interpretation of Contract Documents; Consulting Architect as Initial Arbiter of Disputes.
3.2 Communications.
3.3 Termination of Consulting Architect; Substitute Consulting Architect.

ARTICLE 4: THE DBE

4.1 Work in Accordance with Contract Documents.
   4.1.1 No Commencement of Work Without DSA Permitted Design Documents.
   4.1.2 DBE Notice of Construction Commencement.
4.2 Site Investigation; Subsurface Conditions.
4.2.1 DBE Investigation.
4.2.2 Subsurface Data.
4.2.3 Subsurface Conditions.

4.3 Supervision and Construction Procedures.
4.3.1 Supervision of the Work.
4.3.2 Responsibility for the Work.
4.3.3 Layouts.
4.3.4 Construction Utilities.
4.3.5 Existing Utilities; Removal, Relocation and Protection.

4.3.6 Conferences and Meetings.
4.3.6.1 Pre-Construction Conference.
4.3.6.2 Progress Meetings.
4.3.6.3 Pre-Installation Conference.
4.3.6.4 Special Meetings.
4.3.6.5 Minutes of Meetings.

4.3.7 Temporary Sanitary Facilities.
4.3.8 Noise and Dust Control.
4.3.8.1 Noise Control.
4.3.8.2 Dust Control.
4.3.8.3 DBE Failure to Comply.

4.4 Labor and Materials.
4.4.1 Payment for Labor, Materials and Services.
4.4.2 Employee Discipline.
4.4.3 DBE’s Project Manager and Superintendent.
4.4.4 Prohibition on Harassment.
4.4.4.1 District’s Policy Prohibiting Harassment.
4.4.4.2 DBE’s Adoption of Anti-Harassment Policy.
4.4.4.3 Prohibition on Harassment at the Site.

4.5 Taxes.

4.6 Permits, Fees and Notices; Compliance With Laws.
4.6.1 Payment of Permits, Fees.
4.6.2 Compliance With Laws.
4.6.3 Notice of Variation from Laws.

4.7 Submittals.
4.7.1 Purpose of Submittals.
4.7.2 DBE’s Submittals.
4.7.2.1 Prompt Submittals.
4.7.2.2 Approval of Subcontractor Submittals.
4.7.2.3 Verification of Submittal Information.

4.7.2.4 DBE Responsibility for Deviations.
4.7.2.5 No Performance of Work Without Architect Review.
4.7.3 Architect Review of Submittals.
4.7.4 Submittal Review Notations.
4.7.5 Deferred Approval Items.

4.8 Materials and Equipment.
4.8.1 Specified Materials, Equipment.
4.8.2 Approval of Substitutions or Alternatives.
4.8.3 “Sole Source” Products.
4.8.4 Placement of Material and Equipment Orders.
4.8.5 District’s Right to Place Orders for Materials and/or Equipment.

4.9 Safety.
4.9.1 Safety Programs.
4.9.2 Safety Precautions.
4.9.3 Safety Signs, Barricades.
4.9.4 Safety Notices.
4.9.5 Safety Coordinator.
4.9.6 Emergencies; First Aid.
4.9.7 Hazardous Materials.
4.9.7.1 General.
4.9.7.2 Prohibition on Use of Asbestos Construction Building Materials (“ACBMs”).
4.9.7.3 Disposal of Hazardous Materials.

4.10 Maintenance of Documents.
4.10.1 Documents at Site.
4.10.2 Maintenance of Record Drawings.

4.11 Use of Site.
4.12 Clean-Up.

4.13 Access to the Work.

4.14 Information and Facilities for the Project Inspector.
4.15 Patents and Royalties.
4.16 Cutting and Patching.


4.18 Wage Rates; Employment of Labor.
4.18.1 Determination of Prevailing Rates.
4.18.2 Payment of Prevailing Rates.
4.18.3 Prevailing Rate Penalty.
4.18.4 Payroll Records.
4.18.5 Hours of Work.
4.18.5.1 Limits on Hours of Work.
4.18.5.2 Penalty for Excess Hours.
4.18.5.3 DBE Responsibility.
4.18.6 Apprentices.
4.18.6.1 Employment of Apprentices.
4.18.6.2 Apprenticeship Certificate.
4.18.6.3 Ratio of Apprentices to Journeymen.
4.18.6.4 Exemption from Ratios.
4.18.6.5 Contributions to Trust Funds.
4.18.6.6 DBE’s Compliance.
4.18.7 Employment of Independent Design-Build Entities.
4.19 Assignment of Antitrust Claims.
4.20 Limitations Upon Site Activities.
4.21 Labor Compliance Program (“LCP”)
  4.21.1 Pre-Construction Conference
  4.21.2 Maintenance and Submission of Weekly Certified Payroll Records.
  4.21.3 District Audit of Certified Payroll Records.
  4.21.4 DBE’s Rights Upon Determination of Violation.
  4.21.5 LCP Not Exclusive.

ARTICLE 5: SUBCONTRACTORS
5.1 Subcontracts.
5.2 Substitution of Listed Subcontractor.
  5.2.1 Substitution Process.
  5.2.2 Responsibility of DBE Upon Substitution of Subcontractor.
5.3 Subcontractors’ Work.
5.4 Subcontractors’ Compliance with Labor Compliance Program.

ARTICLE 6: INSURANCE; INDEMNITY; BONDS
6.1 Worker’s Compensation Insurance; Employer’s Liability Insurance.
6.2 Commercial General Liability and Property Insurance.
6.3 Builder’s Risk “All Risk” Insurance.
  6.4.1 Minimum Coverage Amounts.
  6.4.2 Required Qualifications of Insurers.
6.5 Evidence of Insurance; Subcontractor’s Insurance.

6.5.1 Certificates of Insurance.
6.5.2 Subcontractor’s Insurance.
6.6 Maintenance of Insurance.
6.7 DBE’s Insurance Primary.
6.8 Indemnity.
6.9 Payment Bond; Performance Bond.

ARTICLE 7: CONTRACT TIME
7.1 Substantial Completion of the Work Within Contract Time.
7.2 Progress and Completion of the Work.
  7.2.1 Time of Essence.
  7.2.2 Substantial Completion.
  7.2.3 Correction or Completion of the Work After Substantial Completion.
    7.2.3.1 Punchlist.
  7.2.4 Final Completion.
  7.2.5 DBE Responsibility for Multiple Inspections.
  7.2.6 Final Acceptance.
7.3 Construction Schedule.
  7.3.1 Submittal of Preliminary Construction Schedule.
  7.3.2 Review of Preliminary Construction Schedule.
  7.3.3 Preparation of Submittal of Contract Construction Schedule.
  7.3.4 Revisions to Approval Construction Schedule.
  7.3.5 Updates to Approved Construction Schedule.
  7.3.6 DBE Responsibility for Construction Schedule.
7.4 Adjustment to Contract Time.
  7.4.1 Excusable Delays.
  7.4.2 Compensable Delays.
  7.4.3 Unexcusable Delays.
  7.4.4 Adjustment of Contract Time.
    7.4.4.1 Procedure for Adjustment of Contract Time.
    7.4.4.2 Limitations Upon Adjustment of Contract Time on Account of Delays.
7.5 Liquidated Damages.
7.6 District Right to Take-Over Work.

ARTICLE 8: CONTACT PRICE
8.1 Contract Price.
8.2 Cost Breakdown.
8.3 Progress Payments.
  8.3.1 Applications for Progress Payments.
  8.3.2 District’s Review of Applications for Progress Payments.
  8.3.3 Review of Applications for Progress Payments.
  8.3.4 District’s Disbursement of Progress Payments.
    8.3.4.1 Timely Disbursement of Progress Payments.
    8.3.4.2 Untimely Disbursement of Progress Payments.
    8.3.4.3 District’s Right to Disburse Progress Payments by Joint Checks.
    8.3.4.4 No Waiver of Defective or Non-Conforming Work.
  8.3.5 Progress Payments for Changed Work.
  8.3.6 Materials or Equipment Not Incorporated into the Work.
    8.3.6.1 Limitations Upon Payment.
    8.3.6.2 Materials or Equipment Delivered and Stored at the Site.
    8.3.6.3 Materials or Equipment Not Delivered or Stored at the Site.
    8.3.6.4 Materials or Equipment in Fabrication or Transit.
  8.3.7 Exclusions from Progress Payments.
  8.3.8 Title to Work.
  8.3.9 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.
8.7.3 Job Cost System Information.

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9.1 Changes in the Work.
9.2 Oral Order of Change in the Work.
9.3 DBE Submittal of Data.
9.4 Adjustment to Contract Price and Contract Time on Account of Changes to the Work.
  9.4.1 Adjustment to Contract Price.
    9.4.1.1 Mutual Agreement.
    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.
      9.4.1.3.5 DBE Maintenance of Records.
  9.4.2 Adjustment to Contract Time.
  9.4.3 Addition or Deletion of Alternate Bid Item(s).
9.5 Change Orders.
9.6 DBE Notice of Changes.
9.7 Disputed Changes.
9.8 Emergencies.
9.9 Minor Changes in the Work.
9.10 Unauthorized Changes.

ARTICLE 10: SEPARATE CONTRACTORS
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10.2 District’s Coordination of Separate Contractors.
10.3 Mutual Responsibility.
10.4 Discrepancies or Defects.

ARTICLE 11: TESTS AND INSPECTIONS
11.1 Tests; Inspections; Observations.
  11.1.1 DBE’s Notice.
  11.1.2 Costs of Tests and Inspections.
  11.1.3 Testing/Inspection Laboratory.
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12.1 Inspection of the Work.
  12.1.1 Access to the Work.
  12.1.2 Limitations Upon Inspections.
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GENERAL CONDITIONS

ARTICLE 1:  DEFINITIONS; GENERAL

1.1 District. The “District” refers to SANTA CLARITA 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 DBE. The DBE is the person or entity identified as such in the Agreement; references to “DBE” include the DBE’s authorized representatives.

1.3 Architect. The Architect is the person or entity who is a member of the DBE, licensed under the laws of the State of California as an architect and who will complete the Bridging Documents to produce complete Design Documents for review and permitting by DSA. References to the Architect include, as appropriate by the circumstances of usage, Design Consultants (who may or may not be members of the DBE) responsible for completing portions of the Design Documents.

1.4 Consulting Architect. The Consulting Architect is a California licensed Architect under direct contract to the District to prepare the Bridging Documents and to provide guidance and assistance to the District during the DBE’s completion of the Design Documents and construction of the Project.

1.5 Bridging Documents. The Bridging Documents are Drawings, Specifications and other instruments of services prepared by or on behalf of the Consulting Architect which set forth the scope and other requirements of the Project for further development and refinement by the DBE to produce complete Design Documents for the Project which can be reviewed and permitted by DSA.

1.6 Design Services. Design Services refers to the services of California licensed/registered architects or engineers to complete development of the Bridging Documents to produce complete and accurate Design Documents for review and permitting by DSA and construction of the Project.

1.7 Construction Services. All of the work, labor, materials, equipment, services and other items necessary to complete construction of the Project based upon the DSA permitted Design Documents and Changes thereto directed or authorized by the District in accordance with the terms of the Contract Documents.

1.8 The Work. The “Work” is the entirety of the design and construction services required by the Contract Documents, and includes all labor, materials, equipment or services provided or to be provided by the DBE to fulfill the DBE’s obligations under the Contract Documents.

1.9 The Project. The Project is the total construction of which the Work performed by the DBE 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.

1.10 Surety. The Surety is the person or entity that executes, as surety, the DBE’s Labor and Material Payment Bond and/or Performance Bond.

1.11 Subcontractors; Sub-Subcontractors. A Subcontractor is a person or entity who has a direct contract with the DBE to perform a portion of the Work. “Subcontractor” does not include a separate contractors to the District or Subcontractors of any separate contractors. 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.
1.12 **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.

1.13 **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. 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.

1.14 **Contract Documents.** The Contract Documents consist of the Agreement between the District and the DBE and all documents identified in the Agreement as forming a part of the Contract Documents. The Contract Documents shall include modifications thereto issued after execution of the Agreement.

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

1.15.1 **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 DBE. The Contract Documents are complementary and what is required by one shall be as binding as if required by all; performance by the DBE 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 DBE 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.

1.15.2 **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.

1.15.3 **Conflict in Contract Documents.** In the event there are conflicting provisions in the Contract Documents, the Consulting Architect shall determine which of the conflicting provisions shall govern. In general, the Consulting Architect shall use as a guideline the more stringent requirements or the more expensive material unless, in the opinion of the Consulting Architect, other requirements are more appropriate. The decision of the Consulting Architect is final and shall not be further reviewable or appealable by arbitration or litigation. 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 DBE shall provide the item, product, equipment or material of the highest or more stringent quality.

1.15.4 **Drawing Dimensions.** Dimensions given on the Drawings take precedence over scaled measurements, and large scale Drawings take precedence over small scale Drawings. Figures take precedence over scaled dimensions. Scaling of dimensions is performed at the DBE’s own risk.

1.16 **Shop Drawings; Samples; Product Data (“Submittals”).** Shop Drawings are diagrams, schedules and other data specially prepared for the Work by the DBE 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 DBE to illustrate materials or equipment for some portion of the Work. Shop Drawings, Samples and Product Data prepared or furnished by the DBE or any of its Subcontractors or Material Suppliers are collectively referred to as “Submittals”.

1.17 **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.

1.18 **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 the Laws, including without limitation, in Title 24 of the California Code of Regulations, as the same may be amended from time to time.

1.19 **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 Consulting 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” or which are reasonably inferable as a “typical” condition; Work in such other areas shall conform to that shown as “typical” or as reasonably inferable therefrom.

1.20 **DBE’s Field Superintendent.** The DBE’s Field Superintendent is the individual employed by the DBE whose principal responsibility shall be the supervision and coordination of the DBE’s Construction Services and activities; the DBE’s Superintendent shall not perform routine construction labor.

1.21 **Record Drawings.** The Record Drawings are a set of the Drawings marked by the DBE 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.

1.22 **Construction Equipment.** “Construction Equipment” is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.

1.23 **Site.** The Site is the physical area designated in the Contract Documents for DBE’s performance, construction and installation of the Work.

1.24 **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.

1.25 **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. The DBE shall promptly correct, repair or replace any portion of the Work subject to a Notice of Non-Compliance.

1.26 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.

1.27 Notice to Proceed. The Notice to Proceed is the written notice issued by or on behalf of the District to the DBE authorizing the DBE to proceed with commencement of the Work and which establishes the date for commencement of the Contract Time for completion of the Design Services and completion of the Construction Services.

1.28 Progress Reports; Verified Reports. Progress Reports are written reports prepared by the DBE and its Subcontractors on a daily basis. Daily Progress Reports shall be completed and submitted to the District not later than 9:00 A.M. of the ensuing business day. Daily Progress Reports must include: (i) the number of labor and supervising personnel at the Site; (ii) the labor/work classification of each laborer; (iii) a detailed description of the Work in progress and completed; (iv) weather/environmental conditions; and (v) problems encountered with a potential impact to the Contract Time or the Contract Price. Verified Reports are periodic written reports prepared by the DBE 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 DBE is the preparation of complete and accurate Progress Reports, if required, and Verified Reports as well as the timely submission of the same.

1.29 Laws. The term “Laws” as used in the Contract Documents shall refer to all laws, ordinances, codes, rules and/or regulations promulgated by any governmental or quasi-governmental agency with jurisdiction over any portion of the Work and which apply to any portion of the Work. Laws refer to those enacted and in effect as of the execution of the Agreement, amendments thereto occurring during the performance of the Work and subsequently enacted Laws that take effect during the performance of the Work. No adjustment of the Contract Time or the Contract Price shall be allowed for the DBE’s compliance with the Laws.

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 DBE without adjustment to the Contract Price or the Contract Time.

2.1.2 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 or warrants that such information is complete and accurate. The DBE 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. The DBE 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 or Consulting Architect, may, by written order, direct the DBE to stop the Work, or any portion thereof, until the cause for such stop work order has been eliminated if the DBE: (i) fails 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 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 DBE 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 the Laws. If Work is stopped or suspended pursuant to the foregoing, the Contract Price and the Contract Time are not subject to adjustment.

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 DBE 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 DBE 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 DBE, and the Consulting 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 DBE 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 DBE, 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 elsewhere in the Contract Documents and/or arising by operation of the Laws, 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 DBE’s
performance of its obligations under the Contract Documents.

2.4.1 **Access to Work.** The DBE 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.
The Project Inspector has no authority relative to the content or scope of the DBE’s safety
plan/program. No Work inconsistent with the Contract Documents shall be performed solely
on the basis of the direction of the Project Inspector, and the DBE shall be liable to the District
for the consequences of all Work performed on such basis. The actions, functions and
responsibilities of the Project Inspector shall not be deemed control over the DBE’s means,
methods, sequences and schedule for completing construction of the Project.

**ARTICLE 3: CONSULTING ARCHITECT AND CONTRACT ADMINISTRATION**

3.1 **Administration of the Contract.**

3.1.1 **Role of the Consulting Architect.** The Consulting Architect will provide
administration of the Contract as described in the Contract Documents, and will be a District
representative during construction until the time that Final Payment is due the DBE under the
Contract Documents. The Architect will advise and consult with the District and the Project
Inspector with respect to the administration of the Contract and the Work. The Consulting
Architect is authorized to act on behalf of the District to the extent provided for in the Contract
Documents.

3.1.2 **Consulting Architect’s Periodic Site Observations.** The Consulting 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 Consulting 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 Consulting 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 **DBE Responsibility for Construction Means, Methods and Sequences.** Neither
the District, Project Inspector or Consulting Architect 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 DBE’s
responsibility. The District, Consulting Architect or Project Inspector have no control over or
charge of and are not responsible for acts or omissions of the DBE, 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
Consulting Architect and Project Inspector will review the DBE’s Applications for Progress
Payments and for Final Payment, evaluate the extent of Work performed and the amount
properly due the DBE on such Application for Payment.
3.1.5 **Rejection of Work.** The Consulting Architect is authorized to reject Work which is defective or does not conform to the requirements of the Contract Documents. Whenever the Consulting Architect or Project Inspector consider it necessary or advisable, for implementation of the intent of the Contract Documents, the Consulting Architect and/or Project Inspector shall 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 Consulting Architect or the Project Inspector nor a decision made in good faith by the Consulting Architect or the Project Inspector to exercise or not to exercise such authority shall give rise to a duty or responsibility to the DBE, 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.** Submittals required by the Contract Documents shall be prepared by or on behalf of the DBE in accordance with the requirements of the Contract Documents. Submittals shall be transmitted by the DBE to the Consulting Architect for review. Upon completion of the Consulting Architect’s review of a Submittal, the Construction Manager shall transmit the reviewed Submittal to the DBE for the DBE’s distribution to its Subcontractor(s) and other affected parties. If the District does not retain a Construction Manager for the Work, Submittals shall be submitted by the DBE to the Consulting Architect or such other party designated in the Contract Documents or by the Consulting Architect for review and processing.

3.1.6.2 **Consulting Architect’s Review.** The Consulting Architect will review and approve or take other appropriate action upon the DBE’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 DBE as required by the Contract Documents. The Consulting Architect’s review of the DBE’s Submittals shall not relieve the DBE of its obligations under the Contract Documents. The Consulting Architect’s review of Submittals shall not constitute approval of safety measures, programs or precautions or, unless otherwise specifically stated by the Consulting Architect, of any construction means, methods, techniques, sequences or procedures. The Consulting 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 Consulting Architect.

3.1.6.3 **Time for Consulting Architect’s Review.** The Consulting 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 DBE, the District or the District’s separate contractors while allowing sufficient time, in the Consulting Architect’s reasonable professional judgment, to permit adequate review of Submittals. The foregoing notwithstanding, the Consulting 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 Consulting Architect will prepare Change Orders upon the written approval or direction of the District.

3.1.8 **Completion.** The Consulting Architect and Project Inspector will conduct
observations to determine the date(s) of Substantial Completion and the date(s) of Final Completion. The Consulting Architect will receive from the DBE and forward to the District, for the District’s review and records, written warranties and related documents or other items required by the Contract Documents upon close-out of the Work which are assembled by the DBE. The Consulting Architect and Project Inspector will verify that the DBE has complied with all requirements of the Contract Documents and is entitled to receipt of Final Payment.

3.1.9 Interpretation of Contract Documents; Consulting Architect as Initial Arbiter of Disputes. The Consulting Architect will interpret and decide matters concerning the requirements of the Contract Documents on written request of either the District or the DBE. The Consulting 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 Consulting Architect’s review and response to requests under this Article 3.1.9, the Consulting Architect shall be afforded a ten (10) calendar day period after receipt of such request to review and respond thereto. Interpretations and decisions of the Consulting 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 Consulting Architect will endeavor to secure faithful performance by both the District and the DBE, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith. The Consulting 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 DBE, in addition to other requirements established by the Contract Documents or by law, the submission of the same to the Consulting Architect for its decision shall be a condition precedent to initiation of dispute resolution procedures.

3.2 Communications. 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 DBE and the District or the Consulting Architect shall be through the Consulting Architect. Communications between the DBE and the District’s separate contractors, if any, shall be through the District. All written communications between the DBE and any Subcontractor, Material Supplier or others directly or indirectly engaged by the DBE to perform or provide any portion of the Work shall be available to the District, and the Consulting Architect for review, inspection and reproduction as may be requested from time to time. Failure or refusal of the DBE to permit the District or the Consulting Architect to review, inspect or reproduce such written communications may be deemed a default of DBE hereunder. The District reserves the right to implement a computerized data logging and storage system (such as Primavera Expedition®) for communications relating to the Work. The DBE’s use and access to such data logging system will be as established by the District. The DBE’s use of the data logging system will be without charge or expense to the DBE; provided, however, the Contract Time and the Contract Price shall not be subject to adjustment on account of the use of the data logging system or training of the DBE’s personnel on the use and functions of the data logging system.

3.3 Termination of Consulting Architect; Substitute Consulting Architect. In case of termination of employment of the Consulting Architect, the District shall appoint a substitute consulting architect whose status under the Contract Documents shall be that of the Consulting Architect.

ARTICLE 4: THE DBE

4.1 Work in Accordance With Contract Documents. The DBE shall perform all of the Work in strict conformity with the Contract Documents, including without limitation the DSA permitted Design Documents.
4.1.1 No Commencement of Work Without DSA Permitted Design Documents. The DBE shall not commence any Work of the Project unless DSA has issued a construction permit for the Work and the DBE has obtained all other approvals, reviews and/or authorizations of any public or quasi-public agency with jurisdiction over any portion of the Work (collectively "Permits"). Prior to commencement of construction activities at the Site, the DBE shall compile and present to the District and Consulting Architect all of the Permits for review and confirmation that all necessary Permits have been obtained by the DBE. Within three (3) days of the DBE submittal of all Permits to the District and the Consulting Architect, the District and Consulting Architect shall notify the DBE of the District’s acceptance of the Permits as being validly issued and that all Permits necessary for construction have been obtained ("District Permit Acceptance").

4.1.2 DBE Notice of Construction Commencement. Upon the DBE’s receipt of the District Permit Acceptance, the DBE shall issue a written notice to the District, Consulting Architect and the Project Inspector which shall indicate the date of the DBE’s commencement of construction activities at the Site ("DBE Notice of Construction Commencement"). The commencement of construction activities at the Site by the DBE as set forth in the DBE Notice of Construction Commencement shall be no more than seven (7) days after the date of the District Permit Acceptance, which shall be the commencement date for the Construction Services Contract Time. If the DBE Notice of Construction Commencement indicates that the commencement of construction at the Site is more than seven (7) days after the District Permit Acceptance, the commencement of the Construction Services Contract Time shall be deemed to be the seventh (7th) day after the date of the District Permit Acceptance.

4.2 Site Investigation; Subsurface Conditions.

4.2.1 DBE Investigation. The DBE 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 affect 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 DBE 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 DBE 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 DBE 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 DBE 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 DBE shall promptly and before the following conditions are disturbed, notify the Project Inspector, in writing, of any: (i) material that the DBE 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 DBE and the District as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse the DBE from the completion of the Work within the Contract Time and the DBE 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 DBE shall supervise and direct performance of the Work, using the DBE’s best skill and attention. The DBE 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. The DBE 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 DBE shall be responsible to the District for acts and omissions of the DBE’s employees, Subcontractors and their agents and employees, and all other persons performing any portion of the Work under a contract with the DBE. The DBE shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Project Inspector or the Consulting Architect in their administration of the Contract, observations of the Work, or by tests, inspections or approvals required or performed by persons other than the DBE.

4.3.3 **Layouts.** The DBE 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 DBE 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 DBE 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 DBE is responsible for furnishing and paying for all temporary utility services necessary to complete the Work. Any such temporary utility services shall be removed at the end of the Project by the DBE as part of his work. The installation and/or removal of any such services by the DBE shall be coordinated with the District’s facilities, so as to not interrupt the District’s operations and activities.

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. DBE shall be compensated for the costs of locating, repairing damage not due to the DBE’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. DBE 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 DBE encounters utility facilities not identified by the District in the Drawings, Specifications, or other Contract Documents, the DBE shall immediately notify, in writing, the District, the Project Inspector, the Consulting Architect 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 DBE to do such repairs or relocation work at a reasonable price.

4.3.6 Conferences and Meetings. A material obligation of the DBE under the Contract Documents is the attendance at required meetings by the DBE’s supervisory personnel for the Work and the DBE’s management personnel as required by the Contract Documents or as requested by the District. The DBE’s personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of the DBE and to bind the DBE. The DBE 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 DBE’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: (i) administrative matters, including an overview of the respective responsibilities of the District, Consulting Architect, DBE, Subcontractors, Project Inspector and others performing any part of the Work or services relating to the Work; (ii) Submittals; (iii) Changes and Change Order processing; (iv) employment practices, including compliance with the LCP, Certified Payroll preparation and submission, and prevailing wage rate responsibilities of the DBE and Subcontractors; (v) Progress Schedule development and maintenance; (vi) development of Schedule of Values and payment procedures; (vii) communications procedures; (ix) Site visitor policies; (x) conduct of DBE/Subcontractor personnel at the Site; and (xi) 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 DBE’s representatives and representatives of Subcontractors (as requested by the District) shall attend Progress Meetings. Progress Meetings will be chaired by the District or Consulting Architect and will generally include as agenda items: Site safety, field issues, coordination of Work, a review of a three week look-ahead schedule prepared by the DBE’s Superintendent, 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 Pre-Installation Conference. The DBE’s representatives (and representatives of Subcontractors as requested by the District or the Consulting Architect) shall attend a Pre-Installation Conference prior to the initiation of a new phase of work at such time and place as designated by the District. The Pre-Installation 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: (i) administrative matters, including an overview of the respective responsibilities of the District, Consulting Architect, DBE, Subcontractors, Project Inspector and others performing any part of the Work or services relating to the Work; (ii) Submittals; (iii) to plan and coordinate work of new sub-Design-Build Entities, separate Design-Build Entities and to plan for utility outages; (d) emergency and safety procedures; (iv) Site visitor policies; and (v) conduct of DBE/Subcontractor personnel at the Site.

4.3.6.4 Special Meetings. As deemed necessary or appropriate by the District, Special Meetings will be conducted with the participation of the DBE, Subcontractors and other Project participants as requested by the District. Attendance of the DBE, Subcontractors and others as directed by the District at such special meetings is a material obligation of the DBE under the Contract Documents.

4.3.6.5 Minutes of Meetings. Following conclusion of the Pre-Construction Conference, Progress Meetings and Special Meetings, the District or the Consulting Architect will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless the DBE notifies the Consulting Architect or the District, as applicable, 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 Consulting Architect or the District; such objections or corrections shall be submitted to the Consulting Architect or the District through the DBE. If the DBE 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 DBE shall obtain and maintain temporary sanitary facilities in conformity with applicable law, rule or regulation. The DBE 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 or about the Site.

4.3.8 Noise and Dust Control.

4.3.8.1 Noise Control. The DBE shall install noise reducing devices on construction equipment. DBE 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 DBE 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 DBE 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 DBE 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 Laws, including without limitation, the regulations established by the EPA and OSHA. Additionally, the DBE 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 DBE’s failure to comply with these requirements shall be exclusively at the cost of the DBE, 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. DBE shall replace any damaged 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 determination, debris, powder, sawdust, dirt or dust from any Work disrupts or disturbs the students or faculty or the normal operation of the District, at the District’s request, the DBE shall schedule the performance of all such Work around normal District 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 DBE Failure to Comply. If the DBE fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of the Contract Documents, the District, Consulting Architect or Project Inspector are each authorized to notify the DBE in writing of such failure and the DBE shall take immediate action. Should the DBE 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 DBE; the District may deduct such amounts from the Contract Price then or thereafter due the DBE.

4.4 Labor and Materials.

4.4.1 Payment for Labor, Materials and Services. Unless otherwise provided in the Contract Documents, the DBE shall provide and pay for all 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 DBE shall enforce strict discipline and good order among the DBE’s employees, the employees of any Subcontractor or Sub-Subcontractor, and all other persons performing any part of the Work at the Site. The DBE shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The DBE 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 DBE 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 DBE’s Project Manager and Superintendent. The DBE shall employ a competent superintendent and all necessary assistants who shall be in attendance at the Site at all times during performance of the Work. Competency of the DBE’s superintendent shall include, without limitation, a minimum of three (3) years prior experience as a superintendent for a general DBE on projects similar in size, scope and complexity to the Work. The DBE’s communications relating to the Work or the Contract Documents shall be through the DBE’s superintendent. The superintendent shall represent the DBE and communications given to the superintendent shall be binding as if given to the DBE. The DBE 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. The DBE’s Superintendent and Project Manager shall be satisfactory to the District and shall not be changed except with the consent of the District, unless the Superintendent or Project Manager proves to be unsatisfactory to the DBE and ceases to be employed by the DBE.

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 DBE’s Adoption of Anti-Harassment Policy. DBE 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. DBE 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. DBE 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. DBE shall not permit any person, whether employed by DBE, 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 DBE 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 DBE 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. DBE 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 DBE has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of the DBE 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 DBE shall pay, without adjustment of the Contract Price, all sales, consumer, use and other taxes for the Work or portions thereof provided by the DBE under the Contract Documents.

4.6 Permits, Fees and Notices; Compliance With Laws.

4.6.1 Payment of Permits, Fees. Unless otherwise provided in the Contract Documents, the DBE 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. The DBE shall pay all fees, costs or other expenses associated with or arising in connection with Deferred Approval Items.

4.6.2 Compliance With Laws. The DBE shall comply with and give notices required by the Laws and other orders of public authorities bearing on performance of the Work.

4.6.3 Notice of Variation From Laws. If the DBE knows, or has reason to believe, that any portion of the Contract Documents are at variance with applicable Laws, the DBE shall promptly notify the Consulting Architect and the Project Inspector, in writing, of the same. If the DBE 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 Consulting Architect and the Project Inspector, the DBE 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 DBE 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 **DBE’s Submittals.**

4.7.2.1 **Prompt Submittals.** The DBE shall review, approve and submit to the Consulting 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 DBE to the Consulting 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 DBE pursuant to Article 7 of these General Conditions. DBE’s submission of Submittals in conformity with the Submittal Schedule is a material obligation of the DBE. In the event of DBE’s failure or refusal to prepare and deliver Submittals in accordance with the Submittal Schedule, the DBE 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 DBE’s submission of such Submittal. DBE and District acknowledge and agree that if DBE 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. DBE and 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 DBE’s submission of all required Submittals in accordance with the Submittal Schedule, in the event that the District or the Consulting 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, the DBE shall submit revised Submittals within seven (7) days and bear all costs associated with the review and approval of resubmitted Submittals, including without limitation Consulting 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 DBE’s delayed submission of Submittals. In the event of the District’s imposition of the per diem assessments due to the DBE’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 DBE. Submittals not required by the Contract Documents or which do not otherwise conform with 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 DBE 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 DBE thereto prior to submission to the Consulting Architect for review. Any Submittal not bearing the DBE’s written approval shall be subject to return to the DBE 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 DBE 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 DBE represents to the District and Consulting Architect that the DBE 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 DBE’s Superintendent for the Work:

“The DBE has reviewed and approved the field dimensions and construction criteria of the attached Submittal. The DBE 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 DBE with information included in other Submittals.”

4.7.2.4 DBE Responsibility for Deviations. The DBE shall not be relieved of responsibility for correcting deviations from the requirements of the Contract Documents by the Consulting Architect’s review of Submittals unless the DBE has specifically informed the Consulting Architect in writing of such deviation at the time of submission of the Submittal and the Consulting Architect has given written approval to the specific deviation. The DBE shall not be relieved of responsibility for errors or omissions in Submittals by the Consulting Architect’s review thereof.

4.7.2.5 No Performance of Work Without Consulting Architect Review. The DBE shall perform no portion of the Work requiring the Consulting Architect’s review of Submittals until the Consulting Architect has completed its review and returned the Submittal to the DBE indicating “No Exception Taken” to such Submittal. The DBE 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 Consulting Architect in review of Submittals and other applicable portions of the Contract Documents.

4.7.3 Consulting Architect Review of Submittals. The purpose of the Consulting Architect’s review of Submittals and the time for the Consulting Architect’s return of Submittals to the DBE shall be as set forth elsewhere in the Contract Documents. If the Consulting Architect returns a Submittal as rejected or requiring correction(s) with re-submission, the DBE, so as not to delay the progress of the Work, shall thereafter resubmit, within seven (7) days, a Submittal conforming with the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in accordance with the Consulting Architect’s direction. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Consulting Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals. The Consulting Architect’s review of the Submittals is for the limited purposes described in the Contract Documents.

4.7.4 Submittal Review Notations. Unless otherwise provided elsewhere in the Contract Documents, the following notations or notations of a similar nature noted on a reviewed Submittal will require the DBE action noted below.
### Deferred Approval Items

In the event that any portion of the Work is designated in the Contract Documents as a "Deferred Approval" item, DBE 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. All fees, costs or expenses incurred or necessary to incur to complete Submittals relating to Deferred Approval Items and to obtain approvals/permits therefor shall be borne solely by the DBE without adjustment of the Contract Price. Preparation, submission, approval and permitting of Submittals relating to Deferred Approval Items shall be completed without adjustment of the Contract Time.

### Materials and Equipment

#### Specified Materials, Equipment

Except as otherwise expressly set forth in the Contract Documents, 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. Whenever a product, material or other item is specified with reference to a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other trade association standard (collectively, “the standards”), the DBE shall present an affidavit from the manufacturer when requested by the Consulting Architect or required in the Specifications, certifying the product, material or other item to be furnished and installed complies with the Standard. When requested by the Consulting Architect or required by the Contract Documents, support test data shall be submitted to substantiate compliance with the Standards.

#### Approval of Substitutions or Alternatives

The DBE 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 DBE certifies to the Consulting 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 Consulting 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 DBE shall submit engineering, construction, dimension, visual, aesthetic and performance data to the Consulting Architect to permit its proper evaluation of the proposed substitution or alternative. If requested by the Consulting, DBE shall promptly furnish any additional information or data regarding a proposed substitution or alternative, which the Consulting Architect deems reasonably necessary for the evaluation of the proposed substitution or alternative. The DBE shall not provide, furnish or install any substitution or
alternative without the Consulting 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 Consulting Architect’s review and final action of the same shall be subject to removal pursuant to Article 12 hereof. The Consulting Architect’s decision evaluating the DBE’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 DBE and which is accepted by the Consulting Architect; provided, however, that in the event a substitution or alternative accepted by the Consulting 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 DBE’s furnishing and/or installation of such approved substitution or alternative. The DBE 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 Consulting Architect, of the Consulting Architect’s consultant(s) and/or governmental agencies to review and/or approve any proposed substitution or alternative. The DBE 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 Consulting 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 DBE not later than thirty-five (35) days following the date of the District’s award of the Contract to DBE by action of the District’s Board of Trustees; 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 DBE, any Subcontractor, any Sub-Subcontractor, Material Supplier or Manufacturer.

4.8.3 “District Standard 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. The DBE 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. The DBE 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 or the Consulting Architect, the DBE 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 DBE shall, upon request of the District or the Consulting 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 DBE. 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 DBE. 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 DBE from any of DBE’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 DBE pursuant to the foregoing, DBE 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 DBE.

4.9 Safety.

4.9.1 Safety Programs. Notwithstanding any action by the District, Project Inspector or Consulting Architect, the DBE shall be solely responsible for initiating, maintaining, supervising and enforcing all safety programs required by the Laws in connection with the performance of the Contract, or otherwise required by the type or nature of the Work. The DBE’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 DBE of its obligations hereunder, the DBE shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs. Prior to commencement of Work at the Site, the DBE shall provide the Consulting Architect and the District with the DBE’s proposed safety program for the Work for review. Such review by Consulting Architect and/or the District shall not operate to relieve, impair or otherwise limit the DBE’s responsibility for initiating, maintaining, supervising and enforcing safety programs. Without adjustment of the Contract Price or the Contract Time, the DBE shall modify and re-submit its proposed safety plan to incorporate modifications thereto requested by the District or the Consulting Architect. The Consulting Architect and Project Inspector are authorized to monitor the DBE’s obligation to implement the DBE’s safety program.

4.9.2 Safety Precautions. The DBE 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 DBE or the DBE’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 DBE shall take adequate precautions and measures to protect existing roads, sidewalks, curbs, pavement, utilities, utility easements, adjoining property and improvements thereon (including without limitation, protection from settlement or loss of lateral support) and to avoid damage thereto. When use or storage of explosives or other hazardous materials or equipment or other hazardous construction methods are necessary, the DBE shall give the District and Project Inspector. At all times the DBE shall provide an adequate number of fire
extinguishers or other approved fire/life-safety devices during Work at the Site. Each fire extinguisher shall be conspicuously displayed and clearly marked with instructions for use. Without adjustment of the Contract Price or the Contract Time, the DBE 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 DBE 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 owners and users of adjacent sites and utilities.

4.9.4 Safety Notices. The DBE shall post all notices required by applicable law and comply with the Laws bearing on safety of persons or property or their protection from damage, injury or loss.

4.9.5 Safety Coordinator. The DBE shall designate a responsible member of the DBE’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 DBE’s superintendent unless otherwise designated by the DBE in writing to the Project Inspector, District and the Consulting Architect.

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

4.9.7 Hazardous Materials.

4.9.7.1 General. In the event that the DBE, 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 DBE 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. DBE 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 DBE 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. The DBE’s obligations under the preceding sentence shall survive the termination of the Contract, the warranty period provided under the Contract Documents, the DBE’s completion of the Work or the District’s acceptance of the Work. In the event that the DBE 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 DBE 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 DBE and the DBE’s Performance Bond Surety.

4.9.7.3 Disposal of Hazardous Materials. DBE shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about Site resulting from the DBE’s performance of Work and other activities. The DBE’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 DBE 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 Consulting 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, Parts 2, 3, 4, 5, 7 and 9 of the California Code of Regulations. During performance of the Work, all documents maintained by the DBE at the Site shall be available upon request to the District, the Consulting Architect, the Project Inspector and DSA for review, inspection or reproduction. Upon completion of the Work, all documents maintained at the Site by the DBE pursuant to the foregoing shall be assembled and transmitted to the Consulting Architect for delivery to the District.

4.10.2 Maintenance of Record Drawings. During its performance of the Work, the DBE 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 DBE during the performance of the Work. At any time during the DBE’s performance of the Work, upon the request of the District, the Project Inspector and/or the Consulting Architect, the DBE shall make the Record Drawings maintained hereunder available for the District’s review and inspection. The District’s review and inspection of the Record Drawings during the DBE’s performance of the Work shall be only for the purpose of generally verifying that DBE 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 DBE 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 DBE’s default of a material obligation hereunder. Without waiving, restricting or limiting any other right or remedy of the District for the DBE’s failure or refusal to continuously
maintain the Record Drawings, the District may, upon reasonably determining that the DBE 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 DBE and the District may deduct the amount of such fees and costs from any portion of the Contract Price then or thereafter due the DBE. In accordance with Article 8.4.2 of these General Conditions, prior to receipt of the Final Payment, DBE shall deliver the Record Drawings to the Consulting Architect.

4.11 Use of Site. The DBE 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 DBE shall not unreasonably encumber the Site or adjoining areas with materials or equipment. The DBE 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 DBE 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, DBE 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, DBE 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 DBE 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 District or the Consulting Architect, the DBE 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 Consulting Architect shall be authorized to direct the DBE’s clean-up obligations hereunder. If the DBE 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 DBE; the District may deduct such costs from any portion of the Contract Price then or thereafter due the DBE.

4.13 Access to the Work. The DBE shall provide the DSA, the District, the Project Inspector, the Consulting Architect and the Consulting Architect’s consultant(s) with access to the Work, whether in place, preparation or in progress and wherever located.

4.14 Information and Facilities for the Project Inspector. The DBE 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 DBE 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 DBE 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. DBE 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 DBE’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 DBE.

4.15 **Patents and Royalties.** The DBE 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 DBE shall be responsible for cutting, fitting or patching required to complete the Work or to make the component parts thereof fit together properly. The DBE shall not damage or endanger any portion of the Work, or the fully or partially completed construction of the District or separate contractors to the District by cutting, patching, excavation or other alteration. When modifying new Work or when installing Work adjacent to an existing structure/facility, the DBE 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 DBE shall not cut, patch or otherwise alter the construction by the District or separate DBE without the prior written consent of the District or separate DBE thereto, which consent shall not be unreasonably withheld. The DBE shall not unreasonably withhold consent to the request of the District or separate DBE to cut, patch or otherwise alter the Work.

4.17 **Encountering of Hazardous Materials.** In the event the DBE 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 DBE 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 DBE shall immediately notify the Project Inspector and the Consulting Architect, in writing, of such condition. The DBE 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 DBE 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 DBE 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 DBE 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 DBE, 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 DBE or any Subcontractor, of any tier, and such worker.
4.18.3 Prevailing Rate Penalty. The DBE 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 DBE 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 DBE 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 DBE or Subcontractor; and (ii) whether the DBE 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 DBE 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 DBE 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 DBE 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 DBE or Subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that DBE or Subcontractor shall be satisfied before applying that amount to the penalty imposed on that DBE 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 DBE.

4.18.4 Payroll Records. Pursuant to California Labor Code §1776, the DBE 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 DBE 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 DBE, 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 DBE; (iv) the DBE 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 DBE or any Subcontractor, of any tier, performing a part of the Work shall not be marked or obliterated. The DBE 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 DBE shall have ten (10) days in which to comply, subsequent to receipt of written notice specifying in what respects the DBE must comply herewith. Should noncompliance still be evident after such 10-day period, the DBE 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 DBE. The DBE 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 DBE 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 DBE 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 DBE shall pay to the District a penalty of Twenty-five Dollars ($25.00) for each worker employed on the Work by the DBE 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 DBE 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 DBE Responsibility. Any Work performed by workers necessary to be performed after regular working hours or on Saturdays, Sundays or other holidays shall be performed without adjustment to the Contract Price or any other additional expense to the District. The DBE shall be responsible for costs incurred by the District which arise out of Work performed by the DBE 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 DBE.

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 DBE or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade, the DBE 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 DBE 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 DBE or Subcontractor, shall arrange for the dispatch of apprentices to the DBE or such Subcontractor in order to comply with California Labor Code §1777.5. Prior to the commencement of the Work, the DBE and Subcontractors shall submit contract award information (on Form DAS-140) 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. Concurrently with submission of contract information on Form DAS-140 to the Apprenticeship Council, the DBE shall deliver a copy of its completed DAS-140 to the District and the Construction Manager. 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. Design-Build Entities 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 DBE shall employ apprentices for the number of hours computed as above before the completion of the Work. The DBE 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 DBE 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 DBE 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 DBE 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
Design-Build Entities, or to contracts of specialty Design-Build Entities not bidding for
work through a general or prime DBE, 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 DBE 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 Design-Build Entities in a specific trade on
a local or statewide basis, the member Design-Build Entities 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 DBE or any Subcontractor, of any
tier, who, performs any of the Work by employment of journeymen or apprentices in
any Apprenticeable Craft or Trade and who is not contributing to a fund or funds to
administer and conduct the apprenticeship program in any such craft or trade in the
area of the site of the Work, to which fund or funds other Design-Build Entities 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 Design-Build Entities do,
but where the trust fund administrators are unable to accept such funds, Design-Build
Entities not signatory to the trust agreement shall, using California Apprenticeship
Council Training Fund Contributions Form CAC-2, 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 DBE’s Compliance. The responsibility of compliance with this Article
for all Apprenticeable Trades or Crafts is solely and exclusively that of the DBE. 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 DBE willfully fails to
comply with the provisions of this Article and California Labor Code §1777.5, pursuant
to California Labor Code §1777.7, the DBE 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, DBE 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 Contractor’s 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 DBE shall employ any person in violation of the foregoing, DBE 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, DBE’s violation of this Article 4.18.7 or the provisions of California Labor Code §1021.5 shall be deemed an event of DBE’s default under Article 15.1 of these General Conditions. The DBE 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 DBE 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 DBE, 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 Contract Documents. 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. A material obligation of the DBE 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
DBE relating to 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-Construction Conference pursuant to these 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 DBE and each Subcontractor identified in its Subcontractors List submitted with its Proposal shall attend the Pre-Construction Conference. The foregoing notwithstanding, if the District reasonably determines that individuals or entities in addition to the DBE and such Subcontractors are necessary attendees at the Pre-Construction Conference, the DBE 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 Submission of Weekly Certified Payroll Records. The DEB 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 DBE and its Subcontractors shall maintain and submit Certified Payroll Records on a weekly basis to the LCP Administrator as part of the DBE’s obligations under the LCP. During the progress of the Work until Final Payment is due, no later than 5:00 P.M. on each Monday during the Work, the DBE shall submit to the District’s LCP Administrator Certified Payroll Records for the DBE and its Subcontractors for all persons performing or providing any Work in the immediately preceding week. In addition to weekly submissions of Certified Payroll Records of the DBE and Subcontractors, concurrently with submission of an Application for Progress Payment and the Application for Final Payment, the DBE shall submit to the LCP Administrator and the District Certified Payroll Records for the DBE and its Subcontractors for all persons providing or performing any Work in the immediately preceding month. The Certified Payroll Records maintained and submitted hereunder shall be in strict conformity with requirements established in the LCP. A material obligation of the DBE under the Contract Documents is the DBE’s and its Subcontractor's strict compliance with requirements of the LCP relating to maintenance and submission of Certified Payroll Records. The DBE’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 DBE and the DBE’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 DBE or its Subcontractors have committed violations of the LCP, the DBE 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 DBE's Rights Upon Determination of Violation. If upon audit of Certified Payroll Records, the District determines that the DBE has violated, or failed to comply with, applicable provisions of the LCP, the DBE shall be subject to the penalties, assessments and other remedies set forth in the LCP for the DBE’s violation of, or failure to comply with, the LCP. To the extent applicable, the DBE shall be entitled to contest or appeal such determination, as set forth in the LCP, provided that the DBE strictly complies with all applicable provisions of applicable law and the LCP relating to the initiation and completion of any proceeding to contest or appeal a determination that the DBE 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 the DBE’s obligations relating to the payment of prevailing wages and compliance with apprenticeship standards. A material obligation of the DBE under the Contract Documents is the DBE’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.

ARTICLE 5: SUBCONTRACTORS

5.1 Subcontracts. Any Work performed for the DBE by a Subcontractor shall be pursuant to a written agreement between the DBE 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 DBE all the obligations and responsibilities of the DBE which by the Contract Documents the DBE assumes toward the District, the Project Inspector, DSA, and the Consulting 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 DBE shall provide to the District copies of all executed Subcontracts and Purchase Orders to which DBE is a party within thirty (30) days after DBE’s execution of the Agreement. During performance of the Work, the DBE shall, from time to time, as and when requested by the District or the Consulting Architect provide the District with copies of any and all Subcontracts or Purchase Orders relating to the Work and all modifications thereto. The DBE’s failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders in accordance with the two preceding sentences is DBE’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 DBE 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 Consulting Architect or attorneys fees in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the DBE; such costs may be deducted by the District from the Contract Price then or thereafter due the DBE.

5.2.2 Responsibilities of DBE Upon Substitution of Subcontractor. The District’s consent to the DBE’s substitution of a listed Subcontractor shall not relieve DBE 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 Consulting 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 Consulting Architect determines that revised or additional Submittals are required of the newly substituted Subcontractor, the Consulting Architect shall promptly notify the DBE, in writing, of such requirement. In such event, revised or additional Submittals shall be submitted to Consulting Architect not later than thirty (30) days following the date of the Consulting Architect’s written notice to the DBE pursuant to the foregoing sentence; provided that if in the reasonable and good faith judgment of the Consulting 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 Consulting Architect shall so state in its written notice to the DBE. In the event that the revised or additional Submittals are not submitted by DBE within thirty (30) days, or such earlier time as determined by the Consulting Architect pursuant to the preceding sentence, following the Consulting Architect’s written notice of the requirement for revised or additional Submittals, DBE 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 with the requirements of Article 4.7 of these General Conditions. DBE shall reimburse the District for all fees and costs, including without limitation fees of the Consulting Architect and/or any design consultant to the Consulting 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 DBE. 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 DBE or another Subcontractor, the DBE shall require the Subcontractor to: (i) coordinate its Work with the dependent Work; (ii) provide necessary dependent data and requirements; (iii) supply and/or install items to built into the dependent Work of others; (iv) make appropriate provisions for dependent Work of others; (v) carefully examine and understand the portions of the Contract Documents (including Drawings, Specifications and Field Clarifications) and Submittals relating to the dependent Work; and (vi) 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 DBE 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 DBE is its enforcement of Subcontractors’ obligations relating to the LCP; failure of the DBE to strictly enforce such Subcontractors’ obligations is a material obligation of the DBE under the Contract Documents.

ARTICLE 6: INSURANCE; INDEMNITY; BONDS

6.1 Workers’ Compensation Insurance; Employer’s Liability Insurance. The DBE shall purchase and maintain Workers’ Compensation Insurance as will protect the DBE 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 DBE 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. DBE 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 DBE. The Employer’s Liability Insurance required of DBE hereunder may be obtained by DBE as a separate policy of insurance or as an additional coverage under the Workers’ Compensation Insurance required to be obtained and maintained by DBE 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 DBE 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 DBE’s operations under the Contract Documents and for which the DBE may be legally responsible: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than the DBE’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 DBE, 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 DBE’s obligations under the Contract
Documents; (vi) DBE’s pollution liability; and (vii) Completed Operations.

6.3 Professional Liability Insurance. The DBE shall purchase and maintain a Professional
Liability Insurance policy covering the Design Services of the DBE under the Contract Documents.

6.4 Builder’s Risk “All-Risk” Insurance. The DBE 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.

6.5 Insurance Policy Requirements. Each policy of insurance required by the Contract
Documents to be obtained and maintained by the DBE shall confirm the following requirements.

6.5.1 Minimum Coverage Amounts. The insurance required of the DBE 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 DBE hereunder, the DBE 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.

6.5.2 Required Qualifications of Insurers. The DBE and Subcontractors’ policies of
Commercial General Liability and Property/Casualty insurance and the DBE’s Builders Risk
insurance will be accepted by the District only if the insurer(s) are: (i) A.M. Best rated A- or
better; (ii) A.M. Best Financial Size Category VII or higher; and (iii) 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 DBE or Subcontractor, as applicable, shall within thirty (30) days of the District’s
written notice of the insufficiency of an insurer to the DBE, 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 DBE 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 the Laws,
the District may withhold disbursement of any Progress Payment otherwise due hereunder
until the DBE has delivered such Certificate(s) of Insurance from an alternative insurer(s).

6.6 Evidence of Insurance; Subcontractor’s Insurance.

6.6.1 Certificates of Insurance. Prior to commencing the Work, DBE shall deliver to the
District Certificates of Insurance evidencing the insurance coverages required by the Contract
Documents. Failure or refusal of the DBE to so deliver Certificates of Insurance may be
deemed by the District to be a default of a material obligation of the DBE under the Contract
Documents, and thereupon the District may proceed to exercise any right or remedy provided
for under the Contract Documents or the Laws. 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 DBE hereunder shall also name the District as an additional insured as its interests may appear. Should any policy of insurance be canceled before Final Acceptance of the Work by the District and the DBE 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 DBE under the Contract Documents. The DBE 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 DBE to comply with the District’s request may be deemed by the District to be a default of a material obligation of the DBE under the Contract Documents.

6.6.2 Subcontractors’ Insurance. The DBE 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 Contract Documents. The policies of insurance to be obtained and maintained by Subcontractors hereunder are in addition to, and not in lieu of, DBE 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, DBE 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 DBE to provide the District with Subcontractors’ Certificates of Insurance evidencing the insurance coverages required hereunder is a material default of DBE hereunder.

6.7 Maintenance of Insurance. Any insurance bearing on the adequacy of performance of Work shall be maintained after the District’s Final Acceptance of all of the Work for the full 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 DBE 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 DBE. Nothing contained in these insurance requirements is to be construed as limiting the extent of the DBE’s responsibility for payment of damages resulting from its operations or performance of the Work under the Contract Documents, including without limitation the DBE’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 DBE of its obligation to maintain insurance required under this Article until the date of Final Acceptance of the entirety of the Work by the District, or such time thereafter as required by the Contract Documents.

6.8 DBE’s Insurance Primary. All insurance and the coverages thereunder required to be obtained and maintained by DBE 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 DBE’s Builder’s Risk Insurance or the Comprehensive General Liability Insurance of the DBE or any Subcontractor, the District, DBE 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.
6.9 Indemnity. Unless arising solely out of the active negligence, gross negligence or willful misconduct of the Indemnified Parties, the DBE shall indemnify, defend and hold harmless the Indemnified Parties who are: (i) the District and its Board of Trustees, officers, employees, agents and representatives; (ii) the Consulting Architect and its consultants for the Work and their respective agents and employees; and (iii) the Project Inspector and its agents and employees. The DBE’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 DBE, any Subcontractor or any person or entity engaged by them for the Work. The DBE’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 DBE, any of DBE’s Subcontractors, of any tier, or any other person or entity employed directly or indirectly by the DBE or any Subcontractor in connection with the Work and their respective agents, officers or employees. The obligations of the DBE, as set forth in (v) above shall include, without limitation losses, costs, expenses, damages and other claims asserted by any other DBE 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 DBE’s obligations hereunder, and such action or proceeding names any of the Indemnified Parties as a party thereto, the DBE 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, DBE shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; DBE 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 DBE’s obligations hereunder are binding upon DBE’s Performance Bond Surety and these obligations shall survive notwithstanding DBE’s completion of the Work or the termination of the Contract.

6.10 Payment Bond; Performance Bond. Prior to commencement of the Work, the DBE shall furnish a Performance Bond as security for DBE’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 DBE’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 DBE 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 DBE of a material obligation hereunder. The Surety issuing 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; and (ii) A.M. Best rated A-/VII or better.

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 for the DBE’s commencement of Construction Services, which shall not be postponed by the failure to act of the DBE or of persons or entities for
whom the DBE is responsible. The date of Substantial Completion is the date certified by the Consulting 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 DBE confirms that the Contract Time is a reasonable period for performing and achieving Substantial Completion of the Work. The DBE 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 and approved by DSA and other governmental agencies with jurisdiction over the Work or any portion thereof 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 Consulting Architect and the Project Inspector upon request by the DBE in accordance with the Contract Documents. The good faith and reasonable determination of Substantial Completion by the Project Inspector, and the Consulting 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 Consulting Architect and the DBE shall jointly inspect the Work and prepare a comprehensive list of items of the Work to be corrected or completed by the DBE ("the Punchlist"). The exclusion of, or failure to include, any item on the Punchlist shall not alter or limit the obligation of the DBE 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 DBE and Consulting Architect shall, after the joint inspection, establish a reasonable time for DBE’s completion of all Punchlist items. If mutual agreement is not reached for the DBE’s completion of Punchlist items, the Consulting Architect shall determine such time, and in such event, the time determined by the Consulting Architect shall be final and binding upon the District and DBE so long as the Consulting Architect’s determination is made in good faith. The DBE shall promptly and diligently proceed to complete all Punchlist items within the time established. In the event that the DBE shall fail or refuse, for any reason, to complete all Punchlist items within the time established, DBE shall be subject to assessment of Liquidated Damages in accordance with Article 7.4 hereof. The foregoing notwithstanding, if the DBE fails or refuses to complete all Punchlist items, the District may in its sole and exclusive discretion and without further notice to DBE, 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 the Laws. If the District elects to complete Punchlist items, pursuant to the foregoing, the DBE 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 DBE, if these costs exceed the remaining Contract Price due to the DBE, the DBE 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 DBE. Final Completion shall be determined by the Consulting Architect and the Project Inspector upon request of the DBE. The good faith and reasonable determination of Final Completion by the Project Inspector, and the Consulting Architect shall be controlling and final.

7.2.5 DBE Responsibility for Multiple Inspections. In the event the DBE shall request determination of Substantial Completion or Final Completion by the Project Inspector and the Consulting Architect and it is determined by the Project Inspector and the Consulting 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 DBE shall be responsible for all costs of such re-inspection, including without limitation, the fees of the Consulting Architect and the Project Inspector. The District may deduct such costs from the Contract Price then due or thereafter due to the DBE.

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 Submittal of Preliminary Construction Schedule. Within five (5) days following the District’s issuance of the Notice to Proceed for the DBE’s commencement of Construction Services, the DBE shall prepare and submit to the District and the Consulting Architect a Preliminary Construction Schedule indicating, in graphic form, the estimated rate of progress and sequence of all Work required under the Contract Documents. The Preliminary Construction Schedule shall be organized into groupings by location, responsibility, specifications, sections, etc. The purpose of the Preliminary Construction Schedule is to assure adequate planning and execution of the Work so that it is completed within the Contract Time and to permit evaluation of the progress of the Work. Unless otherwise provided in the Contract Documents, the Construction Schedules required under this Article 7 shall; (i) be prepared utilizing the then most recent version of P3e/c™ for Construction, Primavera Project Planner Scheduling Software; (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, completion of: foundation, building framing/structural elements, mechanical/electrical/plumbing rough-in, roofing, exterior doors and windows, interior finishes, etc.; (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 DBE’s submission of each Submittal and the date for the return of the reviewed Submittal to the DBE; (vi) indicate sequencing and interdependencies of activities. The DBE may submit a Preliminary Construction Schedule depicting completion of the Work in a duration shorter than the Contract Time; provided that such Preliminary Construction Schedule shall not be a basis for adjustment to the Contract Price in the event that completion of the Work shall occur after the time depicted therein, nor shall such Preliminary Construction Schedule be the basis for any extension of the Contract Time, the DBE’s entitlement to any extension of the Contract Time shall be based upon the Contract Time and not on any shorter duration which may be depicted in the DBE’s Preliminary Construction Schedule. If the Construction Schedules required under this Article 7.3
incorporate therein any “float” time, such float shall be deemed to jointly belong to and owned by the District and the DBE. As used herein, “float time” shall be deemed to refer to the time between earliest finish date and the latest finish date of each activity shown on the Construction Schedule. The Construction Schedule prepared by the DBE shall not sequester float through float suppression techniques such as extending activity durations, using preferential logic, etc.

7.3.2 Review of Preliminary Construction Schedule. The District, the Consulting Architect shall review the Preliminary Construction Schedule submitted by the DBE pursuant to Article 7.3.1 above for conformity with the requirements of the Contract Documents. Within fifteen (15) days of the date of receipt of the Preliminary Construction Schedule, the Preliminary Construction Schedule will be returned to the DBE with comments to the form or content thereof. Review of the Preliminary Progress Schedule and any comments thereto by the District and/or the Consulting Architect shall not be deemed to be the assumption of construction means, methods or sequences by the District or the Consulting Architect, all of which remain the DBE’s obligations under the Contract Documents.

7.3.3 Preparation and Submittal of Contract Construction Schedule. Within ten (10) days of the District’s return of the Preliminary Construction Schedule to the DBE pursuant to Article 7.3.2 above, the DBE shall prepare and submit to the Consulting Architect and the District the Construction Schedule, fully cost and resource loaded, which incorporates therein the comments to the Preliminary Construction Schedule. Upon the DBE’s submittal of such Construction Schedule, the District and the Consulting Architect shall review the same for purposes of determining conformity with the requirements of the Contract Documents. Within fifteen (15) days of the receipt of the Construction Schedule, the District will accept such Construction Schedule or will return the same to the DBE with comments to the form or content. In the event there are comments to the form or content thereof, the DBE, shall within seven (7) days of receipt of such comments, revise and resubmit the Construction Schedule incorporating therein such comments. Upon the District’s acceptance of the form and content of a Construction Schedule, the same shall be deemed the “Approved Construction Schedule.” The District’s acceptance of a Construction Schedule shall be for the sole and limited purpose of determining conformity with the requirements of the Contract Documents. By the Approved Construction Schedule, the District shall not be deemed to have exercised control over, or approval of, construction means, methods or sequences, all of which remain the responsibility and obligation of the DBE in accordance with the terms of the Contract Documents. Further, the Approved Construction Schedule shall not operate to limit or restrict any of DBE’s obligations under the Contract Documents nor relieve the DBE from the full, faithful and timely performance of such obligations in accordance with the terms of the Contract Documents. The activities, commencement and completion dates of activities, and the sequencing of activities depicted on the Approved Construction Schedule shall not be modified or revised by the DBE without the prior consent, or direction, of the District and the Consulting Architect. Updates to the Approved Construction Schedule pursuant to Article 7.3.5 below shall not be deemed revisions to the Approved Construction Schedule. In the event that the Approved Construction Schedule shall depict completion of the Work in a duration shorter than the Contract Time, the same shall not be a basis for an adjustment of the Contract Time or the Contract Price in the event that actual completion of the Work shall occur after such the time depicted in such Approved Construction Schedule. In such event, the Contract Price shall not be subject to adjustment on account of any additional costs incurred by the DBE to complete the Work prior to the Contract Time, as adjusted in accordance with the terms of the Contract Documents. Any adjustment of the Contract Time or the Contract Price shall be based upon the Contract Time set forth in the Contract Documents and not any shorter duration which may be depicted in the Approved Construction Schedule.
7.3.4 Revisions to Approved Construction Schedule. In the event that the progress of the Work or the sequencing of the activities of the Work shall materially differ from that indicated in the Approved Construction Schedule, as determined by the District in its reasonable discretion and judgment, the District may direct the DBE to revise the Approved Construction Schedule; within fifteen (15) days of the District’s direction, the DBE shall prepare and submit to the Consulting Architect and the District a revised Approved Construction Schedule, for review and acceptance by the District. The DBE may request consent of the District to revise the Approved Construction Schedule. Any such request shall be considered by the District only if in writing setting forth the DBE’s proposed revision(s) to the Approved Construction Schedule and the reason(s) therefor. The District may grant, deny or condition consent to such request of the DBE to revise the Approved Construction Schedule in the District’s sole reasonable discretion.

7.3.5 Updates to Approved Construction Schedule. The DBE shall monitor and update the Approved Construction Schedule on a monthly basis, provide four-week rolling schedules on a weekly basis or more frequently as required by the conditions or progress of the Work, or as may be requested by the District. The DBE shall provide the District and the Consulting Architect with updated Approved Construction Schedules indicating progress achieved and activities commenced or completed within the prior updated Approved Construction Schedule. Updates to the Approved Construction Schedule shall not include any revisions to the activities, commencement and completion dates of activities or the sequencing of activities depicted on the Approved Construction Schedule. Any such revisions to the Approved Construction Schedule shall result in the District’s rejection of such update and DBE shall, within seven (7) days of the District’s rejection of such update, submit to the Consulting Architect and the District an Updated Approved Construction Schedule which does not incorporate any such revisions. The DBE shall also submit, with its updates to the Approved Construction Schedule a narrative statement including a description of current and anticipated problem areas of the Work, delaying factors and their impact, and an explanation of corrective action taken or proposed by the DBE. If the progress of the Work is behind the Approved Construction Schedule, the DBE shall indicate what measures will be taken to place the Work back on schedule. The District may, from time to time, and in the District’s sole and exclusive discretion, transmit to the DBE’s Performance Bond Surety the Approved Construction Schedule, any updates thereof and the narrative statement described hereinabove. The District’s election to transmit, or not to transmit such information, to the DBE’s Performance Bond Surety shall not limit the DBE’s obligations under the Contract Documents.

7.3.6 DBE Responsibility for Construction Schedule. The DBE shall be responsible for the preparation, submittal and maintenance of the Construction Schedules required by the Contract Documents, and any failure of the DBE to do so may be deemed by the District as the DBE’s default in the performance of a material obligation under Contract Documents. Any and all costs or expenses required or incurred to prepare, submit, maintain, and update the Construction Schedules shall be solely that of the DBE 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 DBE’s preparation, submittal, and maintenance or updating of the Construction Schedules.

7.4 Adjustment to 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 Consulting 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 DBE, any Subcontractor, Material Supplier or other person directly or indirectly engaged by the DBE 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 DBE or any person or entity directly or indirectly engaged by the DBE in performance of any portion of the Work shall be deemed conditions beyond the control of the DBE. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the DBE establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for DBE’s notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for DBE’s request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the DBE or any person or entity directly or indirectly engaged by DBE in performance of any portion of the Work; and (iii) that the event(s) forming the basis for DBE’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 Consulting Architect, or separate contractor employed by the District (collectively “Compensable Delays”), upon DBE’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 Consulting Architect and the District. In accordance with California Public Contract Code §7102, if the DBE’s progress is delayed by any of the events described in the preceding sentence, DBE 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 DBE at the time of execution of the Agreement. In such event, DBE’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, DBE 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 DBE to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed DBE’s waiver of the same.

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 Approved 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 DBE 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 DBE neglect, fail or refuse to: (i) submit Submittals in accordance with the Approved Construction Schedule; (ii) achieve Substantial Completion of the Work within the Contract Time, (subject to adjustments authorized under the Contract Documents); (iii) or to complete Punchlist items within the time established pursuant to the Contract Documents, the DBE agrees to pay to the District the amount of per diem Liquidated Damages set forth in the Contract Documents, not as a penalty but as Liquidated Damages, for every day beyond the Contract Time, as adjusted, until Submittals are submitted, Substantial Completion or completion of the Punchlist items are achieved. The Liquidated Damages amounts set forth in the Contract Documents are agreed upon by and between the DBE and the District because of the difficulty of fixing the District’s actual damages in the event of delayed submission of Submittals, Substantial Completion or completion of Punchlist items. The DBE 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 from the Contract Price then or thereafter due the DBE. The DBE 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 DBE 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 DBE with the cost of completing or correcting such items of the Work, as provided for under Article 7.2.3.2. The DBE 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 DBE’s execution of the Agreement.

7.6 District Right to Take-Over Work. Unless caused by the District, Consulting Architect, or the Project Inspector, if the DBE 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) hour advance written notice from the District or the Consulting Architect to the DBE 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

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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 DBE and the District may deduct the same from the Contract Price then or thereafter due the DBE. 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 DBE for performance of the Work under the Contract Documents. The District’s payment of the Contract Price to the DBE shall be in accordance with the Contract Documents. The Contract Price is inclusive of all expenses, fees, costs or other charges incurred by the DBE to complete all of the DBE’s obligations under the Contract Documents. The Contract Price shall not be subject to adjustment for costs incurred by the DBE, including without limitation, extended work-hours or premium labor costs to complete utility tie-ins and/or to avoid disruption of utility services or the District’s on-going operations and activities. Rebates obtained by the DBE or any Subcontractor for materials, equipment or services utilized to complete the Work or incorporated into the Work shall be deemed the property of the District. The DBE shall completely accurately account for all rebates arising out of the Work and shall deliver proceeds to the District reflecting the full value of all such rebates.

8.2 Cost Breakdown. Within fifteen (15) days of the execution of the Agreement by DBE, DBE shall furnish, on forms provided by the District, a detailed estimate and complete Cost Breakdown of the Design Services Contract Price and the Construction Services Contract Price; the Design Services Contract Price and the Construction Services Contract Price must be equal to the Contract Price set forth in the Agreement. The Cost Breakdown shall be subject to review and approval by the Consulting 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 DBE, in writing of the District's objection(s) to the Cost Breakdown. Within five (5) days of the date of the District’s and/or the Consulting Architect's written objection(s), DBE shall submit a revised Cost Breakdown to the District and the Consulting Architect for review and approval. The foregoing procedure for the preparation, review and approval of the Cost Breakdown shall continue until the District and the Consulting Architect have accepted of the entirety of the Cost Breakdown. Once the Cost Breakdown is accepted by the District and the Consulting Architect, the Cost Breakdown shall not be thereafter modified or amended by the DBE without the prior consent and approval of the District and the Consulting Architect, which may be granted, denied or conditioned in their sole reasonable discretion.

8.3 Progress Payments.

8.3.1 Progress Payments for Design Services. Based upon the District and Consulting Architect accepted Cost Breakdown for the Design Services, the DBE shall submit monthly billings for portion of the Design Services Contract Price allocated for the month in which such billing is submitted.

8.3.2 Applications for Progress Payments. During the DBE’s performance of the Construction Services the DBE shall submit monthly, on the first working day of each month, to the District, Project Inspector and the Consulting Architect, Applications for Progress Payments, on forms approved or designated by the District, setting forth an itemized estimate of the value of the 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.
Payments shall be based upon the District approved Cost Breakdown of the Construction Services Contract Price pursuant to Article 8.2 above and such values shall be only for determining the basis of Progress Payments to DBE, and shall not be considered as fixing a basis for adjustments, whether additive or deductive, to the Construction Services Contract Price, or for determining the extent of Work actually completed. In addition to submitting the Application for Progress Payment, the DBE shall submit with each Application for Progress Payment a detailed summary of (i) the break-down of the Progress Payment requested reflecting the amount of the requested Progress Payment to be retained by the DBE; (ii) the Subcontractors/Material Suppliers to whom the remaining balance of the requested Progress Payment will be disbursed to along with the amount to be disbursed to each identified Subcontractor/Material Supplier; and (iii) the amounts disbursed by the DBE to the Subcontractors/Material Suppliers from the immediately preceding Progress Payment.

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, and the Consulting 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 DBE and such completed Application for Progress Payment is accompanied by: (i) a Certification, executed under penalty of perjury by the DBE’s Superintendent and/or Project Manager, that all weekly Certified Payroll Records for the DBE 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 DBE, 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 DBE, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment received by the DBE under the prior Application for Progress Payment; (v) if applicable, a current union statement reflecting that the DBE and any Subcontractor of any tier, are current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining agreement to which the DBE or any such Subcontractor is a party to or is otherwise bound by; (vi) a certification by the DBE 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 or the Construction Manager prior to disbursement of the Progress Payment; and (vii) an updated Construction Schedule, reflecting Work actually completed and in progress. 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 DBE as soon as is practicable after receipt of the same from the DBE, 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 Consulting Architect 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 DBE 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 DBE a sum equal to ninety five percent (95%) 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 Consulting Architect and the pro rata portion of the DBE’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 8.3.2 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 DBE 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 or scheduled to be 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 DBE 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 DBE 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 8.3.2 above, and the District does not return such Application for Progress Payment within the seven (7) day period provided for in Article 8.3.2, 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 DBE 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 DBE 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 DBE’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, and the Consulting 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 DBE’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 DBE’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 DBE 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 DBE 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 DBE 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 DBE 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 DBE’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 DBE 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 DBE 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 8.3.6.3 shall be borne solely and exclusively by the DBE 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 DBE’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 DBE 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 DBE 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 DBE further warrants that upon submittal of an Application for Progress Payment, all Work for which a Progress Payment has been previously issued and the DBE has received payment from the District therefor shall, to the best of the DBE’s knowledge, information and belief, be free and clear of liens, claims, stop notices, security interests or encumbrances in favor of the DBE, 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 DBE’s performance under the Contract Documents at the request and expense of the DBE 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 DBE to request the substitution of eligible and equivalent securities for monies to be withheld by the District prior to submission of the first Application for Progress Payment of the Construction Services Contract Price shall be deemed the DBE’s waiver of rights under Section 22300.

8.4 Final Payment.

8.4.1 Application for Final Payment. When the DBE has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, the DBE shall submit an Application for Final Payment on such form as approved by the District. Thereupon, the Consulting Architect and the Project Inspector will promptly make a final
inspection of the Work and when the Consulting Architect and the Project Inspector find the Work acceptable under the Contract Documents and that the Contract has been fully performed by the DBE, the Consulting 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 DBE 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 DBE 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 DBE’s receipt of Final Payment is currently in effect; (iii) a written statement that the DBE 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 DBE, 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 DBE; (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; (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; and (xii) Affidavits of each Subcontractor to the DBE which affirm that the Subcontractor has made payments to its employees engaged in the Work in accordance with the specified general prevailing wage rate of per diem wages for the classification(s) of labor provided each such employee; such Affidavits shall be in such form and content established by the District and shall be executed under penalty of perjury by an authorized employee or officer of each Subcontractor to the DBE.

**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 DBE. Pursuant to California Public Contract Code §7107, if there is any dispute between the District and the DBE 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 DBE’s acceptance of the Final Payment is a waiver and release by the DBE of any and all claims against the District for compensation or otherwise in connection with the DBE’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 DBE’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 DBE 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, DBE 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 DBE 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 DBE 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 DBE; (vii) any amounts due from the DBE to the District under the terms of the Contract Documents; (viii) violations of the obligations of the DBE or any Subcontractor relating to the employment of labor in connection with the Work (including without limitation, violation of the LCP, delinquent submission of Certified Payroll Records or the submission of inadequate weekly Certified Payroll Records); or (ix) the DBE’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 DBE 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 Construction Manager, 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 DBE. When the District is reasonably satisfied that the DBE has remedied any such deficiency, payment shall be made of the amount withheld. In lieu of making payment of withheld amounts to the DBE, the District may, in its sole exclusive discretion, apply withheld amounts to the payment and satisfactions of debts and obligations of the DBE relating to the Work. In doing, the District shall be an agent of the DBE for the sole and limited purpose of making payment(s) to others for the Work on behalf of the DBE; payments made by the District pursuant to the foregoing shall be deemed payments to the DBE and the Contract Price shall be adjusted to reflect such payment(s). The District shall not be liable to the DBE or others for its good faith decision to make or not make payment(s) of amounts withheld from the DBE pursuant to the foregoing. If the District elects to make payments to other of amounts withheld from the DBE, the District may do so without prior judicial determination; the District will render the DBE a complete and accurate accounting of amounts withheld and paid to others on behalf of the DBE.

8.6 Payments to Subcontractors. The DBE 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 DBE’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. Retention withheld by the DBE from a progress payment due from the DBE to a Subcontractor shall not exceed the retention withheld by the District from the DBE under the Contract Documents. The DBE 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 DBE 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 with the requirements set forth herein. The computer program(s) utilized by the DBE 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 more than one (1) calendar month.

8.7.2 Job Cost Reporting System Requirements. The computerized job cost programs utilized by the DBE 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 DBE and applicable Subcontractors shall be capable of: (i) providing overall cost status on a monthly and cumulative basis; (ii) 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; (iii) 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 Consulting Architect, the DBE and applicable Subcontractors shall make available written job cost reports and provide the District and the Consulting Architect with the electronic files of the then current or requested job cost report. The foregoing are material obligations of the DBE under the Contract Documents.

ARTICLE 9: CHANGES

9.1 Changes in the Work. The District, at any time, by issuance of a Field 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 District may, without directing or authorizing a Change to the Work, request that the DBE provide a proposal for adjustment of the Contract Time and/or the Contract Price, in connection with a Change being considered by the District (“Proposal Request”). Unless otherwise expressly provided in a Proposal Request issued on behalf of the District to the DBE, the DBE shall respond to each Proposal Request within five (5) days of the issuance thereof. If the DBE fails or refuses to respond to a Proposal Request within said five (5) days and the District elects to proceed with the potential Change noted in a Proposal Request, the reasonable determination of the District of the extent of adjustment of the Contract Price or the Contract Time on account of the potential Change shall be final, binding and enforceable against the
DBE. The DBE shall not proceed to implement a proposed Change noted in a Proposal Request unless specifically directed or authorized in writing by or on behalf of the District. The DBE 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 Consulting Architect or the District. The foregoing notwithstanding, the DBE shall promptly commence and diligently complete any Change to the Work subject to the written authorization issued by the Consulting Architect or the District pursuant to the preceding sentence. The DBE shall not be relieved or excused from its prompt commencement and diligent completion of any Change subject to such written authorization by virtue of the absence or inability of the DBE 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 DBE’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 DBE 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 DBE. 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 or the Consulting Architect which in the opinion of the DBE 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 DBE gives the District and the Consulting Architect 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 DBE’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 DBE’s notice. Accordingly, DBE 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 DBE’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 Change. 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 DBE regards as a Change. Unless the DBE acts in strict accordance with this procedure, any such order, direction, instruction, interpretation or determination shall not be treated as a Change and the DBE hereby waives any claim for any adjustment to the Contract Price or the Contract Time on account thereof.

9.3 DBE 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 DBE shall submit to the Consulting Architect, the Project Inspector and the District a detailed written statement setting forth the general nature of the Change, the amount of any adjustment to the Contract Price and impact to the then current Construction Schedule on account thereof, properly itemized and supported by a detail Construction Schedule analysis and 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 DBE 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 DBE 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 Consulting Architect, the DBE 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 DBE’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 the Consulting Architect to review and assess the
completeness and accuracy thereof. The DBE 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,
and the Consulting 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 DBE as determined by the District on the basis of the DBE’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 DBE in writing of the same; the DBE 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 DBE shall notify the District, the Consulting
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 DBE to timely notify the District, the Consulting Architect and the Project
Inspector of DBE’s objections to the District’s determination of the extent of adjustment
to the Contract Price shall be deemed DBE’s acceptance of the District’s determination
and a waiver of any right or basis of the DBE to thereafter protest or otherwise object to
the District’s determination. Notwithstanding any objection of the DBE to the District’s
determination of the extent of any adjustment to the Contract Price pursuant to this
Article 9.4.1.2, DBE 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. DBE 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 DBE 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 costs of supervision, including costs/salaries of the
DBE’s and Subcontractor(s)’ superintendents and non-labor foremen and other
overhead and general conditions costs associated with the Change or performance thereof.

9.4.1.3.2 Materials and Equipment. DBE 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 DBE, 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 DBE for materials and/or equipment in connection with any Change is excessive, or if the DBE 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 DBE 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. DBE 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, DBE 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 DBE from the Consulting 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 DBE 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 one thousand dollars ($1,000.00) or less. Construction Equipment costs claimed by the DBE 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 Consulting 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 DBE 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 DBE 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 Contract Documents, 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 DBE 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 Contract Documents for mark-ups on the cost of a Change adding to the scope of the Work.

9.4.1.3.5 DBE Maintenance of Records. In the event that DBE shall be directed to perform any Changes to the Work pursuant to Article 9.1 or 9.2, or should the DBE encounter conditions which the DBE, pursuant to Article 9.6, believes would obligate the District to adjust the Contract Price and/or the Contract Time, DBE shall maintain detailed records itemizing each element of costs along with substantiating evidence of costs incurred 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 DBE in a calendar day, DBE 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, DBE shall require that each such Subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by DBE’s Superintendent or DBE’s authorized representative; such signature shall be deemed DBE’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 Consulting Architect or the Project Inspector upon request. In the event that DBE 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 DBE. DBE’s obligation to maintain records hereunder is in addition to, and not in lieu of, any other DBE 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 DBE 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 DBE and the District at the time of execution of the Agreement, the DBE shall not be precluded from the recovery of damages arising therefrom.

9.5 Change Orders. If the District approves of a Change, a written Change Order prepared by the Consulting Architect on behalf of the District shall be forwarded to the DBE describing the Change and setting forth the adjustment to the Contract Time and the Contract Price (broken down by costs for labor, materials, equipment, Subcontractor mark-ups and other costs incorporated into the Change Order), 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 DBE for inclusion in the Change Order shall be deemed waived. The DBE shall execute the Change Order prepared pursuant to the foregoing; once the Change Order has been prepared and forwarded to the DBE 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 DBE shall not modify or amend the form or content of such Change Order, or any portion thereof. The DBE’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 DBE 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 Consulting 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 DBE to such Change Order. The form and content of Change Orders shall be as set forth in the attachments to the Special Conditions.

9.6 DBE Notice of Changes. If the DBE should claim that any instruction, request, action, condition, omission, default, or other situation obligates the District to increase the Contract Price or to extend the Contract Time, the DBE shall notify the Project Inspector and the Consulting 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 DBE only if sufficient supporting documentation is submitted with the DBE’s notice to the Project Inspector and the Consulting Architect. Time is of the essence in DBE’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, action, condition, omission, default or other situation. Accordingly, DBE 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, action, condition, omission, default or other situation for which the DBE believes there should an adjustment of the Contract Time or the Contract Price shall be deemed DBE’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, 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 DBE’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 DBE and the District or the Consulting 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 DBE 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 DBE’s failure or refusal to so proceed with such Work is the DBE’s default of a material obligation of the DBE under the Contract Documents.

9.8 Emergencies. In an emergency affecting the safety of life, or of the Work, or of property, the DBE, without special instruction or prior authorization from the District, the Project Inspector or the Consulting Architect, is permitted to act at its discretion to prevent such threatened loss or injury. Any compensation claimed by the DBE 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 Consulting 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 DBE. The DBE 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 DBE without notice to the Consulting Architect, the District 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 DBE. 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 DBE’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 DBE 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 DBE claims that delay or additional cost is involved because of such action by the District, the DBE shall seek an adjustment to the Contract Price or the Contract Time as provided for in the Contract Documents. Failure of the DBE 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 DBE, who shall cooperate with them. The DBE shall participate with each such other separate contractors and the District in reviewing their respective Construction Schedules when directed to do so. The DBE 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 DBE, separate contractors and the District until subsequently revised.

10.3 Mutual Responsibility. The DBE 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 DBE’s Work, construction and operations with theirs.
as required by the Contract Documents.

10.4 Discrepancies or Defects. If part of the DBE’s Work depends for proper execution or results upon construction or operations by the District or a separate contractor, the DBE shall, prior to proceeding with that portion of the Work, promptly report to the Consulting 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 DBE to so report shall constitute an acknowledgment that the District’s or separate contractor’s completed or partially completed construction is fit and proper to receive the DBE’s Work, except as to defects not then discoverable by the DBE’s reasonable diligence.

ARTICLE 11: TESTS AND INSPECTIONS

11.1 Tests; Inspections; Observations.

11.1.1 DBE’s Notice. If the Contract Documents, the Laws or any public authority with jurisdiction over any portion of the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved, the DBE shall give 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 DBE shall inform the Project Inspector not less than two (2) working days prior to the date fixed for such inspection, test or observation. The DBE 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 DBE prior to completion and satisfaction of the requirements of such tests, inspection or approval, DBE 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. The District will pay for fees, costs and expenses for the initial tests/inspections of materials/equipment forming a part of the Work which are conducted at a location within a one hundred (100) mile radius of the Site. All fees, costs or expenses for subsequent tests/inspections or for tests/inspections conducted at a location situated more than a one hundred (100) mile radius from the Site (including without limitation, travel and travel-related expenses) shall be borne solely and exclusively by the DBE. The District may deduct such fees, costs or expenses from any portion of the Contract Price then or thereafter due the DBE.

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 the Laws. 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 or the Consulting Architect and not by the DBE.

11.1.4 Additional Tests, Inspections and Approvals. If the Consulting Architect the Project Inspector or public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval, the Consulting Architect will, upon written authorization from the District, instruct the DBE to make arrangements for such additional testing, inspection or approval by an entity acceptable to the District, and the DBE
shall give timely notice to the Consulting Architect and the Project Inspector of when and where tests and inspections are to be made so the Project Inspector and the Consulting 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 DBE 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 Consulting 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 DBE and promptly delivered to the Consulting Architect;

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 DBE to avoid delay in the progress of the Work.

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 Consulting Architect and the Project Inspector for conformity with the Contract Documents. The DBE 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 Consulting 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 Consulting Architect 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 DBE from performing the Work in full compliance with the Contract Documents. No inspection by the Consulting 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 Consulting Architect, the Project Inspector or the requirements of the Contract Documents, it must, if required by the Consulting Architect or the Project Inspector, be uncovered for observation by the Consulting Architect and/or the Project Inspector and be replaced at the DBE’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 Consulting Architect or the Project Inspector and the DBE 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 Consulting 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. A material obligation of the DBE is its prompt correction of any portion of the Work rejected by the District, the Consulting 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 DBE shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the services of the Consulting Architect, and/or the Project Inspector and other expenses made necessary thereby. The DBE shall bear all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the District or separate contractors, caused by the DBE’s correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective. If the DBE fails or refuses to undertake and complete corrective measures in strict conformity with these provisions, the Performance Bond Surety shall be liable to the District for performing and completing necessary corrective measures or the costs thereof.

12.5 Removal of Non-Conforming or Defective Work. The DBE 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 DBE nor accepted by the District.

12.6 Failure of DBE to Correct Work. If the DBE fails to commence to correct defective or non-conforming Work within three (3) days of notice by or on behalf of the District 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 DBE 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 DBE’s expense. If the DBE 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 DBE, including without limitation compensation for the Construction Manager’s services, the Consulting Architect’s services, attorneys fees and other expenses made necessary thereof. If such proceeds of sale do not cover costs which the DBE should have borne, the Contract Price shall be reduced by the deficiency. If payments of the Contract Price then or thereafter due the DBE are not sufficient to cover such amount, the DBE 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 DBE 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 Consulting Architect, the Project Manager or the District, the DBE 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 DBE 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 DBE 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 DBE 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 DBE 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 DBE, cause such corrective Work to be performed and completed. In such event, DBE and DBE’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 DBE under the Contract Documents. The obligations of the DBE 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 DBE or the DBE’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, DBE shall execute and deliver to the District the form of Guarantee included within the Contract Documents. The DBE’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 DBE.

13.4 Survival of Warranties. The provisions of this Article 13 shall survive the DBE’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 DBE, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine. When all or a portion of the Work is to be suspended for any reason, the DBE and each Subcontractor shall cover over, and securely fasten down all coverings, to protect the Work from damage, destruction or deterioration from any cause. The DBE 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 DBE 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 DBE's overhead, general administrative costs or profit, all of which will remain as reflected in the Cost Breakdown submitted by the DBE 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 DBE's default: (i) if the DBE refuses or fails to prosecute the Work with diligence as will insure Substantial Completion of the Work within the Contract Time, or if the DBE fails to substantially Complete the Work within the Contract Time; (ii) if the DBE becomes bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the DBE 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 DBE or for any of the DBE's property on account of the DBE's insolvency, and the DBE 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 DBE repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment; (iv) if the DBE 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 DBE disregards the Laws or the requirements of any public entity having jurisdiction over any portion of the Work; (vi) if the DBE disregards proper directives of the Consulting Architect, the Project Inspector or District under the Contract Documents; (vii) if the DBE performs Work which deviates from the Contract Documents and neglects or refuses to correct such Work; or (viii) if the DBE 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 DBE 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 DBE 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 DBE from the site. The District may take possession of the Work and of all of the DBE'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 DBE without liability to the DBE. 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 DBE 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 DBE 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 DBE 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 DBE 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 DBE 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 DBE 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 DBE and/or the Surety shall pay the difference to the District. Payments made or due pursuant to the preceding shall not operate to limit, restrict, waive or modify any other rights or remedies of the District under the Contract Documents or the Laws arising out of the causes for the District’s exercise of the default termination remedy under Article 15.1.

15.1.6 DBE Responsibility for Damages. The DBE 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 DBE 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 DBE 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 DBE 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 the Laws or under the Contract Documents. Any retention or payment of monies to the DBE by the District shall not be deemed to release the DBE 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 DBE, 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 DBE 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 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 DBE and as further reduced by the value of the Work as not yet completed. The DBE 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 DBE 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 DBE.

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 DBE 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 DBE. The DBE 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 DBE 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 DBE or any Subcontractors, employees of the DBE or Subcontractors or their respective agents and representatives. Neither the DBE, Subcontractors nor any employees of the DBE 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 DBE 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 DBE at their respective address set forth in the Contract Documents, or such other address(es) as either the District or the DBE 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, disagreement or other matter in controversy between the District and the DBE arising out of or related in any manner to the Contract Documents or the Work thereunder, the DBE shall, unless expressly excused in writing by the District, proceed diligently with performance of the Work in accordance with the Contract Documents, pending any final determination or decision regarding any such claim, dispute, disagreement or other matter in controversy.

16.11 Dispute Resolution; Arbitration.

16.11.1 Claim Defined. The term “claims” as used herein is defined in California Public Contract Code §20104(b)(2) and means a separate demand by the DBE for: (i) a time extension, (ii) payment of money or damages arising from work done by, or on behalf of, the DBE pursuant to the contract and payment of which is not otherwise expressly provided for or the DBE is not otherwise entitled to, or (iii) an amount the payment of which is disputed by the District.

16.11.2 Claims Under $375,000.00. Each Claim between the District and the DBE 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 DBE’s notification to the District of such claim or extend the time for the giving of such notice as provided in the Contract Documents.

16.11.3 Government Code Claims. Pursuant to Government Code §930.6, any and all claims, demands, disputes, disagreements or other matters in controversy between the DBE and the District for money or damages, including, without limitation, a demand for arbitration, 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 dispute resolution and arbitration provisions set forth in Article 16 herein, all claims demands, disputes, disagreements or other matters in controversy between the DBE and the District involving money or damages in any sum shall first be presented to the District’s Board of Trustees and acted upon or deemed rejected as a condition precedent to suit including, without limitation, demand for arbitration, in accordance with California Government Code §900, et seq.

16.11.4 Arbitration. Except as provided in Article 16.11.2, any other claims, disputes, disagreements or other matters in controversy between the District and the DBE 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 by a Judicial Arbitration and Mediation Services (“JAMS”) arbitrator identified as having expertise in public works
construction matters and in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS 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 JAMS closest to the Site.

16.11.5 Demand for Arbitration. 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 DBE, all such controversies shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and the DBE.

16.11.6 Third Parties. The DBE’s Surety, a Subcontractor or Material Supplier to the DBE 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 DBE, 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 DBE, in which case an appropriate severance order shall be issued by the arbitrator.

16.11.7 Discovery. 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.

16.11.8 Arbitrator’s Award. Notwithstanding Rule 24 of JAMS Comprehensive Arbitration Rules and Procedures, in accordance with California Code of Civil Procedure §1296, in any arbitration to resolve a dispute relating to the Work or the Contract Documents, the arbitrator’s award shall be supported by law and substantial evidence; the District and DBE hereby expressly agree that a court shall, subject to California Code of Civil Procedure §1286.4, vacate the award if after review of the award it determines either that the award is not supported by substantial evidence or that it is based on an error of law. Any arbitration award that does not include written findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296 shall be invalid and unenforceable. Subject to the foregoing provisions, the arbitrator’s award shall be final and binding upon the District and the DBE.

16.11.9 Costs. The expenses and fees of the arbitration and 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 may award arbitration costs, including arbitrators’ fees but excluding attorneys’ fees, to the prevailing party.

16.11.10 Post-Arbitration Proceedings. 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.

16.11.11 Limitation on Damages. In the event of the District’s breach or default of its obligations under the Contract Documents, the damages, if any, recoverable by the DBE shall
be limited to general damages which are solely, directly and proximately caused by the District's breach or default of the District's obligations hereunder and shall exclude all special or consequential damages, including without limitation, impaired or loss of bonding capacity, home/regional office overhead/general administrative costs and expenses, loss of business of other economic advantage and other similar types of damages. By executing the Agreement, the DBE expressly acknowledges the foregoing limitation to recovery of only general damages from the District if the District is in breach or default of its obligations under the Contract Documents.

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 DBE 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 DBE thereunder.

16.14 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.

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

16.16 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.

16.17 Entire Agreement. The Contract Documents contain the entire agreement and understanding between the District and the DBE 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 DBE.

ARTICLE 17: DESIGN SERVICES

17.1 Application of Article 17. The provisions of this Article 17 relate to the DBE’s Design Services responsibilities.

17.2 Use and Ownership of Design Documents.

17.2.1 Ownership. Subject to the provisions hereof, all Drawings, Specifications, calculations, and other Instruments of Service and other tangible items ("Project Documents") prepared by or through the DBE for the Project shall be and remain the property of the District. The Project Documents shall be and remain the property of the District regardless of the format on which said items are prepared or stored, including without limitation paper copies,
original or reproducible transparencies, AutoCAD R-2002 files (or similar computer-aided drafting of design formats), or other types of computerized data. The District specifically maintains ownership of the design of the Project and the design of any buildings or other improvements which are a part thereof, notwithstanding creation/preparation of such design by or through the DBE, and such design may not be re-used by the DBE or any members of the DBE, including without limitation, sub-consultants to the members of the DBE, without the specific prior written consent of the District which may granted, denied or conditioned in the sole exclusive discretion of the District.

17.2.2 Right to Use. The DBE and the Architect of Record member of the DBE grants to the District a perpetual license to use and/or reuse all or any part of the Project Documents at the District's sole discretion with no additional compensation to the Architect for the purposes of: (i) construction of all or part of the Project; (ii) the repair, renovation, modernization, replacement, reconstruction or expansion of the Project; or (iii) the construction of another project by or for the District for the District's ownership and/or use. The District is not bound by the Contract Documents to employ the services of the DBE or the Architect of Record member of the DBE in the event any of the Project Documents are used for such purposes. The District shall be authorized to use or reuse the Project Documents for these purposes without liability to the DBE or the Architect of Record member of the DBE, its Design Consultants or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall be not be construed or interpreted to waive or limit the District's right to recover for latent defects or for errors or omissions of DBE provided, however, that any use or reuse by the District of the Project Documents on any project other than the Project for which the Project Documents were prepared without employing the services of the Architect of Record member of the DBE shall be at the District's own risk. If the District uses or reuses the Project Documents on any project other than the Project for which the Project Documents were prepared for, the District shall remove the Architect of Record's seal from the Project Documents and indemnify and hold harmless the Architect from claims arising out of the use or re-use of the Project Documents on such other project.

17.2.3 District License to Use Project Documents. The Contract Documents create a non-exclusive and perpetual license for the District to copy, use, modify or reuse any and all Project Documents and any intellectual property rights therein. DBE shall require any and all of the Design Consultants to the DBE or the Architect of Record member of the DBE to agree in writing that the District is granted a non-exclusive and perpetual license for the work of such Design Consultants.

17.2.4 DBE and Architect of Record Right to Grant License. The DBE and the Architect of Record member of the DBE represent and warrant that the DBE and/or the Architect of Record have the legal right to license any and all copyrights, designs and other intellectual property embodied in the Project Documents prepared by or through the DBE and/or Architect of Record under the Contract Documents.

17.3 Design Services Standard of Care. The DBE, Architect of Record and Design Consultants to the DBE and/or the Architect of Record shall provide and complete the Design Services: (i) using their best professional skill and judgment; (ii) acting with due care and in accordance with respective applicable standards of care under California law for those providing similar services for projects of the size, scope and complexity of an Assigned Project; (iii) the terms of the Contract Documents; and (iv) in accordance with applicable standards of care.

17.4 Compliance with Regulatory Agencies. The DBE and/or the Architect of Record member of the DBE shall respond to and comply with all requests relating to the Project made by any
applicable federal, state, regional or local governmental or quasi-governmental agency with
jurisdiction over any portion of the Project, including without limitation, the California Community
Colleges Chancellor’s Office, California Department of Finance, Division of State Architect and the
California Public Works Board.

17.5 **Conformity to District Standards.** Design Documents prepared by or through the DBE
and/or the Architect of Record member of the DBE for the Project shall conform to District standards
for materials, equipment and/or workmanship in effect as of the completion of the Design Documents.
Modifications of the Design Documents for the Project to conform to District materials, equipment or
workmanship standards shall be without adjustment of the Contract Price.

17.6 **Approvals/Permitting of Design Documents.** The DBE and/or Architect of Record
member of the DBE shall obtain, on behalf of the District, all necessary approvals or permits for the
Design Documents for the Project from governmental and quasi-governmental agencies with
jurisdiction over any portion of the Project as necessary for construction of the Project including
without limitation, DSA review and permitting. Without adjustment of the Contract Price, the DBE
and/or the Architect of Record member of the DBE shall revise the Design Documents as required by
DSA or other governmental or quasi-governmental agencies with jurisdiction over the Project, or
portions thereof, to obtain their respective approval(s) or permit issuance.

17.7 **Disbursement of Design Services Contract Price.** The provisions of Article 8 of the
General Conditions shall be applicable only to disbursement of the Construction Services Contract
Price. The Design Services Contract Price shall be disbursed in accordance with the provisions
hereof.

17.7.1 **Initial Payment.** Thirty (30) days after the date of the Agreement, the DBE may
submit a billing for the Initial Payment of the Design Services Contract Price. Such billing shall
be in an amount equal to ten percent (10%) of the Design Services Contract Price and shall be
accompanied by a detailed statement of the Design Services completed by the DBE in the
thirty (30) day period after the date of the Agreement. Provided that the DBE has diligently
proceeded to complete Design Services obligations, as reflected in the DBE’s detailed
statement of Design Services, the District will disburse the Initial Payment within thirty (30)
days after the date of the District’s receipt of the DBE’s statement requesting disbursement of
the Initial Payment of the Design Services Contract Price.

17.7.2 **Interim Payment.** At such time as the DBE has completed preparation of the Design
Documents and submitted the same to DSA for review and permitting, the DBE may submit a
billing for disbursement of the Interim Payment of the Design Services Contract Price. Such
billing shall be an amount equal to seventy percent (70%) of the Design Services Contract
Price. Such billing shall be accompanied by written evidence of the DBE’s submission of the
Design Documents to DSA for review and permitting. Provided that the DBE has submitted
complete Design Document to DSA for review and permitting, within thirty (30) days of the
District’s receipt of the DBE’s statement requesting disbursement of the Interim Payment, the
District will disburse the Interim Payment.

17.7.3 **Final Payment.** At such time as DSA has completed its review of the Design
Documents and has issued a permit authorizing construction of the Project, the DBE may
submit a billing statement for the Final Payment of the Design Services Contract Price, which
shall be an amount equal to twenty percent (20%) of the Design Services Contract Price. Provided that DSA has issued a permit authorizing construction of the Project, within thirty (30)
days of the date of the District’s receipt of the DBE’s Final Payment billing statement, the
District will disburse the Final Payment of the Design Services Contract Price to the DBE.
BACKGROUND / ANALYSIS:

The District, after a detailed analysis of current and future electric demand and rate studies, as well as an in-depth investigation into multiple technologies, has identified two specific projects of like nature, on each District campus property, that would reduce our future electric utility payments while providing the added benefit of generating sustainable electrical power. The project would:

- Provide Photovoltaic (PV) generating devices at the Valencia and Canyon Country campuses;
- Provide shaded parking via the installation of the PV panels over existing parking spaces;
  - at the Valencia campus, the panels will be placed in Lots 14 and 15 (the "South Lot") and,
  - at the Canyon Country campus, the panels will be placed in the lot immediately adjacent to the Administration complex.
- Generate approximately 614kW and 264kW of power at the Valencia and Canyon Country campuses, respectively;
- Generate substantial utility company rebates that would assist in offsetting the cost of the construction;
- Recoup its initial cost of construction and implementation prior to reaching 70% of the service life of the implemented system;

(Continued)

FISCAL IMPLICATIONS:

The District will fund this project from a combination of Measure M Funds (structural carports), Energy Rebates and financing, either via COPS, tax-exempt leases (TELP) and/or clean renewable energy bonds (CREB) or a combination of the three. Energy savings will offset the financed liability and the entire liability will be met within approximately 15-19 years. This will yield the District up to 10 years of no-cost energy supply in the quantities described in the contract.

RECOMMENDATIONS:


Submitted by:  
James C. Schrage  
Vice President, Facilities Planning, Operations and Construction

Approval for submission to Board of Trustees:  
Dr. Dianne G. Van Hook  
Chancellor

Recommended by:  

2.2, Page 1  
Dec. 10, 2008
Background/Analysis (cont'd):

- Provide the District with a reliable, renewable source of electrical energy from which to rely upon to meet current and future demand;
- Provide the District with $1,855,673 in Energy Rebates;
- Create a second source of site-generated electrical power at the District that is non utility-provided, moving the District closer to the maximum allowable levels of power generation without actually becoming a regulated energy provider; and
- Continue to move the District’s vision and efforts towards Sustainable development.

The contract for this work has been prepared by our Counsel, Public Agency Law Group, and uses the same template as was used at another, very successful Community College PV project completed in Northern California. Copies of the contracts are available upon request.
WHEREAS, the District is a public agency as that term is defined in Government Code §4217.11(j).

WHEREAS, the provisions of Government Code §§4217.10 et seq. authorize a public agency to enter into an energy service contract for an energy conservation facility upon terms in the best interest of the District, provided that certain findings are made by the District’s Board of Trustees in connection with such an energy service contract.

WHEREAS, the scope of an energy conservation facility under Government Code §§4217.11 includes alternate energy equipment for production or conversion of energy from alternate sources as its primary fuel source, including solar.

WHEREAS, District Staff has evaluated implementation of energy conservation measures at the District’s College of the Canyons to meet electrical power requirements and to reduce on-going operational expenses for securing electrical power through SCE.

WHEREAS, District Staff have evaluated a variety of different alternative means of implementing energy conservation measures at College of the Canyons.

WHEREAS, District Staff has concluded that energy conservation facilities consisting of photovoltaic solar shade structure electrical generating systems utilizing solar power installed in parking areas of the College of the Canyons and Canyon Country Campuses of the District provides the District with the most suitable energy conservation facility.

WHEREAS, District staff has determined that a photovoltaic solar generating facilities with a 264 kilowatt capacity at the Canyon Country Campus and a 614 kilowatt capacity at the College of the Canyons Campus provides the District with the best value when electrical power generation and installation costs are considered.

WHEREAS, District Staff has engaged in a comprehensive review of potential vendors of design and installation services for photovoltaic solar generating equipment and systems who meet the criteria of: (a) prior public agency photovoltaic energy generating system design and installation; (b) existing staff and operational resources sufficient to complete procurement and installation photovoltaic energy operating equipment; (c) client satisfaction; (d) sufficient financial capacity; and (e) willingness to commit resources to assist in developing specific scope of an energy conservation facility.

WHEREAS, District Staff has identified Chevron Energy Solutions Company (“Chevron”) as the meeting the criteria set forth above.

WHEREAS, the photovoltaic energy generating facility is anticipated to generate electrical power electrical power to serve the College of the Canyons and Canyon Country Campuses, resulting in operational cost savings to the District by reduction of electrical power purchases from SCE.
WHEREAS, public notice of the Board of Trustees consideration of this Resolution was posted at least two (2) weeks in advance of the date of the public meeting of the Board of Trustees to consider the Resolution.

NOW THEREFORE, the following Resolution is adopted.

RESOLVED, that the Board of Trustees finds that the anticipated cost to the District to design and construct a photovoltaic energy generating facilities producing 164 kilowatts at the Canyon Country Campus and producing 614 kilowatts at the College of the Canyons is less than the cost for the District to obtain electrical service from SCE to serve these campuses.

FURTHER RESOLVED, that the written agreements entitled “Energy Services Agreement” attached to this Resolution as Exhibit A incorporate terms and conditions that establish the requirements for the photovoltaic energy generating facilities at the College of the Canyons and Canyon Country Campuses and which are in the best interests of the District; District staff is hereby authorized to execute the Energy Services Agreement on behalf of the District and to take all other measures necessary or appropriate to implementation of the Energy Services Agreement.

On the motion of __________________________ and seconded by ________________________.

AYES ____ NOES _____ ABSTAIN _____ ABSENT _____

The foregoing Resolution is adopted by the Board of Trustees of the Santa Clarita Community College District at a scheduled meeting of the Board of Trustees this 10th day of December, 2008.

____________________________
Mrs. Joan W. MacGregor
President, Board of Trustees

____________________________
Dr. Dianne G. Van Hook
Secretary to the Board of Trustees
ENERGY SERVICES AGREEMENT

THIS ENERGY SERVICES AGREEMENT ("Agreement") is made this 10th day of December, 2008, in the City of Santa Clarita, County of Los Angeles, State of California, by and between SANTA CLARITA COMMUNITY COLLEGE DISTRICT, a California Community College District hereinafter "District", located at 26455 Rockwell Canyon Rd, Santa Clarita, County of Los Angeles, State of California, and CHEVRON ENERGY SOLUTIONS COMPANY, a Division of Chevron U.S.A. Inc., a Pennsylvania corporation, having its principal offices at 345 California Street, 18th Floor, San Francisco, CA, 94104 ("Vendor"). Chevron Energy Solutions Company and the District are hereinafter collectively referred to as "the Parties".

WHEREAS, Vendor provides design and installation services for energy conservation projects.

WHEREAS, Vendor’s design and construction of certain energy conservation measures at the District’s Valencia Campus is attached ("the Scope"); the Scope is incorporated herein as Exhibit A.

WHEREAS, pursuant to Government Code §4217.10 et seq. the District has selected Vendor, on the basis of its skills and qualifications, to provide design and construction services for an energy conservation project consisting of a photovoltaic (PV) carport array located on the faculty parking lot of Valencia campus ("the Project").

WHEREAS, the District and Vendor desire by this Agreement to establish terms and conditions relating to design, construction and other rights and obligations of the Parties relating to the Project.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged by the Parties and each of them, the Parties agree as follows:

1. **The Work.** The Work of the Project consists of two components: (a) preparation of Design Documents for the Project ("Design Services") and (b) construction of the Project ("Construction Services"). Vendor shall perform and provide all necessary labor, materials, tools, equipment, utilities, services and transportation to complete all of the Work.

2. **Design Services.**

   2.1. **General.** All of the Design Services provided by or through Vendor under this Agreement shall be provided and performed consistent with professional skill and care and in such a manner as to avoid hindrance, unnecessary interruption or delay to the orderly progress and completion of the Design Services. Design Services consist generally of the preparation of Drawings and Specifications with sufficient accuracy, clarity and completeness to reflect the Scope.

   2.2. **Design Consultants; Design Disciplines.** Design Services include all architectural, engineering and other design services necessary to complete Project Design Services including without limitation: (a) architectural; and (b) engineering disciplines: structural, mechanical, electrical, plumbing and civil. The Design Services may be completed by Vendor's personnel or the personnel of Design Consultants to Vendor provided that all of the Design Services hereunder shall be provided by or under the direction and control of a California licensed Architect or California registered engineer as required by the nature of the Design Services being provided.

   2.3. **Design Services Standard of Care.** Vendor and/or its Design Consultants shall provide the Design Services: (a) using their best professional skill and judgment; (b)
acting with due care and in accordance with professional standards of care and the terms of this Agreement; and (c) in accordance with all applicable codes, laws, rules or regulations in effect or reasonably foreseeable at the time the Design Services are rendered.

2.4. **Vendor Design Services Project Manager.** Vendor shall designate a responsible employee of Vendor to serve as Vendor’s Design Services Project Manager. The Design Services Project Manager shall: (a) be reasonably satisfactory to the District; (b) not be replaced without the prior consent of the District; (c) have the overall responsibility for Vendor’s timely and complete performance of Design Services obligations under this Agreement; and (d) be authorized to act on behalf of Vendor, which shall not be unreasonably withheld, in connection with Design Services of Vendor under this Agreement.

2.5. **Design Development Documents.**

2.5.1. **Scope of Design Development Documents.** Based on the Project scope described in the Exhibit A, Vendor shall develop and prepare Design Development Documents which include: (a) Drawings indicating generally the anticipated layout of photovoltaic cells, locations of utility line runs and equipment locations; and (b) draft outline of Specifications including designation/description of materials/equipment to be incorporated into the Work.

2.5.2. **District Review of Design Development Documents.** Upon completion of the Design Development Documents, Vendor shall submit the same to the District Representative for review and acceptance. If the District Representative fails to provide written acceptance of such Documents within ten (10) calendar days of Vendor’s submittal of said Documents, the Parties agree that the Documents shall be deemed to have been accepted by the District on the tenth (10th) day. Vendor shall modify the Design Development Documents as necessary to obtain the District’s acceptance thereof.

2.5.3. **Vendor Preparation of Design Documents.** Upon the execution and ratification of this Agreement, the Vendor shall be deemed authorized to commence with the preparation of Design Documents and other Design Services under this Agreement and procure long lead time equipment, without further action of the District. If the District fails to provide a written Notice to Proceed within fifteen (15) calendar days after the date of the District’s acceptance of the Design Documents, the Parties agree that the Notice to Proceed shall be deemed to have been issued by the District on the fifteenth (15th) day.

2.6. **Construction Documents.** Based on the comments of the District Representative to the Design Development Documents, Vendor shall prepare Construction Documents consisting of detailed Drawings and Specifications with sufficient clarity, coordination and consistency to construct the Project in accordance with the Construction Contract Time established by the District and within the Project Budget. Vendor shall submit the completed Construction Documents to the District for review, comment and acceptance. If the District Representative fails to provide a written acceptance of such Documents within ten (10) calendar days of Vendor’s submittal of said Documents, the Parties agree that the Documents shall be deemed to have been accepted by the District on the tenth (10th) day. Upon completing revisions, if any, to the Construction Documents to address comments of the District, Vendor shall submit the same to the District Representative for review, comment and acceptance on behalf of the District. Vendor shall revise the Construction Documents as reasonably necessary to obtain the District’s acceptance of the entirety of the Construction Documents. The Construction Documents accepted by the District shall be referred to as the Final Construction Documents. Notwithstanding any provision of this Agreement to the contrary and in addition to other comments/revisions necessary to obtain the District’s acceptance of the Construction Documents, the District’s acceptance of the Construction Documents shall be conditioned upon Vendor’s written statement accompanying the Construction Documents which shall specifically warrant and represent to the District that the scope of the Project depicted in the Contract Documents is: (a) an 578 kilowatt solar powered photovoltaic power generating system; and (b) that the cost savings realized by the District
through the self-generated electrical power capacity resulting from implementation of the Project in lieu of purchasing electrical power through the Southern California Edison (SCE) grid, along with California Solar Initiative (CSI) will exceed the costs, fees and expenses incurred by the District to design and construct the Project over the minimum useful life of the asset, which is 25 years. Unless otherwise indicated in this Agreement, references to the Construction Documents in this Agreement shall be deemed references to the Final Construction Documents.

2.7. Permits, Approvals. Upon completion of the Final Construction Documents, Vendor shall submit the same, on behalf of the District, to all governmental or quasi-governmental agencies or entities with jurisdiction over any portion of the Work depicted therein for review and issuance of permits or other approvals necessary or required for construction of the Work. Vendor shall promptly process such applications and promptly obtain all necessary permits and approvals for construction of the Project. Vendor shall keep the District informed of the status of such applications for permits and approvals. Except for the fee(s) charged by the governmental or quasi-governmental agency issuing a permit or approval relating to Project construction, all costs and expenses associated with or arising out of the submission and processing of necessary permits or approvals for construction of the Project are included and incorporated into the Design and Construction Services Contract Price. The District shall be responsible for payment of the fee(s) charge by the governmental or quasi-governmental agency issuing a permit or approval relating to Project construction.

2.8. Limitations on District Acceptance of Design Documents. The District’s review of Design Documents shall be for the limited purpose of confirming that the Work reflected in the Design Documents generally conforms to the requirements of the Project. The District’s review and acceptance of the Design Documents or any portion thereof shall not relieve or limit Vendor’s obligations, whether pursuant to the terms of this Agreement or by operation of law, relating to its standard of care in preparing Design Documents, nor shall such review/acceptance result in any District assumption of responsibility for the content thereof nor the completeness and accuracy of the Design Documents. If the District fails to provide a written acceptance of such Documents within ten (10) calendar days of Vendor’s submittal of said Documents, the Parties agree that the Documents shall be deemed to have been accepted by the District on the tenth (10th) day. If the District deems the Design Documents unacceptable and the Vendor disagrees with the District’s assessment, a mutual third party shall resolve whether the Design Documents meet the Scope.

3. Construction Services

3.1. General. Vendor shall provide Construction Services, consisting generally of labor, materials, equipment and services necessary to procure install and construct the Work indicated in the Construction Documents. The Work indicated in the Construction Documents shall be installed and constructed in accordance with the Construction Documents and applicable laws, ordinances, rules or regulations.

3.2. District.

3.2.1. Notice to Proceed. After the District’s acceptance of the Final Construction Documents, the District will issue a written Notice to Proceed to Vendor authorizing and directing its commencement of Project construction. If the District fails to provide a written Notice to Proceed within fifteen (15) calendar days after the date of the District’s acceptance of the Final Construction Documents, the Parties agree that the Notice to Proceed shall be deemed to have been issued by the District on the fifteenth (15th) day. The commencement date of the Construction Services Contract Time shall be as set forth in the Notice to Proceed issued by the District to Vendor. The Construction Services Contract Time shall not be subject to adjustment if Vendor does not commence Project construction as of the commencement date set forth in the Notice to Proceed.
3.2.2. District Right to Stop 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 Vendor to stop the Work, or any portion thereof, until the cause for such stop work order has been eliminated if Vendor: (i) fails to correct Work which is not in conformity and in accordance with the requirements of the Construction Documents, or (ii) otherwise fails to carry out the Work in conformity and accordance with the Contract Documents. 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 Vendor 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.

3.2.3. District Partial Occupancy or Use. 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 Vendor 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 District occupies or use any completed or partially completed portion of the Work; District shall indemnify the Vendor for any damages occurred in association with such occupation or use of the Work. If Vendor 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, and Vendor 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 Vendor 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. Vendor shall be entitled to a reasonable extension of time and reasonable increase in the contract amount in the event that the use by the District results in performance delays or increased project costs or expenses.

3.2.4. No Acceptance of Defective or Non-Conforming Work. Unless otherwise expressly agreed upon by the District and Vendor, 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.

3.2.5. District Representative. The District will designate an employee of the District during construction of the Project to serve as the District Representative. The District Representative is authorized to act on behalf of the District and to enforce the District's rights under this Agreement. All Work of the Project, whether in place or in progress, shall be available for inspection, observation or review by the District Representative at any time. Without adjustment of the Design and Construction Services Contract Price, Vendor shall provide the District Representative with access to the Work, wherever located and whether in place or in progress.

3.3. Project Inspections. All of the Work shall be subject to inspections conducted by public agencies with jurisdiction over the Project or any portion thereof. In addition to inspection of the Work by public agencies with jurisdiction over any portion of the Work, the Work shall be subject to
3.3.1. **Access to Work.** Vendor shall provide the Inspectors with access to all parts of the Work at any time, wherever located and whether partially or completely fabricated, manufactured, furnished or installed. The Inspectors shall have the authority to stop Work if the Work is not in conformity with the Contract Documents.

3.3.2. **Limitations on Project Inspections.** The Inspectors do 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 Inspectors, and Vendor shall be liable to the District for the consequences of all Work performed on such basis.

3.3.3. **Compliance with Inspectors’ Corrective Requirements.** If the Inspectors determine that any portion of the Work is defective or not conforming to requirements of the Construction Documents, upon notice of such defective or non-conforming conditions, Vendor shall promptly take all necessary measures to correct such defective or non-conforming conditions. Vendor shall under take and complete corrections to defective/non-conforming conditions identified by the Inspectors. If Vendor fails or refuses to correct defective/non-conforming conditions pursuant to the preceding within ten (10) calendar days of the Inspectors’ determination, the District, with its own forces or its own separate contractor, may complete correction to defective or non-conforming conditions at the cost and expense of Vendor. The District may deduct such cost(s) and expense(s) from any portion of the Design and Construction Services Contract Price then or thereafter due Vendor. If Vendor establishes that the Inspector’s corrective requirements were in error and that Vendor’s work was in conformity with the Contract Documents, Vendor shall be entitled to a change order granting it a reasonable extension of Contract Time and Contract Price based on the time and increased costs and expenses incurred by Vendor in performing the Inspector’s corrective requirements.

3.4. **District Separate Contractors.** The District reserves the right to perform construction or other operations at or about the Site with its own forces or other contractors. Vendor shall cooperate with the District and the District’s separate contractors to coordinate their respective activities on or about the Site and shall afford the District and the District’s separate contractors a reasonable opportunity for storage of materials/equipment and performance of their respective activities at or about the Site to the same extent that the District has provided to Vendor.

3.5. **Vendor Construction Activities.**

3.5.1. **Field Measurements.** Prior to commencement of the Work, or portions thereof, Vendor shall take field measurements and verify field conditions at the Site.

3.5.2. **Dimensions; Layouts and Field Engineering.** Vendor 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 Vendor at its expense. Any field engineering or other engineering to be provided or performed by Vendor under the Contract Documents and required or necessary for the proper execution or installation of the Work shall be provided and performed by the a registered engineer 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, Vendor is responsible for dimensions of such item of Work and related Work; without adjustment of the Contract Time or Design and Construction Services Contract Price, Vendor is responsible for making component parts of the Work fit together properly.
3.5.3. **Work in Accordance With Contract Documents.** Vendor shall perform all of the Work in strict conformity with the Contract Documents and applicable laws, codes, regulations and rules. The Project, as completed shall conform to the Construction Documents, except to the extent that the District has accepted a Change and issued a Change Order therefore. Vendor shall furnish and install the materials and equipment as specified in the Construction Documents, unless Vendor shall have obtained the District’s consent and approval to substitution of specified materials or equipment.

3.5.4. **Subsurface Conditions.** If the Work under the Contract Documents involves digging trenches or other excavations that extend deeper than four feet below the surface, Vendor shall promptly and before the following conditions are disturbed, notify the District Representative in writing, of any: (i) material that Vendor 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 the District and the Vendor determine that the conditions so materially differ or involve such hazardous materials which require an adjustment to the Design and Construction Services Contract Price or the Contract Time, the District shall issue a Change Order in accordance with the provisions of this Agreement. If any of the conditions listed in (i), (ii), or (iii) above, are discovered and result in any delays by Vendor or any increases in Contract Price by Vendor, Vendor shall be entitled to a change order granting it a reasonable extension of Contract Time and a reasonable increase in the Contract Price based upon the time and increased costs and expenses incurred by Vendor in stopping or delaying performance under the Contract Documents, working around affected areas of the project site, and restarting performance under the Contract Documents. In accordance with California Public Contract Code §7104, any dispute arising between Vendor and the District as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse Vendor from the completion of the Work within the Contract Time and Vendor shall proceed with all Work to be performed under the Contract Documents. The District reserves the right to terminate the Contract pursuant to the Contract Documents should the District determine not to proceed because of any condition described in (i), (ii) or (iii) above. The District shall notify the Vendor in writing of the Contract termination within five (5) calendar days of the notification provided by the Vendor of such conditions. If the Contract is terminated because of any the conditions described in (i), (ii) or (iii), the Vendor shall be entitled to payment for all Work performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

3.5.5. **Supervision and Construction Procedures.**

3.5.5.1. **Supervision of the Work.** Vendor shall supervise and direct performance of the Work, using Vendor’s best skill and attention. Vendor 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. Vendor 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.

3.5.5.2. **Responsibility for the Work.** Vendor shall be responsible to the District for negligent acts and omissions of Vendor’s employees, Subcontractors and their agents.
and employees and all other persons performing any portion of the Work under a
contract with Vendor and at Vendor’s discretion. Vendor shall not be relieved of the
obligation to perform the Work in accordance with the Contract Documents by tests,
inspections or approvals required or performed by persons other than Vendor.

3.5.5.3. Layouts. Vendor 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. Vendor 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 Design and Construction Services Contract Price.
Vendor shall be solely responsible for all loss or costs resulting from the loss,
destruction, disturbance or damage of benchmarks, reference points or stakes by
Vendor and its agents, employee’s invitees and other representatives. Vendor shall
not be liable for loss, destruction, disturbance or damage caused by vandal or other
third parties not under the control or supervision of Vendor. Vendor shall be entitled to
a change order granting it a reasonable extension of Contract Time and a reasonable
increase in the Contract Price based upon the time and increased costs and expenses
incurred by Vendor as a result of such occurrences.

3.5.5.4. Construction Utilities. The District will furnish and pay the costs of temporary
power and water utility services for the Work. The foregoing notwithstanding, District
provided water utility service shall not be used by Vendor for any earthwork or grading
operations. All other utilities necessary to complete the Work and to completely
perform all of Vendor’s obligations shall be obtained by Vendor without adjustment of
the Design and Construction Services Contract Price. Vendor 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 Vendor 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 Vendor and included

3.5.5.5. Existing Utilities; Removal, Relocation and Protection. Vendor and the District
acknowledge that under California Government Code §4215, the District assumes 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. Prior to commencing any underground
work on this project, Vendor shall contact Underground Service Alert of Northern
California (“USA”) and arrange to have the project area marked by USA for
underground utilities. In the event that underground utilities or other underground
obstacles or site conditions are discovered by Vendor that were not reflected in the
results of the USA underground service inspection or in the District’s as-built drawings,
survey’s and other site documents produced to Vendor, such matters shall be deemed
unforeseen circumstances and Vendor shall be entitled to a change order granting it a
reasonable extension of Contract Time and a reasonable increase in the Contract Price
based upon the time and increased costs and expenses incurred by Vendor as a result
of such inaccuracies. Vendor and the District agree that the provisions of Government
Code §4215 shall not apply to this Agreement insofar as Vendor has the responsibility
for design of the Project as well as construction of the Project. Further, Vendor and the
District agree that the scope of Vendor’s responsibilities relating to design of the
Project includes without limitation, survey, assessment and locating utility lines in or
about the area of the Site. Vendor waives all rights under Government Code §4215.
3.5.6. Conferences and Meetings. A material obligation of Vendor under the Contract Documents is the attendance at required meetings by Vendor’s supervisory personnel for the Work and Vendor’s management personnel as required by the Contract Documents or as requested by the District. Vendor’s personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of Vendor and to bind Vendor. Vendor 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.

3.5.6.1. Pre-Construction Conference. Vendor’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, Vendor, Subcontractor, Inspectors 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 Vendor; (e) Progress Schedule development and maintenance; (f) development of Schedule of Values and payment procedures; (g) communication procedures; (h) emergency and safety procedures; (i) Site visitor policies; (j) conduct of Vendor/Subcontractor personnel at the Site; and (k) punchlist/close-out procedures.

3.5.6.2. Progress Meetings. Progress meetings will be conducted on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). Vendor’s representatives and representatives of Subcontractors (as requested by the District) shall attend Progress Meetings. Progress Meetings will be chaired by the District 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.

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

3.5.6.4. Minutes of Meetings. Following conclusion of the Pre-Construction Conference, Progress Meetings and Special Meetings, Vendor will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless the District notifies Vendor 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 District; such objections or corrections shall be submitted to the District through Vendor. If Vendor timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next scheduled Progress Meeting.

3.5.7. Temporary Sanitary Facilities. At all times during Work at the Site, Vendor shall obtain and maintain temporary sanitary facilities in conformity with applicable law, rule or regulation. Vendor 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.

3.5.8. **Noise and Dust Control.**

3.5.8.1. **Noise Control.** Vendor 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, Vendor 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 Design and Construction Services Contract Price or the Contract Time.

3.5.8.2. **Dust Control.** Vendor shall be fully and solely responsible for maintaining and up keep 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, Vendor 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, Vendor 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 Vendor's failure to comply with these requirements shall be exclusively at the cost of Vendor, 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. Vendor 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, Vendor 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 Design and Construction Services Contract Price or the Construction Contract Time.

3.5.8.3. **Vendor Failure to Comply.** If Vendor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of the Contract Documents, the District shall notify Vendor in writing and Vendor shall take immediate action. Should Vendor 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 reasonable costs incurred by the District in connection with such actions shall be the sole responsibility of, and be borne by, Vendor; the District may deduct such amounts from the Design and Construction Services Contract Price then or thereafter due Vendor.

3.5.9. **Labor and Materials.**
3.5.9.1. **Payment for Labor, Materials and Services.** Vendor 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.

3.5.9.2. **Employee Discipline.** Vendor shall enforce strict discipline and good order among Vendor’s employees, the employees of any Subcontractor or Sub-subcontractor, and all other persons performing any part of the Work at the Site. Vendor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Vendor 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, Vendor 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.

3.5.9.3. **Vendor’s Superintendent.** Vendor shall employ a competent superintendent and all necessary assistants who shall be in attendance at the Site at all times during Project construction. Vendor’s communications relating to the Work or the Contract Documents shall be through Vendor’s superintendent. The superintendent shall represent Vendor and communications given to the superintendent shall be binding as if given to Vendor. Vendor 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.

3.5.9.4. **Prohibition on Harassment.**

3.5.9.4.1. **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.

3.5.9.4.2. **Vendor’s Adoption of Anti-Harassment Policy.** Vendor 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. Vendor 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. Vendor shall require that any Subcontractor or Sub-subcontractor is performing any portion of the Work to adopt and implement policies in conformity with these provisions relating to prohibition of harassment.
3.5.9.4.3. **Prohibition on Harassment at the Site.**  Vendor shall not permit any person, whether employed by Vendor, 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 these provisions. 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 Vendor 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 Vendor 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 and nor shall the Design and Construction Services Contract Price or the Contract Time shall be adjusted on account thereof. Vendor 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 provision; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of Vendor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of Vendor 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.

3.5.10. **Taxes.**  Vendor shall pay, without adjustment of the Design and Construction Services Contract Price, all sales, consumer, use and other taxes for the Work or portions thereof provided by Vendor under the Contract Documents.

3.5.11. **Compliance With Laws.**  All Work and construction operations shall conform to and comply with all applicable laws, rules, regulations and ordinances. Vendor shall comply with and give notices required by laws, ordinances, rules, regulations and other orders of public authorities bearing on performance of the Work.

3.5.12. **Submittals.**

3.5.12.1. **Waiver of Submittals.**  Provided that Vendor furnishes and installs the materials and equipment indicated in the Construction Documents, Vendor shall not be required to submit Shop Drawings, Product Data, Samples and similar submittals (collectively “Submittals”) of materials, equipment or construction procedures to the District.
Representative or any other party for review and acceptance.

3.5.12.2. **No Substitutions of Materials/Equipment Without District Review.** Vendor shall perform no portion of the Work involving substitutions of materials/equipment indicated in the Construction Documents until the District Representative has reviewed and returned the Submittal to Vendor indicating “No Exception Taken” to such Submittal, within three (3) calendar days of receipt of the Submittal by the Vendor. If the District fails to return the Submittal to Vendor, the Parties agree that “No Exception Taken” shall be deemed to have been indicated on the third (3rd) day. If the District deems to “Take Exception” to such Submittal and the Vendor disagrees with the District’s assessment, a mutual third party shall resolve whether the substitution of materials/equipment meets the Scope. Vendor shall not perform any portion of the Work requiring a Submittal or which is affected by a required Submittal until the entirety of the required Submittal or other related required Submittal has been fully processed. Such Work shall be in accordance with the final action taken by the District in their review of Submittals and other applicable portions of the Contract Documents.

3.5.12.3. **District Review of Submittals for Substitutions of Materials Equipment.** The purpose of the review by the District of Submittals relating to substitutions of materials/equipment indicated in the Construction Documents is for conformity of the proposed substitution of materials/equipment with the design intent of the Construction Documents and conformity with the performance and other requirements of the Project. If a Submittal is returned to Vendor as rejected or requiring correction(s) with re-submission, Vendor, so as not to delay the progress of the Work, shall promptly thereafter resubmit a Submittal conforming with the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in accordance with comments accompanying the rejected Submittal. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals. Acceptance of substitute materials/equipment reflected in a Submittal shall not result in an increase in the Construction Contract Time or the Design and Construction Services Contract Price.

3.5.12.4. **Deferred Approval Items.** In the event that any portion of the Work is designated in the Contract Documents as a “Deferred Approval” item, Vendor 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.

3.5.13. **Materials and Equipment.**

3.5.13.1. **Specified Materials, Equipment.** Vendor acknowledges that the Construction Documents for the Work are prepared by or under the direction of Vendor and that the Construction Documents as prepared by or under the direction of Vendor are in conformity with applicable laws, including without limitation, Public Contract Code §3400. Specifications prepared by on behalf of Vendor do not include any specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number which could be construed as limiting competition.

3.5.13.2. **No Substitutions or Alternatives.** Vendor shall furnish and install the materials and equipment specified in the Construction Documents without material substitutions or alternatives thereto, unless Vendor shall have notified the District in writing of its intent...
to substitute materials/equipment and the proposed substituted materials/equipment are accepted by the District pursuant to the Submittal process described in Paragraph 3.5.12 above.

3.5.13.3. Placement of Material and Equipment Orders. Except as stated in Section 2.5.3, Vendor shall, after issuance of the Notice to Proceed, 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. Vendor 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, Vendor 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.

3.5.13.4. District's Right to Place Orders for Materials and/or Equipment. Notwithstanding any other provision of the Contract Documents, in the event that Vendor shall, upon request of the District, 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 reasonably 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 Vendor. 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 Vendor. 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 Vendor from any of Vendor’s obligations under the Contract Documents, including without limitation, completion Project construction within the Contract Time and for the Design and Construction Services Contract Price. If the District exercises the right hereunder to place orders for materials and/or equipment on behalf of Vendor pursuant to the foregoing, Vendor 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 Design and Construction Services Contract Price then or thereafter due Vendor.


3.5.14.1. Safety Programs. Vendor 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. Vendor’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.). Prior to commencement of construction activities at the Site, an authorized representative of Vendor shall execute the Drug-Free Workplace Certification and
deliver the executed Drug-Free Workplace Certification to the District. Without limiting or relieving Vendor of its obligations hereunder, Vendor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs. Prior to commencement of Work at the Site, Vendor shall provide the District Representative with Vendor's proposed safety program for the Work for the District Representative's review and acceptance. Without adjustment of the Design and Construction Services Contract Price or the Contract Time, Vendor shall modify and re-submit its proposed safety plan to incorporate modifications thereto requested by the District Representative.

3.5.14.2. Safety Precautions. Vendor 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 Vendor or Vendor’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. Vendor 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 Design and Construction Services Contract Price or the Contract Time, Vendor shall repair, replace or restore any damage or destruction of the foregoing items as a result of performance or installation of the Work.

3.5.14.3. Safety Signs, Barricades. Vendor 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 owners and users of adjacent sites and utilities.

3.5.14.4. Safety Notices. Vendor 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.

3.5.14.5. Safety Coordinator. Vendor shall designate a responsible member of Vendor’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 Vendor’s superintendent unless otherwise designated by Vendor in writing to the District.

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

3.5.15. Hazardous Materials.

3.5.15.1. General. In the event that Vendor, 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”), Vendor 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.

3.5.15.2. **Prohibition on Use of Asbestos Construction Building Materials (“ACBMs”).** It is the intent of the District that ACBMs not be used or incorporated into any portion of the Work. Vendor warrants to the District that the Construction Documents do not incorporate therein any ACBMs. If the Work depicted in the Construction Documents require materials or products which Vendor knows, or should have known with reasonably diligent investigation, to contain ACBMs, Vendor shall promptly notify the District Representative 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. Vendor 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, Vendor 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. Vendor’s obligations under the preceding sentence shall survive the termination of the Contract, the warranty period provided under the Contract Documents, Vendor’s completion of the Work or the District’s acceptance of the Work. In the event that Vendor 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 Vendor 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 Vendor and Vendor’s Performance Bond Surety.

3.5.15.3. **Disposal of Hazardous Materials.** Vendor shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about Site resulting from Vendor’s performance of Work, unless such Hazardous Materials were present on or about the Site prior to Vendor’s performance of Work. Vendor’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.

3.5.16. **Maintenance of Documents.**

3.5.16.1. **Documents at Site.** Vendor shall maintain at the Site: (i) one record copy of the Drawings, and Specifications; (ii) Change Orders approved by the District and all other modifications to the Contract Documents; (iii) Record Drawings; (iv) Material Safety Data Sheets (“MSDS”) accompanying any materials, equipment or products delivered or stored at the Site or incorporated into the Work; and (v) 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 Vendor at the Site shall be available to the District review, inspection or reproduction. Upon completion of the Work, all documents maintained at the Site by Vendor pursuant to the foregoing shall be assembled and transmitted to the District
Representative upon Substantial Completion of the Work.

3.5.16.2. **Maintenance of Record Drawings.** During its performance of the Work, Vendor 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 Construction Documents to adapt 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 Vendor during the performance of the Work. At any time during Vendor’s performance of the Work, upon the request of the District, Vendor 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 Vendor’s performance of the Work shall be only for the purpose of generally verifying that Vendor 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 Vendor 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 Vendor’s default of a material obligation hereunder. Without waiving, restricting or limiting any other right or remedy of the District for Vendor’s failure or refusal to continuously maintain the Record Drawings, the District may, upon reasonably determining that Vendor 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 Vendor and the District may deduct the amount of such fees and costs from any portion of the Design and Construction Services Contract Price then or thereafter due Vendor. Prior to receipt of the Final Payment, Vendor shall deliver the Record Drawings to the District.

3.5.17. **Use of Site.** Vendor 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. Vendor shall not unreasonably encumber the Site or adjoining areas with materials or equipment. Vendor shall be solely responsible for providing security at the Site with all such costs included in the Design and Construction Services Contract Price. The District and agencies with jurisdiction over the Work shall at all times have access to the Site.

3.5.18. **Clean-Up.** Vendor 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, Vendor shall maintain the Site in a “broom-clean” standard on a daily basis. Notwithstanding the foregoing, Vendor shall not be responsible for cleaning the Site areas of any waste materials or rubbish generated by other than Vendor or its employees, subcontractors, agent or representatives. Vendor agrees to promptly notify the District in the event that vandals or other third persons damage or leave waste material or rubbish in or about the Site. 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, Vendor shall remove from the Site all rubbish, waste material, excess excavated material, tools, Construction Equipment, machinery, surplus material that were generated by Vendor or its employees, subcontractors, agent or representatives that are not the property of the District under the Contract Documents. As directed by the District, Vendor shall remove temporary fencing, barricades, planking, temporary sanitary facilities, temporary utility distributions and other temporary facilities. Subject to the foregoing exclusions, upon completion of the Work, the Site and all adjoining areas shall be left in a neat and broom clean condition satisfactory to District. If Vendor 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 Vendor; the District may deduct such costs from any portion of the Design and Construction Services Contract Price then or thereafter due Vendor.

3.5.19. Patents and Royalties. Vendor 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 arising as a result of Vendor’s performance of the Work under the Contract Documents. Notwithstanding the foregoing, Vendor shall not have any indemnity or liability obligation to the extent that the subject infringements pertain to materials specifically required by the District under the Contract Documents.

3.5.20. Cutting and Patching. Vendor shall be responsible for cutting, fitting or patching required to complete the Work or to make the component parts thereof fit together properly. Vendor 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, Vendor shall use reasonable efforts under the existing circumstances to 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. Vendor 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. Vendor shall not unreasonably withhold consent to the request of the District or separate contractor to cut, patch or otherwise alter the Work.

3.5.21. Encountering of Hazardous Materials. In the event Vendor 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, Vendor 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, Vendor shall immediately notify the District Representative, in writing, of such condition. Vendor shall proceed with the Work in such affected area only after such Hazardous Materials have been rendered harmless, contained, removed or abated by the District. In the event such Hazardous Materials are encountered, Vendor 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 Design and Construction Services Contract Price solely on account of Vendor encountering such Hazardous Materials.

3.5.22. Wage Rates; Employment of Labor.

3.5.22.1. 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. Vendor shall post, at appropriate and conspicuous locations on the Site, a schedule showing all determined general prevailing wage rates.

3.5.22.2. Payment of Prevailing Rates. There shall be paid each worker of Vendor, 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 Vendor or any Subcontractor, of any tier, and such worker.

3.5.22.3. Prevailing Rate Penalty. Vendor shall, as a penalty, forfeit Fifty Dollars ($50.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for the Work by Vendor or by any Subcontractor, of any tier, in connection with the Work. Pursuant to California Labor Code §1775, 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 Vendor.

3.5.22.4. Payroll Records. Pursuant to California Labor Code §1776, Vendor 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 Vendor. 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 Vendor, 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 Vendor; (iv) Vendor 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 Vendor or any Subcontractor, of any tier, performing a part of the Work shall not be marked or obliterated. Vendor 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 Paragraph 3.6.24.4, Vendor shall have ten (10) days in which to comply, subsequent to receipt of written notice specifying in what respects Vendor must comply herewith. Should noncompliance still be evident after such 10-day period, Vendor 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 Design and Construction Services Contract Price then or thereafter due Vendor. Vendor is solely responsible for compliance with the foregoing provisions.

3.5.22.5. Hours of Work.

3.5.22.5.1. 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 Vendor 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 Vendor 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.

3.5.22.5.2. Penalty for Excess Hours. Vendor shall pay to the District a penalty of Twenty-five Dollars ($25.00) for each worker employed on the Work by Vendor 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 Vendor 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.

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

3.5.22.5.4. Apprentices.

3.5.22.5.4.1. 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.

3.5.22.5.4.2. Apprenticeship Certificate. When Vendor or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade, Vendor 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 for a certificate approving Vendor 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 Vendor or Subcontractor, shall arrange for the dispatch of apprentices to Vendor or such Subcontractor in order to comply with California Labor Code §1777.5. Vendor 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. Vendor 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.

3.5.22.5.4.3. 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. Vendor shall employ apprentices for the number of hours computed as above before the completion of the Work. Vendor 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. Vendor or any Subcontractor covered by this Paragraph 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 Vendor 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 Vendor from the 1-to-5 ratio as set forth in this Paragraph and California Labor Code §1777.5. This Paragraph 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.

3.5.22.5.4.4. 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 Vendor from the 1-to-5 ratio set forth in this Paragraph 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.

3.5.22.5.4.5. Contributions to Trust Funds. Vendor or any Subcontractor, of any tier, who, performs any of the Work by employment of journeymen or apprentices in any Apprenticeable Craft or Trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the 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 Design and Construction Services Contract Price.

3.5.22.5.4.6. Vendor’s Compliance. The responsibility of compliance with this Paragraph for all Apprenticeable Trades or Crafts is solely and exclusively that of Vendor. All decisions of the Joint Apprenticeship Committee(s) under this Paragraph are subject to the provisions of California Labor Code §3081. In the event Vendor willfully fails to comply with the provisions of this Paragraph and California Labor Code §1777.5, pursuant to California Labor Code §1777.7, Vendor 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 Design and Construction Services 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 Paragraph 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.

3.5.23. Employment of Independent Contractors. Pursuant to California Labor Code §1021.5, Vendor 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 Vendor shall employ any person in violation of the foregoing, Vendor 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, Vendor’s violation of this provision or the provisions of California Labor Code §1021.5 shall be deemed an event of Vendor’s default under this Agreement. Vendor shall require any Subcontractor or Sub-Subcontractor performing or providing any portion of the Work to adhere to and comply with the foregoing provisions.

3.5.24. Assignment of Antitrust Claims. Pursuant to California Government Code §4551, Vendor 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 Vendor, 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 Design and Construction Services 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 Paragraph 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.

3.5.25. Limitations Upon Site Activities. Except in the circumstances of an emergency, all construction activities shall be permitted at or about the Site Mondays through Fridays, excepting holidays and between the hours of 7:00 a.m. and 6:00 p.m. Work performed outside of the foregoing hours and days will not result in adjustment of the Contract Time or the Design and Construction Services Contract Price.

3.6. Subcontractors

3.6.1. Subcontracts. Any Work performed for Vendor by a Subcontractor shall be pursuant to a written agreement between Vendor 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 by the terms of this Agreement and the termination provisions hereof, and obligates the Subcontractor to assume toward Vendor all the obligations and responsibilities of Vendor which by the Contract Documents Vendor assumes toward the District. 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 the terms of this Agreement, subject to the prior rights of the Surety obligated under a bond relating to the Contract. If this Agreement is terminated for any reason, Vendor shall provide to the District copies of all executed Subcontracts and Purchase Orders to which Vendor is a party. During performance of the Work, Vendor shall, from time to time, as and when requested by the District and mutually agreed upon, provide copies of any and all Subcontracts or Purchase Orders relating to the Work and all modifications thereto. Vendor’s failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders in accordance with the two preceding sentences is Vendor’s default of a material term of the Contract Documents.

3.6.2. Subcontractors List. Within five (5) days of the District’s issuance of the Notice to Proceed, Vendor shall complete and submit to the District Representative the Subcontractors List attached as Exhibit B hereto. In accordance with Public Contract Code §4100 et seq., Vendor shall identify each Subcontractor performing any Work valued at or greater than one-half of one percent (0.05%) of the Design and Construction Services Contract Price allocated to Construction Services. Vendor shall set forth in the Subcontractors List, the business location of each identified Subcontractor and the portion of Work to be performed by each identified Subcontractor.

3.6.3. Substitution of Listed Subcontractor.

3.6.3.1. Substitution Process. Any request of Vendor to substitute a listed Subcontractor will be considered only if such request is in strict conformity with these provisions and the provisions of California Public Contract Code §4107.

3.6.3.2. Responsibilities of Vendor Upon Substitution of Subcontractor. The District’s consent to Vendor’s substitution of a listed Subcontractor shall not relieve Vendor from its obligation to complete the Work within the Contract Time and for the Design and
Construction Services Contract Price. The substitution of a listed Subcontractor shall not, under any circumstance, result in, or give rise to any increase of the Contract Price or the Contract Time on account of such substitution.

3.6.4. **Subcontractors’ Work.** Whenever the Work of a Subcontractor is dependent upon the Work of Vendor or another Subcontractor, Vendor 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 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 without limitation, the Construction Documents) and required Submittals, if any, 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 Vendor 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.

3.7. **Contract Time.** The Contract Time for achieving Final Completion of the Work is nine (9) months after the date established for the Vendor’s commencement of Project and Design Construction, as set forth in the Notice to Proceed issued by the District to the Vendor. The date for commencement of the Work is the date established by the Notice to Proceed issued by the District or on behalf of the District pursuant to the Agreement, which shall not be postponed by the failure to act of Vendor or of persons or entities for which Vendor is responsible. The date of Final Completion shall be the date of the final permit sign-off by the permit authority.

3.7.1 **Time of Essence.** Time limits stated in the Contract Documents are of the essence. By executing this Agreement, Vendor confirms that the Contract Time is a reasonable period for achieving Final Completion of the Work. Vendor and its Subcontractors 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 Final Completion of the Work within the Contract Time.

3.7.2 **Correction or Completion of the Work After Substantial Completion.**

3.7.2.1 **Punchlist.** Upon achieving Substantial Completion of the Work, the District Representative and Vendor shall jointly inspect the Work and prepare a comprehensive list of items of the Work to be corrected or completed by Vendor (“the Punchlist”). Substantial Completion is that stage in the progress of the Work when the Work is complete in accordance with the Contract Documents so that the District can use and occupy the Work for its intended purposes. The exclusion of, or failure to include, any item on the Punchlist shall not alter or limit the obligation of Vendor to complete or correct any portion of the Work in accordance with the Contract Documents.

3.7.2.2 **Time for Completing Punchlist Items.** In addition to establishing the Punchlist, Vendor and the District Representative shall, after the joint inspection, establish a reasonable time for Vendor’s completion of all Punchlist items. Vendor shall promptly and diligently proceed to complete all Punchlist items within the time established. In the event that Vendor shall fail or refuse, for any reason, to complete all Punchlist items within the time established, Vendor shall be subject to assessment of Liquidated Damages for delayed completion of Punchlist.

3.7.2.3 **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 Vendor. Final Completion shall be determined by the District Representative upon request of Vendor. The good faith and reasonable determination of Final Completion by the District Representative shall be controlling and final.

3.7.3 Final Acceptance. Final Acceptance of the Work shall occur upon approval of the Work by the District's Representative. The commencement of any warranty or guarantee period under the Contract Documents shall be deemed to be the date upon which the District approves of the Final Acceptance of the Work, and in no case shall be later than 45 days after SCE interconnection of the solar system.

3.7.4 Construction Schedule.

3.7.4.1 Submittal of Preliminary Construction Schedule. Within five (5) days following issuance of the Notice to Proceed, Vendor shall prepare and submit to the District Representative a Preliminary Construction Schedule indicating, in graphic form, the estimated rate of progress and sequence of all Work required under the Contract Documents. The purpose of the Preliminary Construction Schedule is to assure adequate planning and execution of the Work so that it is completed within the Contract Time and to permit evaluation of the progress of the Work. Unless otherwise provided in the Special Conditions, the Construction Schedules shall; (i) be prepared utilizing the then most recent edition of Microsoft Excel, Microsoft Project or Primavera Suretrak; (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; and (iv) indicate costs for completion of each Construction Schedule activity. If the Construction Schedules required hereunder incorporate therein any “float” time, such float shall be deemed to jointly belong to and owned by the District and Vendor. As used herein, “float time” shall be deemed to refer to the time between earliest finish date and the latest finish date of each activity shown on the Construction Schedule.

3.7.4.1 Review of Preliminary Construction Schedule. The District Representative shall review the Preliminary Construction Schedule submitted by Vendor for conformity with the requirements of the Contract Documents. Within fifteen (15) days of the date of receipt of the Preliminary Construction Schedule, the Preliminary Construction Schedule will be returned to Vendor with comments to the form or content thereof. Review of the Preliminary Progress Schedule and any comments thereto by the District Representative shall not be deemed to be the assumption of construction means, methods or sequences by the District, all of which remain Vendor’s obligations under the Contract Documents.

3.7.4.2 Preparation and Submittal of Contract Construction Schedule. Within ten (10) days of the District's return of the Preliminary Construction Schedule to Vendor, Vendor shall prepare and submit to the District Representative a Construction Schedule which incorporates therein the comments to the Preliminary Construction Schedule. Upon Vendor's submittal of such Construction Schedule, the District Representative shall review the same for purposes of determining conformity with the requirements of the Contract Documents. Within ten (10) days of the receipt of the Construction Schedule, the District Representative will approve such Construction Schedule or will return the same to Vendor with
comments to the form or content. In the event there are comments to the form or content thereof, Vendor, shall within seven (7) days of receipt of such comments, revise and resubmit to the District Representative the Construction Schedule incorporating therein such comments. Upon the District’s approval of the form and content of a Construction Schedule, the same shall be deemed the “Approved Construction Schedule.” The District’s approval of a Construction Schedule shall be for the sole and limited purpose of determining conformity with the requirements of the Contract Documents. By the Approved Construction Schedule, the District shall not be deemed to have exercised control over, or approval of, construction means, methods or sequences, all of which remain the responsibility and obligation of Vendor in accordance with the terms of the Contract Documents. Further, the Approved Construction Schedule shall not operate to limit or restrict any of Vendor’s obligations under the Contract Documents nor relieve Vendor from the full, faithful and timely performance of such obligations in accordance with the terms of the Contract Documents. The activities, commencement and completion dates of activities, and the sequencing of activities depicted on the Approved Construction Schedule shall not be modified or revised by Vendor without the prior consent, or direction, of the District. Updates to the Approved Construction Schedule shall not be deemed revisions to the Approved Construction Schedule. In the event that the Approved Construction Schedule shall depict completion of the Work in a duration shorter than the Contract Time, the same shall not be a basis for an adjustment of the Contract Time or the Design and Construction Services Contract Price in the event that actual completion of the Work shall occur after such the time depicted in such Approved Construction Schedule. In such event, the Design and Construction Services Contract Price shall not be subject to adjustment on account of any additional costs incurred by Vendor to complete the Work prior to the Contract Time, as adjusted in accordance with the terms of the Contract Documents. Any adjustment of the Contract Time or the Design and Construction Services Contract Price shall be based upon the Contract Time set forth in the Contract Documents and not any shorter duration which may depicted in the Approved Construction Schedule.

3.7.4.3 Revisions to Approved Construction Schedule. In the event that the progress of the Work or the sequencing of the activities of the Work shall materially differ from that indicated in the Approved Construction Schedule, as determined by the District in its reasonable discretion and judgment, the District may direct Vendor to revise the Approved Construction Schedule; within fifteen (15) days of the District’s direction, Vendor shall prepare and submit to the District Representative a revised Approved Construction Schedule, for review and acceptance by the District Representative. Vendor may request consent of the District to revise the Approved Construction Schedule. Any such request shall be considered by the District only if in writing setting forth Vendor’s proposed revision(s) to the Approved Construction Schedule and the reason(s) therefor. The District may consent to, or deny, any such request of Vendor to revise the Approved Construction Schedule in its reasonable discretion.

3.7.4.4 Updates to Approved Construction Schedule. Vendor shall monitor and update the Approved Construction Schedule on a monthly basis, or more frequently as required by the conditions or progress of the Work, or as may be requested by the District. Vendor shall provide the District Representative with updated Approved Construction Schedules indicating progress achieved and activities commenced or completed within the prior updated Approved Construction Schedule. Updates to
the Approved Construction Schedule shall not include any revisions to the activities, commencement and completion dates of activities or the sequencing of activities depicted on the Approved Construction Schedule. Any such revisions to the Approved Construction Schedule shall result in the District's rejection of such update and Vendor shall, within seven (7) days of the District's rejection of such update, submit to the District Representative an Updated Approved Construction Schedule which does not incorporate any such revisions. If requested by the District, Vendor shall also submit, with its updates to the Approved Construction Schedule a narrative statement including a description of current and anticipated problem areas of the Work, delaying factors and their impact, and an explanation of corrective action taken or proposed by Vendor. If the progress of the Work is behind the Approved Construction Schedule, Vendor shall indicate what measures will be taken to place the Work back on schedule. The District may, from time to time, and in the District's sole and exclusive discretion, transmit to Vendor's Performance Bond Surety the Approved Construction Schedule, any updates thereof and the narrative statement described hereinabove. The District's election to transmit, or not to transmit such information, to Vendor's Performance Bond Surety shall not limit Vendor's obligations under the Contract Documents.

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

3.7.5 Adjustment of Contract Time. If Final Completion is delayed, adjustment, if any, to the Contract Time on account of such delay shall be in accordance with the following:

3.7.5.1 Excusable Delays. If Final 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 District Representative; Excusable Delays shall not result in any increase in the Design and Construction Services Contract Price except as provided in Section 3.7.5.2, or otherwise in the Contract Documents. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of Vendor, any Subcontractor, Material Supplier or other person directly or indirectly engaged by Vendor 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 Vendor or any person or entity directly or indirectly engaged by Vendor in performance of any portion of the Work shall be deemed conditions beyond the control of Vendor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if Vendor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Vendor's notice and
request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Vendor’s request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of Vendor or any person or entity directly or indirectly engaged by Vendor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Vendor’s request to adjust the Contract Time directly and adversely impacted the progress 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.

3.7.5.2 Compensable Delays. If Final Completion of the Work is delayed and such delay is caused by the acts or omissions of the District, or separate contractor employed by the District (collectively “Compensable Delays”), upon Vendor’s request and notice, in strict conformity with applicable provisions of the Contract Documents, the Contract Time will be adjusted by Change Order for such reasonable period of time as determined by the District Representative and the Vendor, taking into consideration all intervening and interfering events, including without limitation weather, competing uses for the project site, work by other unrelated contractors, and other matters not within the control of Vendor. In accordance with California Public Contract Code §7102, if Vendor’s progress is delayed by any of the events described in the preceding sentence, Vendor shall not be precluded from the recovery of damages directly and proximately resulting therefrom, to the extent that Vendor and its employees, subcontractors, agents or representative are not responsible for the delay, the delay is unreasonable under the circumstances involved and the delay was not within the reasonable contemplation of the District and Vendor at the time of execution of the Agreement. In such event, Vendor’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, Vendor shall not have any other claim, demand or right to adjustment of the Design and Construction Services Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Design and Construction Services 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.

3.7.5.3 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 Paragraphs 3.7.6.1 and 3.7.6.2 above. Neither the Design and Construction Services Contract Price nor the Contract Time shall be adjusted on account of Unexcusable Delays.

3.7.6 Adjustment of Contract Time.

3.7.6.1 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 Vendor to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Vendor’s waiver of the same.

3.7.6.2 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 Approved 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 Vendor 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.

3.8 Liquidated Damages. Should Vendor neglect, fail or refuse to (i) achieve Final Completion of the Work within the Contract Time, being 1 year from date of signed contract (subject to adjustments authorized under the Contract Documents); (ii) or to complete Punchlist items within the time established pursuant to the Contract Documents, Vendor agrees to pay to the District the amount of per diem Liquidated Damages set forth below, not as a penalty but as Liquidated Damages, for every day beyond the Contract Time, as adjusted, until Final Completion or completion of the Punchlist items are achieved. The Liquidated Damages amounts set forth herein are agreed upon by and between Vendor and the District because of the difficulty of fixing the District’s actual damages in the event of delayed submission of Submittals, Final Completion or completion of Punchlist items. Vendor 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 from the Design and Construction Services Contract Price then or thereafter due Vendor. Vendor and the Vendor’s Performance Bond Surety shall be jointly and severally liable to the District for any Liquidated Damages exceeding any amount of the Construction Services Contract Price then held or retained by the District. In the event that Vendor 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 the provisions of this Agreement, 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 Vendor with the cost of completing or correcting such items of the Work in accordance with the provisions of this Agreement. Vendor and the District acknowledge and agree that the provisions of this Paragraph 3.8 are reasonable under the circumstances existing at the time of Vendor’s execution of the Agreement.

8.3.1 Liquidated Damages for Delayed Substantial Completion. Liquidated Damages for delayed Final Completion of the Work shall be Two Hundred Fifty Dollars ($250) per day for the first fourteen (14) days of delayed Final Completion and Four Hundred Fifty Dollars ($450) per day for each day of delayed Final Completion, commencing on the fifteenth (15th) day after the scheduled date of Final Completion, until Final Completion is achieved.

8.3.2 District Right to Take-Over Work. Unless caused by the District, if Vendor 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 one (1) week advance written notice from the District Representative to Vendor of its failure or refusal, the District may thereafter, without terminating this Agreement or waiving/limiting any right or remedy arising therefrom, 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 reasonable 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 Vendor and the District may deduct the same from the Design and Construction Services Contract Price then or thereafter due Vendor. 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 or arising by operation of law.

3.9 Design and Construction Services Contract Price. The Design and Construction Services Contract Price is the amount stated in this 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 Vendor for its full and complete performance of Design and Construction Services under the Contract Documents. The District’s payment of the Design and Construction Services Contract Price to Vendor shall be in accordance the provisions of this Paragraph 4.2.

3.10.1 Cost Breakdown. Within fifteen (15) days of the execution of the date of issuance of the Notice to Proceed, Vendor shall furnish, on forms acceptable to the District, a detailed estimate and complete Cost Breakdown of the Design and Construction Services Contract Price. The Cost Breakdown shall be subject to review and approval by the District Representative of the form and content thereof. In the event that the District Representative objects to any portion of the Cost Breakdown, within ten (10) days of the District’s receipt of the Cost Breakdown, the District Representative shall notify Vendor, in writing of such objection(s) to the Cost Breakdown. Within five (5) days of the date of the District Representative’s written objection(s), Vendor shall submit a revised Cost Breakdown to the District Representative for review and approval. The foregoing procedure for the preparation, review and acceptance of the Cost Breakdown shall continue until the District Representative has approved of the entirety of the Cost Breakdown. Once the Cost Breakdown is approved by the District Representative, the Cost Breakdown shall not be thereafter modified or amended by Vendor without the prior consent and approval of the District Representative, which may be granted or withheld in their sole reasonable discretion.


3.10.2.1 Applications for Progress Payments. During Vendor’s performance of Construction Services, Vendor shall submit an invoice to the District Representative, Applications for Progress Payments monthly, setting forth an itemized estimate of Work completed in the preceding month for the purpose of the District’s making of Progress Payments of the Design and Construction Services Contract Price. Within thirty (30) days after the District’s receipt of invoice, District shall make payment to the Vendor for the work performed hereunder. Values utilized in the Applications for Progress Payments shall be based upon the District approved Cost Breakdown and such values shall be only for determining the basis of Progress Payments to Vendor, and shall not be considered as fixing a basis for adjustments, whether additive or deductive, to the Design and Construction Services Contract Price, or for determining the extent of Work actually completed.

3.10.2.2 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 will review each Application for Progress Payment 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. 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 Vendor and such completed Application for Progress Payment is accompanied by: (i) Certified Payrolls of Vendor and all Subcontractors, of any tier, for laborers performing any portion of the Work for which a Progress Payment is requested; (ii) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §3262 of Vendor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment requested; (iii) duly completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code §3262 of Vendor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment requested; (iv) if applicable, a current union statement reflecting that Vendor and any Subcontractor of any tier, are current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining agreement to which Vendor or any such Subcontractor is a party to or is otherwise bound by; and (v) a certification by Vendor 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 prior to disbursement of the Progress Payment. 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 Vendor as soon as is practicable after receipt of the same from Vendor, 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.

3.10.2.3 Review of Applications for Progress Payments. Upon receipt of an Application for Progress Payment, the District Representative 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 Vendor under the terms of the Contract Documents.

3.10.2.4 District’s Disbursement of Progress Payments.

3.10.2.4.1 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 Vendor 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 District Representative; 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 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 Vendor to submit documents with the Application for Progress Payment, as required by the Contract Documents, 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 Vendor accurately and fully completes preparation of the Record Drawings relating to the Work for which the Progress Payment is requested.

3.10.2.5 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 Vendor 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, and the District does not return such Application for Progress Payment within seven (7) days, 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.

3.10.2.6 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 Vendor and such Subcontractor or Material Supplier in satisfaction of its obligation to make Progress Payments or the Final Payment due hereunder.

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

3.10.2.8 Progress Payments for Changed Work. Vendor’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 District Representative 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.

3.10.3 Materials or Equipment Not Incorporated Into the Work.

3.10.3.1 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 Vendor’s submittal of an Application for Progress Payment, has/have not been incorporated
3.10.3.2 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 Vendor’s submittal of an Application for Progress Payment incorporating therein a request for payment of such materials or equipment if all of the following are complied with: (a) the materials or equipment have been delivered to the Site; (b) adequate arrangements, reasonably satisfactory to the District, have been made by Vendor 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 pursuant to the Contract Documents; and (c) 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. Vendor 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. If the District elects to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements of (b) and (c) above shall be borne solely and exclusively by Vendor and no payment shall be made by the District on account of such costs and expenses.

3.10.3.3 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 Vendor’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: (a) adequate arrangements, reasonably satisfactory to the District, have been made by Vendor 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 pursuant to the Contract Documents; and (b) 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. Vendor 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 (a) and (b) above shall be borne solely and exclusively by Vendor and no payment shall be made by the District on account of such costs and expenses.
3.10.3.4 Materials or Equipment in Fabrication or Transit. 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.

3.10.3.5 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 Vendor’s Application for Progress Payment shall include, nor shall the District be obligated to disburse any portion of the Design and Construction Services Contract Price for amounts which Vendor does not intend to pay any Subcontractor, of any tier, or Material Supplier because of a dispute or any other reason.

3.10.3.6 Title to Work. Vendor 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. Vendor further warrants that upon submittal of an Application for Progress Payment, all Work for which a Progress Payment has been previously issued and Vendor has received payment from the District therefor shall, to the best of Vendor’s knowledge, information and belief, be free and clear of liens, claims, stop notices, security interests or encumbrances in favor of Vendor, Subcontractors, Material Suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

3.10.4 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 Vendor’s performance under the Contract Documents at the request and expense of Vendor 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 Vendor to request the substitution of eligible and equivalent securities for monies to be withheld by the District within ten (10) days following issuance of the Notice to Proceed shall be deemed a waiver of such right.

3.10.5 Final Payment.

3.10.5.1 Application for Final Payment. When Vendor has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, Vendor shall submit an Application for Final Payment on such form as approved by the District. Thereupon, the District Representative will promptly make a final inspection of the Work and when the District Representative finds the Work acceptable under the Contract Documents and that the Contract has been fully performed by Vendor, the District Representative will thereupon promptly approve the Application for Final Payment. The Final Payment shall include the remaining balance of the Design and Construction Services Contract Price and any retention from Progress Payments previously withheld by the District.

3.10.5.2 Conditions Precedent to Disbursement of Final Payment. Neither Final Payment nor any remaining Design and Construction Services Contract Price shall become due until Vendor 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 Vendor 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 Vendor’s
receipt of Final Payment is currently in effect; (iii) a written statement that Vendor
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)
duly completed and executed forms of Conditional or Unconditional Waivers and
Releases of rights upon Final Payment of Vendor, 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; (v) Operations and Maintenance
manuals and separate warranties provided by any manufacturer or distributor of
any materials or equipment incorporated into the Work; (vi) the Record Drawings;
(vii) the form of Guarantee included in the Contract Documents duly executed by
an authorized representative of Vendor; (viii) any and all other items or documents
required by the Contract Documents to be delivered to the District upon
completion of the Work; (ix) 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 (x) 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.

3.10.5.3 Disbursement of Final Payment. Provided that the District is then in receipt
of all documents and other items required by the Contract Documents as
conditions precedent to the District’s obligation to disburse Final Payment, not
later than thirty (30) days following Final Acceptance the District shall disburse the
Final Payment to Vendor. Pursuant to California Public Contract Code §7107, if
there is any dispute between the District and Vendor 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.

3.10.5.4 Waiver of Claims. Vendor’s acceptance of the Final Payment is a waiver
and release by Vendor of any and all claims against the District for compensation
or otherwise in connection with Vendor’s performance of the Contract.

3.10.5.5 Claims Asserted After Final Payment. Any lien, stop notice or other claim
filed or asserted after Vendor’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 Vendor 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, Vendor 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.

3.10.6 Withholding of Payments. The District may withhold any Progress Payment or the
Final Payment, in whole or in part, or backcharge Vendor 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 Vendor 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 Design and Construction Services 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 Vendor; (vii) any amounts due from Vendor to the District under the terms of the Contract Documents; or (viii) Vendor'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 Vendor 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 District Representative and any public authority having jurisdiction over the Work, or any portion thereof, shall not be fully and completely complied with by Vendor. When the District is reasonably satisfied that Vendor has remedied any such deficiency, payment shall be made of the amount withheld. In lieu of making payment of withheld amounts to Vendor, the District may, in its sole exclusive discretion, apply withheld amounts to the payment and satisfactions of debts and obligations of Vendor relating to the Work. In doing, the District shall be an agent of Vendor for the sole and limited purpose of making payment(s) to others for the Work on behalf of Vendor; payments made by the District pursuant to the foregoing shall be deemed payments to Vendor and the Design and Construction Services Contract Price shall be adjusted to reflect such payment(s). The District shall not be liable to Vendor or others for its good faith decision to make or not make payment(s) of amounts withheld from Vendor pursuant to the foregoing. If the District elects to make payments to other of amounts withheld from Vendor, the District may do so without prior judicial determination; the District will render Vendor a complete and accurate accounting of amounts withheld and paid to others on behalf of Vendor.

3.10.7 Payments to Subcontractors. Vendor 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 Vendor'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. Vendor shall timely make payment of retention due Subcontractors in accordance with Public Contract Code §7107.

3.11 Changes

3.11.1 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 delete Work. Vendor shall not proceed with any Change involving an increase or decrease in the Design and Construction Services Contract Price or the Contract Time without prior written authorization from the District. The foregoing notwithstanding, Vendor shall promptly commence and diligently complete any Change to the Work subject to the District’s written authorized issued pursuant to the preceding sentence; Vendor 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 Vendor and the District to agree upon the extent of any adjustment to the Contract Time or the Design and Construction Services Contract Price on account of such Change. The issuance of a Change Order in connection with any Change authorized by the District shall not be deemed a condition precedent to Vendor’s obligation to promptly commence and diligently complete any such Change authorized by the District hereunder. Any requirement of notice of Changes in the scope of Work to the Surety shall be the responsibility of Vendor. Changes to the Work are subject to approval by governmental and/or quasi-governmental agencies with jurisdiction over the Change or the Project.

3.11.2 Oral Order of Change in the Work. Any oral order, direction, instruction, interpretation, or determination from the District, Inspectors or the District Representative which in the opinion of Vendor causes any change to the scope of the Work, or otherwise requires an adjustment to the Design and Construction Services Contract Price or the Contract Time, shall be treated as a Change only if Vendor gives the District Representative written notice within fifteen (15) days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith. Time is of the essence in Vendor’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 Vendor’s notice. Accordingly, Vendor acknowledges that its failure, for any reason, to give written notice within fifteen (15) days of such order, direction, instruction, interpretation or determination shall be deemed Vendor’s waiver of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Design and Construction Services Contract Price on account thereof. The written notice shall state the date, circumstances, extent of adjustment to the Design and Construction Services Contract Price or the Contract Time, if any, requested, and the source of the order, directions, instructions, interpretation or determination that Vendor regards as a Change. Unless Vendor acts in strict accordance with this procedure, any such order, direction, instruction, interpretation or determination shall not be treated as a Change and Vendor hereby waives any claim for any adjustment to the Design and Construction Services Contract Price or the Contract Time on account thereof.

3.11.3 Vendor Submittal of Data. Within thirty (30) 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, Vendor shall submit to the District Representative a detailed written statement setting forth the general nature of the Change, the amount of any adjustment to the Design and Construction Services 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 Design and Construction Services Contract Price or the Contract Time shall be allowed if not asserted by Vendor in strict conformity herewith or if asserted after Final Payment is made under the Contract Documents.
3.11.4 Adjustment to Design and Construction Services Contract Price and Contract Time on Account of Changes to the Work.

3.11.4.1 Adjustment to Design and Construction Services Contract Price.

Adjustments to the Design and Construction Services 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:

3.11.4.1.1 Mutual Agreement. By negotiation and mutual agreement, on a lump sum basis, between the District and Vendor on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change. Vendor’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 Representative to review and assess the completeness and accuracy thereof. Vendor 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 Representative for such estimate.

3.11.4.1.2 Determination by the District. By the District, whether or not negotiations are initiated pursuant to the preceding Paragraph based upon actual and necessary costs incurred by Vendor as determined by the District on the basis of Vendor’s records. In the event that the procedure set forth in this Paragraph is utilized to determine the adjustment to the Design and Construction Services Contract Price for Changes to the Work, promptly upon determining the extent of adjustment to the Design and Construction Services Contract Price, the District shall notify Vendor in writing of the same; Vendor shall be deemed to have accepted the District’s determination of the amount of adjustment to the Design and Construction Services Contract Price on account of a Change to the Work unless Vendor shall notify the District Representative, 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. Notwithstanding any objection of Vendor to the District’s determination of the extent of any adjustment to the Design and Construction Services Contract Price, Vendor shall diligently proceed to perform and complete any such Change.

3.11.4.1.3 Basis for Adjustment of Design and Construction Services Contract Price.

If Changes in the Work require an adjustment of the Design and Construction Services Contract Price the basis for adjustment of the Design and Construction Services Contract Price shall be as follows:

3.11.4.1.3.1 Labor. Vendor shall be compensated for the costs of field labor actually and directly utilized in the performance of the Change. Wage rates for labor shall not exceed the prevailing wage rates for the labor classification(s) necessary for the performance of the Change. Labor costs exclude costs incurred by Vendor prepare estimate(s) of the costs of the Change, maintenance of records relating to the Change, coordination and assembly of materials and information relating to the Change or performance thereof, or the supervision, general overhead and administrative functions and general conditions costs associated with the Change or performance thereof.
3.11.4.1.3.2 Materials and Equipment. Vendor shall be compensated for the actual costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. If, in the reasonable opinion of the District, the costs asserted by Vendor for materials and/or equipment in connection with any Change is excessive, or if Vendor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment, 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 Vendor shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

3.11.4.1.3.3 Construction Equipment. Vendor 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 includes time required to move such Construction Equipment to the Site from the nearest available rental source. If Construction Equipment is not moved to the Site by its own power, Vendor 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 Vendor from the District Representative and the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. Vendor 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 Vendor in connection with the performance of any Change to the Work shall not exceed commercial rental rates in the locality of the Site. The allowable rate for Construction Equipment in connection with Changes to the Work is full compensation to Vendor 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 Vendor incidental to the use of such Construction Equipment.

3.11.4.1.3.4 Mark-up on Costs of Changes to the Work. In determining the cost to the District and the extent of increase to the Design and Construction Services 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 herein. For the portion of any Change performed by Subcontractors of any tier, the percentage mark-up on the allowable actual direct labor and materials costs cumulatively incurred by all Subcontractors of any tier shall be Fifteen Percent (15%). In addition, for the portion of any Change performed by Subcontractors of any tier, Vendor may add an amount equal to Twenty Five Percent (25%) of the allowable actual direct labor and materials costs of Subcontractors performing the Change. For the portion of any Change performed by the Vendor’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%). If a Change to the Work reduces the Design and Construction Services Contract Price, no profit, general conditions or overhead costs shall be paid by the District to Vendor for the reduced or deleted Work. In the event of deductive changes, the adjustment to the Design and Construction Services 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.

3.11.4.1.3.5 Vendor Maintenance of Records. In the event that Vendor shall be directed to perform any Changes to the Work, or should Vendor encounter conditions which Vendor, believes would obligate the District to adjust the Design and Construction Services Contract Price and/or the Contract Time, Vendor 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. If more than one Change to the Work is performed by Vendor in a calendar day, Vendor shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. If Subcontractors provide or perform any portion of Change to the Work, Vendor shall require that each such Subcontractor maintain records in accordance with this Paragraph. Each daily record maintained hereunder shall be signed by Vendor’s Superintendent or Vendor’s authorized representative; such signature shall be deemed Vendor’s representation and warranty that all information contained therein is true, accurate, and complete and relate only to the Change referenced therein. All records maintained by a Subcontractor, 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 Representative upon request. If Vendor fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Design and Construction Services Contract Price on account of any Change to the Work is determined by the district, the District’s reasonable good faith determination of the extent of adjustment to the Design and Construction Services Contract Price shall be final, conclusive,
dispositive and binding upon Vendor. Vendor’s obligation to maintain records hereunder is in addition to, and not in lieu of, any other Vendor obligation under the Contract Documents with respect to Changes to the Work.

3.11.4.2 Adjustment to Contract Time. In the event of Change(s) to the Work 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.

3.11.5 Change Orders. If the District approves of a Change, a written Change Order prepared by the District Representative on behalf of the District shall be forwarded to Vendor describing the Change and setting forth the adjustment to the Contract Time and the Design and Construction Services 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 Vendor for inclusion in the Change Order shall be deemed waived. Once the Change Order has been prepared and forwarded to Vendor for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, Vendor shall not modify or amend the form or content of such Change Order, or any portion thereof. Vendor’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.

3.11.6 Vendor Notice of Changes. If Vendor should claim that any instruction, request, action, condition, omission, default, or other situation obligates the District to increase the Design and Construction Services Contract Price or to extend the Contract Time, Vendor shall notify the District Representative, 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 Vendor only if sufficient supporting documentation is submitted with Vendor’s notice to the District Representative. Time is of the essence in Vendor’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, action, condition, omission, default or other situation. Accordingly, Vendor 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, action, condition, omission, default or other situation for which Vendor believes there should an adjustment of the Contract Time or the Design and Construction Services Contract Price shall be deemed Vendor’s waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Design and Construction Services 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 Design and Construction Services Contract Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with Vendor’s written notice under this Paragraph, any such adjustment shall be determined
in accordance with the Contract Documents.

3.11.7 **Disputed Changes.** In the event of any dispute or disagreement between Vendor and the District regarding the characterization of any item as a Change to the Work or as to the appropriate adjustment of the Design and Construction Services Contract Price or the Contract Time on account thereof, Vendor shall promptly proceed with the performance of such item of the Work, subject to a prompt resolution of such dispute or disagreement in accordance with the terms of the Contract Documents. Vendor's failure or refusal to so proceed with such Work is Vendor's default of a material obligation.

3.11.8 **Emergencies.** In an emergency affecting the safety of life, or of the Work, or of property, Vendor, without special instruction or prior authorization from the District or the District Representative, is permitted to act at its discretion to prevent such threatened loss or injury.

3.11.9 **Minor Changes in the Work.** The District Representative may order minor Changes in the Work not involving an adjustment in the Design and Construction Services 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 Vendor.

3.11.10 **Unauthorized Changes.** Any Work beyond the lines and grades shown on the Contract Documents, or any extra Work performed or provided by Vendor without notice to the District Representative in the manner and within the time set forth in the Contract Documents. 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 Vendor's sole cost and expense. The failure of the District to order removal of such Work is not acceptance of such Work nor relieves Vendor from any liability on account thereof.

3.12 **Correction of Work; Warranties.**

3.12.1 **Uncovering of Work.** If any portion of the Work is covered contrary to the request of the District Representative or the requirements of the Contract Documents, it must, if required by the District Representative, be uncovered for observation by the District Representative and be replaced without adjustment of the Contract Time or the Design and Construction Services Contract Price.

3.12.2 **Rejection of Work.** Prior to the District's Final Acceptance of the Work, any Work which is defective or not in conformity with the Contract Documents may be rejected by the District Representative and Vendor shall correct such rejected Work without adjustment to the Design and Construction Services Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected or even if they failed to observe the defective or non-conforming Work, materials or equipment. Vendor 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 Vendor nor accepted by the District.

3.12.3 **Correction of Work.** Vendor shall promptly correct any portion of the Work properly rejected by the District Representative 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. Vendor shall bear all costs of correcting such rejected Work,
including additional testing and inspections and compensation for the services and expenses made necessary thereby. Vendor shall bear all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the District or separate contractors, caused by Vendor’s correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective.

3.12.4 Failure of Vendor to Correct Work. If Vendor fails to commence to correct defective or non-conforming Work within five (5) days of notice of such condition and promptly thereafter complete the same within a reasonable time, the District may correct the same at Vendor’s expense.

3.12.5 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 Design and Construction Services Contract Price may be reduced as appropriate and equitable.

3.12.6 Workmanship and Materials. Vendor 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 District Representative, Vendor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Vendor 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.

3.12.7 Warranty Work. In addition to the CSI required warranty provisions, if, within one year after the date of Final Acceptance, 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, Vendor shall commence necessary corrective action not more than Four (4) business days after receipt of a written notice from the District to do so, and to thereafter diligently complete the same. If Vendor fails or refuses to commence correction of any such item within said Four (4) business day period or to diligently prosecute such corrective actions to completion, the District may, without further notice to Vendor, cause such corrective Work to be performed and completed. In such event, Vendor and Vendor’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 Vendor under the Contract Documents. The obligations of Vendor hereunder are in addition to, and not in lieu of, any 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 Vendor from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein.

3.12.8 Survival of Warranties. Vendor’s warranty obligations survive Vendor’s completion of Work, the District’s Final Acceptance of the Work or the termination
of the Contract.

4 **Contract Price.** The Contract Price under this Agreement consists of: the Design and Construction Services Contract Price as follows:

4.1 **Design and Construction Services Contract Price.** The Design and Construction Services Contract Price is included in the total cost of the project, defined in Section 4.2 of this Contract.

4.1.1 **No Adjustment to Design and Construction Services Contract Price.** Except for Reimbursable Expenses for permit fees and reproduction of the Design and Construction Documents for Subcontractors, the Design and Construction Services Contract Price is the full and complete amount due Vendor from the District for Vendor’s completion of Design and Construction Services. Except as expressly set forth hereinafter, Vendor is not entitled to payments for other expenses or costs incurred by Vendor in connection with completion of Design and Construction Services.

4.1.2 **Vendor Billings for Payment of the Design and Construction Services Contract Price.** During its performance of Design and Construction Services, Vendor shall submit monthly billing statements for payment of portions of the Design and Construction Services Contract Price. Each monthly billing statement shall reflect the costs of the Design and Construction Services rendered in the immediately preceding month, provided that the monthly billing statements shall be limited the amount allocated to each phase of the Design and Construction Services. Billing statements shall be in such form and format and with such detail as required by the District.

4.1.3 **District Payments for Design and Construction Services.** Within thirty (30) days of receipt of Vendor’s billing statements for Design and Construction Services, District will make payment to Vendor of undisputed amounts of the Design and Construction Services Contract Price. The District may, however, withhold or deduct from amounts otherwise due Vendor for Design and Construction Services if Vendor fails to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Vendor has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom. Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due Vendor for Design and Construction Services under any billing statement for Design and Construction Services rendered by Vendor under this Agreement, pursuant to Civil Code §3320(a), the District may withhold from payment to Vendor an amount not to exceed one hundred and fifty percent (150%) of the disputed amount.

4.1.4 **Reimbursable Expenses.** There are no Reimbursable Expenses due from the District to Vendor in connection with Vendor’s Design and Construction Services, except for the actual direct costs of permits or approvals of the Design and Construction Documents for construction of the Project or if the District directs Vendor to reproduce the Design and Construction Documents for use by Subcontractors during construction. Reimbursable Expenses, if any, shall be billed by Vendor to the District at actual cost without mark-up.

4.2 **Design and Construction Services Contract Price.** The Design and Construction Services Contract Price for Vendor’s installation and construction of the Work depicted in the Construction Documents **Seven Million Ninety Seven Thousand Two Hundred Seven Dollars ($7,097,207).**
4.2.1 District’s Disbursement of the Design and Construction Services Contract Price. The District will disburse the Design and Construction Services Contract Price by Progress Payments as set forth in this Agreement.

4.3 Funding and Disbursement of Contract Price.

4.3.1 Funding Sources. Vendor and the District acknowledge and agree that funds for payment of the Contract Price is derived from one (1) source: (a) District funds in the amount of Seven Million Ninety Seven Thousand Two Hundred Seven Dollars ($7,097,207).

4.3.2 SCE Rebate. Assignment of SCE Application. Vendor and the District acknowledge that an application for the SCE Rebate Reservations under the California Solar Initiative (“the SCE Application”); has been developed and is in the process of being executed by the District in preparation for submission to SCE. The SCE Application will be submitted by the Vendor as soon as received from the District. Vendor shall support the District in the Application Process of the SCE Rebate. District shall be the Recipient of the SCE Rebate.

4.3.3 Payment of the Design and Construction Services Contract Price. Amounts due to Vendor under this Agreement for the Design and Construction Services Contract Price shall be paid or disbursed by the District from the Lease Proceeds or the District funds, in the sole discretion of the District. Payment of the Design and Construction Contract Price shall be in accordance with the Progress Payment Schedule (Exhibit C). Notwithstanding any provision of this Agreement to the contrary, the District’s liability to Vendor for payment of the Design and Construction Services Contract Price shall be limited to the Lease Proceeds and District funds. Disbursement of any portion of the Design Services Contract Price or the Construction Services Contract Price shall be subject to the Vendor’s payment requests and substantiating data comply with and conform to requirements set forth in the Equipment Lease relating to the review, evaluation and disbursement of Lease Proceeds. For the limited purposes of the conditions and requirements established in the Lease relating to disbursement of the Lease Proceeds, the Lease is incorporated herein by this reference as if set forth in full herein.

5 Insurance; Indemnity and Bonds.

5.1 Design and Construction Phase Insurance Requirements. At all times during performance of obligations under this Agreement, Vendor and its Design Services sub-consultants and its Construction Services Subcontractors shall obtain and maintain the following insurance coverages:

5.1.1 Workers’ Compensation Insurance; Employer's Liability Insurance. Vendor and each of its Design Consultants and Subcontractors shall purchase and maintain Workers’ Compensation Insurance as will protect them 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. Vendor and each of its Design Consultants and Subcontractors 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 Vendor. The Employer’s Liability Insurance required of Vendor and its Design Consultants and Subcontractors hereunder may be obtained as a separate policy of insurance or as an additional coverage under the Workers’ Compensation Insurance required to be obtained and maintained hereunder. Coverage amounts for Vendor, its Design
Consultants and Subcontractors under their respective Workers Compensation insurance policies shall be in accordance with applicable law. The coverage amount under Employer’s Liability Insurance required hereunder for Vendor, its Design Consultants and Subcontractors shall be One Million Dollars ($1,000,000). Concurrently with execution of this Agreement, Vendor shall execute and deliver to the District the form of Certificate of Workers Compensation Insurance attached hereto as Exhibit B or a Self administered Claims letter per section 5.8 of this Agreement. The foregoing is a material obligation of Vendor hereunder.

5.1.2 Commercial General Liability and Property Insurance. Vendor and each of its Design Consultants and Subcontractors shall purchase and maintain Commercial General Liability Insurance. The coverage under the Commercial General Liability insurance policies of Vendor and its Design Consultants/Subcontractors shall be One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate.

5.2 Design Phase Insurance. In addition to the insurance coverage requirements set forth above, in connection with Vendor’s obligations under the Design Phase of this Agreement, Vendor and each of its Design Services Consultants shall each obtain and maintain a policy of Professional Liability insurance covering their liabilities in completing its obligations in connection with the Design Services under this Agreement. The coverage amounts of the Professional Liability insurance policies of Vendor and each of its Design Phase Consultants shall be One Million Dollars ($1,000,000) per claim/Two Million Dollars ($2,000,000) aggregate.

5.3 Builder’s Risk “All-Risk” Insurance. Builders Risk insurance covering the risks of loss, damage or destruction of Work in progress or in place at the Site resulting from the perils of fire, malicious mischief, vandalism, and collapse will be obtained by the District as part of the scope of coverage under the District’s property casualty insurance policy. If a claim is adjusted under the District obtained Builder’s Risk Insurance, Vendor shall be liable and responsible for payment of the deductible. In lieu of Vendor’s direct payment of the deductible to the insurance carrier issuing the Builder’s Risk Insurance policy, the District may deduct any portion of the deductible from the Design and Construction Services Contract Price then or thereafter due Vendor.

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

5.4.1 Minimum Coverage Amounts. The insurance required of Vendor 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 Vendor hereunder, Vendor shall be solely and exclusively responsible for the payment of the deductible, if any, under such policy of insurance, without adjustment to the Design and Construction Services Contract Price on account thereof.

5.4.2 Required Qualifications of Insurers. Required policies of insurance under this Agreement 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 Vendor obligations under this Agreement, the insurer(s) issuing a required policy of insurance is/are not A.M. Best rated A- or better and is/are not A.M. Best Financial Size Category VII or higher, Vendor or its Design
Consultant/Subcontractor, as applicable shall within thirty (30) days of the District’s written notice of the insufficiency of an insurer to 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 Vendor 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 payment otherwise due hereunder until Vendor has delivered such Certificate(s) of Insurance from an alternative insurer(s).

5.5 Evidence of Insurance; Subcontractor’s Insurance. Concurrently with execution of this Agreement, Vendor shall provide to the District Representative documented evidence of Insurance for itself and all Design Phase Sub-Consultants evidencing the insurance coverages in at least the coverage amounts required by this Agreement during performance of Design Services. Prior to commencing construction activities at the Site, Vendor shall deliver to the District Representative documented evidence of Insurance evidencing the insurance coverages required of Vendor and its Subcontractors during performance of Construction Services. Failure or refusal of Vendor to so deliver documented evidence of Insurance may be deemed by the District to be a default of a material obligation of Vendor 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 documented evidences 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 Vendor hereunder during Construction Services shall also name the District, as an additional insured. Should any policy of insurance be canceled before Final Acceptance of the Work by the District and Vendor 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 Vendor under the Contract Documents. Vendor 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 Vendor to comply with the District’s request may be deemed by the District to be a default of a material obligation of Vendor under the Contract Documents.

5.6 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 Vendor fails to immediately procure replacement insurance as specified, the District reserves the right to procure such insurance and to charge the cost thereof to Vendor. Nothing contained in these insurance requirements is to be construed as limiting the extent of Vendor’s responsibility for payment of damages resulting from its operations or performance of the Work under the Contract Documents, including without limitation Vendor’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 Vendor of its obligation to maintain insurance required under this Paragraph 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.

5.7 Vendor’s Insurance Primary. All insurance and the coverages thereunder required to be
obtained and maintained by Vendor 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 Vendor’s
Builder’s Risk Insurance or the Comprehensive General Liability Insurance of Vendor or any
Subcontractor, the District, Vendor and all Subcontractors waive rights of subrogation against
the others. The costs for obtaining and maintaining the insurances coverage required herein
of Vendor and its Subcontractors shall be included in the Design and Construction Services
Contract Price.

5.8 Vendor’s Insurance. In lieu of any insurances required by the Vendor in this Section 5, Vendor
may self assume the risks hereunder and use a Self Administered Claims Program for this
purpose. Vendor will notify the District in writing 30 days prior to cancellation of the Self
Administered Claims Program.

For the insurance policies described above, each Party agrees to name the other Party, its
officers, agents, and employees as Additional Insured under its policy(ies), and shall deliver
certificate(s) of insurance and Additional Insured Endorsement(s) evidencing the required
coverage’s to the other Party. If a Party is self-insured, the Party shall provide a Certificate of
Self-Insurance to the other Party prior to the commencement of this Agreement. Such
evidence shall provide for written notice by mail at least thirty (30) days in advance of
cancellation for all required coverage’s.

5.9 Indemnity. Unless arising out of the negligence, gross negligence or willful misconduct of
Vendor or its employees, subcontractors, agents or representatives, the District, Vendor shall
indemnify, defend and hold harmless the Indemnified Parties who are: the District and its
Board of Trustees, officers, employees, agents and representatives. Vendor’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 reasonable attorneys fees and costs which
arise, in whole or in part, from the Design Services/Construction Services provided by or
through Vendor, the Work, the Contract Documents or the acts, omissions or other conduct of
Vendor, any Design Consultant, Subcontractor or any person or entity engaged by them.
Vendor’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
Vendor, any of Vendor’s Design Consultants, Subcontractors, of any tier, or any other person
or entity employed directly or indirectly by Vendor in connection with the Design Services or
construction services under this Agreement and their respective agents, officers or employees.
The obligations of Vendor, 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 Vendor’s
obligations hereunder, and such action or proceeding names any of the Indemnified Parties as
a party thereto, Vendor 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, Vendor shall pay, satisfy or otherwise discharge any such
judgment, award, ruling, settlement or relief; Vendor 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. Vendor’s obligations hereunder are binding upon Vendor. These obligations shall survive notwithstanding Vendor’s completion of the Work or the termination of the Contract.

5.10 **Payment Bond; Performance Bond.** Prior to commencement of Construction Services, Vendor shall furnish a Performance Bond as security for Vendor’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 Vendor’s performance of the Work under the Contract Documents. The Payment and Performance Bonds of the Vendor shall be issued with the District and Bank of America, NA as co-obligees thereunder. The amounts of the Performance Bond and the Labor and Materials Payment Bond required hereunder shall be one hundred percent (100%) of the Design and Construction Services Contract Price. Said Labor and Material Payment Bond and Performance Bond shall be in the form and content of the Labor and Material Payment Bond and the Performance Bond, respectively attached as Exhibits D and E. The failure or refusal of Vendor to furnish either the Performance Bond or the Labor and Material Payment Bond in strict conformity with these provisions may be deemed by the District as a default by Vendor of a material obligation hereunder. The Surety on any bond required under the Contract Documents shall be an Admitted Surety Insurer as that term is defined in California Code of Civil Procedure §995.120. The bonds are not being furnished to cover the performance of any energy guaranty or guaranteed savings under this contract. Customer agrees that upon Final Completion, the Performance and Payment Bonds shall be released and all obligations arising thereunder shall be terminated.

6 **Termination; Suspension.**

6.1 **Termination for Default.** Either the District or Vendor may terminate this Agreement upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure it default(s) and diligently thereafter prosecute such cure to completion. In addition to the District’s right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to Vendor if: (a) Vendor becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by Vendor or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for Vendor or any of Vendor’s property on account of Vendor’s insolvency; or (b) if Vendor disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder prior to Vendor’s completion of Design and Construction Services, the Contract Price due the Vendor, if any, shall be based upon Design and Construction Services, completed prior the effective date of the District’s termination of this Agreement, reduced by the District’s prior payments of the Design and Construction Services Contract Price and losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. If the District exercises the right of termination hereunder after Vendor’s completion of Design and Construction Services and prior to Vendor’s completion of Design and Construction Services, the Design and Construction Services Contract Price due Vendor shall be based upon the value of the Work actually completed and in place as of the effective date of termination, reduced by the District’s prior payments of the Design and Construction Services Contract Price due Vendor.
Services Contract Price and losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. Vendor shall remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of Vendor’s default hereunder, to the extent that such losses, damages or other costs exceed any amount due Vendor hereunder for the Design and Construction Services Contract Price.

6.2 District’s Right to Suspend. The District may, in its discretion, suspend all or any part of the design or construction of the Project or the Vendor’s services under this Agreement; provided, however, that if the District shall suspend design or construction of the Project or Vendor’s services for a period of sixty (60) consecutive days or more and such suspension is not caused by the Vendor’s default or the acts or omissions of Vendor or its Design Consultants or Subcontractors, upon rescission of such suspension, the Design and Construction Services Contract Price will be subject to adjustment to reflect actual costs and expenses incurred by Vendor, if any, as a direct result of the suspension and resumption of Project design/construction.

6.3 District’s Termination for Convenience. The District may, at any time, upon seven (7) days advance written notice to Vendor terminate this Agreement for the District’s convenience and without fault, neglect or default on the part of Vendor. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District’s written notice to Vendor or such other time as the District and Vendor may mutually agree upon. In such event, the District shall make payment of the Design and Construction Services Contract Price to Vendor for services provided through the date of termination plus actual costs incurred by Vendor directly attributable to such termination.

6.4 Vendor Suspension of Services. If the District shall fail to make payment of the Design and Construction Services Contract Price when due Vendor hereunder, Vendor may, upon seven (7) days advance written notice to the District, suspend further performance of services hereunder until payment in full is received.

6.5 Vendor Obligations Upon Termination. Upon the District’s exercise of the right of termination under pursuant to the foregoing, Vendor shall take action as directed by the District relative to on-going preparation of the Design Documents or construction of the Project. If requested by the District, the Vendor shall within five (5) days of such request, assemble and deliver to the District all work product, instruments of service and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the Vendor under this Agreement. Vendor shall deliver the originals of all work product, instruments of service and other items of a tangible nature requested by the District pursuant to the preceding sentence; provided, however, that Vendor may, at its sole cost and expense, make reproductions of the originals delivered to the District.

7 Miscellaneous

7.1 Governing Law; Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. The titles of the various Paragraphs of this Agreement 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 Vendor 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 Vendor.

7.2 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 Vendor and their respective heirs, representatives, successors-in-interest and assigns.

7.3 Cumulative Rights and Remedies; No Waiver. Duties and obligations imposed by the Contract Documents and rights and remedies hereunder are in addition to and not in lieu of nor a limitation of duties, obligations, rights and remedies under law. No action or failure to act by the District is a waiver of a right or remedy under the Contract Documents or at law nor does the District’s failure to act constitute approval of or acquiescence in a breach hereunder.

7.4 Severability. If any provision of the Contract Documents is 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.

7.5 No Assignment by Vendor. Vendor 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 may be withheld or restricted in the sole discretion of the District.

7.6 Gender and Number. Whenever the context of the Contract Documents so require, the neuter gender includes the feminine and masculine, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular.

7.7 Independent Contractor Status. Vendor is an independent contractor to the District and not an agent or employee of the District.

7.8 Notices. Except as otherwise expressly provided for in the Contract Documents, all notices which the District or Vendor 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 Vendor at their respective address set forth in the Special Conditions, or such other address(es) as either the District or Vendor 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.

7.9 Disputes; Continuation of Work. Notwithstanding any claim, dispute or other disagreement between the District and Vendor regarding performance under this Agreement or the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, this Agreement, the Contract Documents or the Work, Vendor 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.

7.10 Dispute Resolution; Arbitration.

7.10.1 Claims Under $375,000.00. Claims between the District and Vendor of $375,000.00 or less shall be resolved in accordance with the procedures established at Public Contract Code, §§20104 et seq

7.10.2 Arbitration. Except as provided above, any other claims, disputes, disagreements or other matters in controversy between the District and Vendor 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) is final and binding upon the District and Vendor. The discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 are applicable, and are 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. If more than one Demand for Arbitration is made by either the District or Vendor, all such controversies shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and Vendor. Vendor's Surety, a Design Sub-Consultant, Subcontractor or Material Supplier to Vendor 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 Vendor, 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 Vendor, 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 post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.

7.10.3 Vendor Compliance with Government Code §900 et seq. The foregoing provisions relating to dispute resolution procedures notwithstanding, neither this Agreement nor such provisions shall be deemed to waive, limit or modify any requirements under Government Code §900 et seq. relating to the Vendor's submission of claims to the District as a express condition precedent and prerequisite to filing a Demand for Arbitration, which shall be deemed a "claim" for money or damages under Government Code §900 et seq. The Vendor's strict compliance with all applicable provisions of Government Code §900 et seq. in connection with any claim, dispute or other disagreement arising hereunder shall be an express condition precedent to the Vendor's initiation of the binding arbitration procedures under Paragraph 7.10.2.

7.11 Attorneys Fees. Except as expressly provided for in the Contract Documents, or authorized by law, neither the District nor Vendor 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 Work.

7.12 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.

7.13 Creditworthiness. If, at any time, District’s credit rating falls below investment grade as defined by Moody’s Investors Services (or other nationally-recognized independent rating agency), District agrees to provide Vendor with current information regarding its creditworthiness upon the request of Vendor. At its sole option, Vendor may then require Customer to provide security satisfactory to Vendor, and the Work may be withheld until such security is received. If District deposits the contract amount into a third-party escrow account with an escrow agent and agreement acceptable to Vendor, then the terms of this paragraph are not applicable.

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

7.15 Entire Agreement. The Contract Documents contain the entire agreement and understanding between the District and Vendor 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 Vendor.

7.16 Use of Design Documents.

7.16.1 Ownership. Subject to the provisions hereof, all of Vendor’s Instruments of Service, including without limitation, the originals and reproducible transparencies of the Drawings, Specifications and other Design Documents prepared by or on behalf of Vendor under this Agreement (which include, but are not limited to, working drawings, and master plans, preliminary sketches, architectural presentation drawings, structural and other engineering calculations or computations and estimates) are and shall remain the property of Vendor. The foregoing notwithstanding, if this Agreement is terminated for the default of Vendor, in addition to any other right or remedy arising from Vendor’s default, the District may use any portion of the Design Documents (whether completed or in progress) for purpose of completing the Project. Further, notwithstanding full performance of obligations hereunder and Vendor’s ownership rights to the Design Documents, Vendor grants to the District a perpetual license to use the Design Documents, without additional compensation to Vendor, in connection with the District’s use, operation, maintenance, upgrading, downsizing/upsizing of the Project, or components thereof; provided, however, that if the Design Documents are used for expansion of the Project, Vendor shall be entitled to reasonable compensation in an amount comparable to that which a competent design professional in the same general geographic area would charge for comparable design services.

7.16.2 Electronic Files. At each stage of Vendor’s submission of Schematic Design Documents and Construction Documents to the District pursuant to the terms hereof, Vendor shall also submit to the District electronic files of the same. Electronic files of the Drawings shall be prepared in the latest version of commercially available computed aided drafting software. Electronic text files shall be prepared in the latest version of MS Word.

7.17 Definitions.
7.17.1 **Design Consultant(s).** Design Consultant(s) are individuals or entities retained by Vendor to provide or perform a portion of the Vendor’s Design Services, including any portion of the Design Documents. Design Consultants shall be duly licensed as required by applicable law, rule or regulation and shall be qualified to perform or provide the portion of Vendor’s services or work product assigned by having previously provided design consulting services for California public school project design and construction. The District shall have the right to reasonably disapprove a Design Consultant. Vendor shall be responsible for the adequacy, timeliness and quality of services or work product provided or performed by Design Consultants; Vendor shall be liable to District for, and shall defend, indemnify and hold harmless District and its Board of Trustees, employees, officers, agents and representatives from and against, all losses, costs, damages, liabilities, actions or demands arising out of the services or work product provided or performed by Design Consultants.

7.17.2 **Submittals.** Shop Drawings, Product Data or Samples prepared or provided by Vendor or its Subcontractor(s) or supplier(s) illustrating some portion of the Work.

7.17.3 **Site.** The physical area for construction and related activities of the Project.

7.17.4 **Drawings and Specifications.** The Drawings are the graphic and pictorial portions of the Design Documents showing generally the location, design and dimensions of the Work, including without limitation, plans, elevations, sections, details, schedules and diagrams. Specifications are the portion of the Design Documents which consist of written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services.

7.17.5 **Work.** All of the design, construction and other services required by the terms of the Agreement including all labor, materials, equipment and other services required of Vendor to complete design and construction of the Project.

7.17.6 **Project Budget.** The Project Budget refers to the total costs allocated by the District for construction of the Project, inclusive of the Contract Price under this Agreement. The Project Construction Budget established by the District may be modified by the District upon notice to the Vendor. As used in this Agreement, the term “Project Construction Budget” refers to the then current amount allocated for construction of the Project as modified from time-to-time.

7.17.7 **Construction Cost Estimate.** Construction Cost Estimates are estimates prepared by or on behalf of the Vendor of the current costs of labor, materials, equipment and services plus a reasonable allowance for Vendor’s profit, overhead and administrative cost as necessary to complete construction of the Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of Vendor bids for the Work of the Project and Changes in the Work during construction of the Project; the allowance for contingency costs shall be consistent with the contingency established by the District in the Project Construction Budget, if any.

7.17.8 **District.** The “District” refers to SANTA CLARITA Community College District and unless otherwise stated, includes the District’s authorized representatives, including the District’s Board of Trustees and the District’s officers, employees, agents and representatives.

7.17.9 **Surety.** The Surety is the person or entity that executes, as surety, Vendor’s Labor
and Material Payment Bond and/or Performance Bond.

7.17.10 **Subcontractors; Sub-Subcontractors.** A Subcontractor is a person or entity under contract with Vendor to perform a portion of Vendor’s Construction Services obligations. A Sub-Subcontractor is a person or entity under contract with a Subcontractor to perform Vendor’s Construction Services obligations. References to “Subcontractor” include Sub-Subcontractors unless otherwise stated or indicated by context.

7.17.11 **Material Supplier.** A Material Supplier is a person or entity who furnishes materials or equipment (including equipment rental) without fabricating, installing or consuming them in construction of the Project.

7.17.12 **Division of State Architect (“DSA”).** The DSA is the California Division of the State Vendor 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 (“CCR”).

7.17.13 **Vendor’s Superintendent.** Vendor’s Superintendent is an individual employed by Vendor whose principal responsibility is supervision and coordination of the Construction Services; Vendor’s Superintendent shall not perform routine construction labor.

7.17.14 **Record Drawings.** The Record Drawings are the Drawings marked by Vendor during performance of its Construction Services to completely and accurately indicate as-built condition of the Project.

7.17.15 **Construction Equipment.** “Construction Equipment” is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.

7.17.16 **Site.** The Site is the physical area designated in the Contract Documents for Vendor’s performance, construction and installation of the Work.

7.17.17 **Defective or Non-Conforming Work.** Defective or non-conforming Work is any Project construction 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.

7.17.18 **Delivery.** “Delivery” is the unloading and storage of materials, equipment or other items in a protected condition pending incorporation into the Work.

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

7.17.20 **Progress Reports; Verified Reports.** Progress Reports, if required, are written reports prepared by Vendor and periodically submitted to the District in the form and content as required by the Contract Documents.
7.17.21 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: the Scope, Subcontractors List, Agreement, Performance Bond, Labor and Materials Payment Bond, Drug-Free Workplace Certification, and Certification of Workers Compensation Insurance, and Special Conditions. In the event of conflicts or inconsistencies between the terms of this Agreement and the Scope, the terms of this Agreement shall govern and prevail.

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

In witness hereof, the District and Vendor have executed this Agreement as of the date set forth above.

“District”
SANTA CLARITA COMMUNITY COLLEGE DISTRICT

By: ____________________________________
Title: _________________________________
Date: ________________________________

“Vendor”
CHEVRON ENERGY SOLUTIONS COMPANY, a Division of Chevron U.S.A. Inc

By: ____________________________________
Title: _________________________________
Date: ________________________________
EXHIBIT A

SCOPE OF WORK

Valencia Campus
578.4kWdc Photovoltaic Covered Parking
(288 Parking spaces)

Chevron Energy Solutions will design, supply, install and commission a fully integrated and operational solar photovoltaic (PV) systems. The PV system(s) will be in the form of solar covered parking structures approximately 578kW for Valencia Campus located on the faculty parking lot. Chevron ES will provide turnkey design, engineering, materials, delivery, installation, testing, and commissioning of a cost-effective and energy efficient PV system that will maximize the solar and renewable energy resource potential at the Colleges.

The System will be composed of the following:

- Purchase and installation of inverter enclosure with chain link fence/gate.
- Purchase and installation of Schott ASE-300-DGF panels
- Purchase and installation of lighting fixtures under carport canopies, and connect to existing parking lot lighting system.
- Purchase, installation and painting of carport steel structure
- Trenching where necessary for electrical installation; patch surfaces to match existing.
- Removal of pine tree along the south side of parking lot (required for installation).

TURNKEY SERVICES

Contractor will provide stamped engineered drawings, materials and installation of photovoltaic modules, installation of electrical systems including inverters, electrical connection to the existing campus electrical infrastructure and construction of mounting structures on which the photovoltaic modules are installed. Contractor shall commission the Photovoltaic System and develop the Utility Interconnection Agreement with Utility. Contractor shall provide on site construction management for the duration of the Project.

Design, Engineering and Permitting.

1. Schematic and Preliminary Designs
2. Electrical, Mechanical, and Structural System Design and Drawings
3. Engineered Drawings
4. · Project Schedule
5. · Schedule of Values
6. · Equipment details and description, specifications
7. · Layout of equipment
8. · Selection of key equipment
9. · Storage and receiving of all freight
10. · Installation of photovoltaic mounting support structures
11. · Installation and electrical connection of panels
12. · Installation of designed electrical infrastructure
13. · Apply for Interconnectivity Agreement
14. · Design Standards, codes and compliance
15. · Design life -coordination with College when trenching is performed
16. · Design calculations
17. · On site construction management
18. · Site clean up
19. · Final As-Built documents upon completion.

Overall Project Scope Exclusions:

- Local jurisdiction or DSA permits and fees.
- Responsibilities and/or removal for existing hazardous materials, including asbestos containing materials, encountered during trenching and/or required to complete construction. If Chevron ES encounters material suspected to be hazardous, we will notify the College representative and stop further work in this area until the material is removed.
- Fire alarm, fire sprinklers, or fire life safety including controls and system devices or programming.
- Repair or replace damaged or inoperable existing equipment that is not specifically being replaced under the scope of work. When such items are discovered we will immediately notify the College representative.
- Repair or replace concrete pads or base repair of existing walkway/parking lot lighting other than included in scope
- All scope of work not shown on final approved drawings and not required to achieve the project design criteria noted above.
- Any emergency generators or special equipment required to maintain the College campus electrical or mechanical needs other than for the work described above.
- Fiber optic cable or labor to install any fiber optics.

Overall Project Scope Clarifications:

- Chevron ES has assumed project construction will be allowed to proceed smoothly and in a
continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions.

- Chevron ES has assumed no bond restrictions.
- System startup, testing, and commissioning on all systems is provided under this contract.
- Chevron ES to provide temporary utilities (construction trailer, phones, copying, etc.) The college will pay actual cost of utilities used to end of construction.
- Chevron ES assumes that the facilities are compliant to all relevant building codes. No allowances have been made to bring existing systems up to code. All newly installed systems will be code compliant.
- No allowance has been made for structural upgrades to existing structures.
- A one year parts and labor warranty is provided on all work performed under this proposal.
- Work will be performed during normal work hours; no overtime hours are included in this proposal unless otherwise stated.
- Chevron ES is not responsible for delays to work by the utility companies or the College.
EXHIBIT B

SUBCONTRACTORS LIST

Subcontractor list will be provided per Section 3.6 following notice to proceed.

Bidder: _Chevron Energy Solutions_________
Address: __150 E Colorado Blvd..______________
Telephone: __626-304-4700_______________
Telecopier: __626-304-4701_______________
Bidder's Authorized Representative(s): ____________________________

PROJECT: SANTA CLARITA COMMUNITY COLLEGE – VALENCIA CAMPUS SOLAR PROJECT

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<th>NAME OF SUBCONTRACTOR</th>
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PHOTOCOPY THIS PAGE AS NECESSARY TO LIST ADDITIONAL SUBCONTRACTORS
EXHIBIT C

PROGRESS PAYMENT SCHEDULE

A Progress Payment Form or Schedule of Values, AIA form G 703 (SOV) will be provided per Section 3.10.1, after execution of the date of issuance of Notice to Proceed. This SOV will include a breakout of the total cost by billable details for the Scope of Work.

A Mobilization Fee will be invoiced to the Customer upon both parties signing the Energy Services Agreement and due and payable as detailed in Section 3.10.

- **Mobilization Fee- 20%** $1,419,441.00
- **Remaining Implementation Cost** $5,677,766.00
- **Contract Amount** $7,097,207.00
Exhibit D

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, Chevron Energy Solutions, a Division of Chevron as Principal, and _________________________________________________________ as Surety, are held and firmly bound unto SANTA CLARITA COMMUNITY COLLEGE DISTRICT hereinafter “the Obligee”, in the penal sum of Seven Million Ninety Seven Thousand Two Hundred Seven Dollars ($7,097,207) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as Valencia Campus Photovoltaic Project.

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

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor materials or services used, or reasonably required for use, in the performance of the Work.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully make payment to any Claimant for all labor, materials or services used or reasonably required for use in the performance of the Work then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The term “Claimant” shall refer to any person, corporation, partnership, proprietorship or other entity including without limitation, all persons and entities described in California Civil Code §3181, providing or furnishing labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard for whether such labor, materials or services were sold, leased or rented. This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

In the event suit is brought on this Bond by any Claimant for amounts due such Claimant for labor, materials or services provided or furnished by such Claimant, the Surety shall pay for the same and reasonable attorneys fees pursuant to California Civil Code §3250.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the Obligee of any such change, extension of time, alteration, deletion, addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.
IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this ________
day of __________, 20__ by their duly authorized agent or representative.

By: ________________________________

Signature

____________________________________________

Type or Print Name

Title: _______________________________________

____________________________________________

(Surety’s Corporate Seal)                  (Surety Name)

By: ________________________________

Signature of Attorney-in-Fact for Surety

(Attach Attorney-in-Fact Certificate)  (Type or Print Name of Attorney-in-Fact)

( ) ________________________________

Area Code and Telephone Number of Surety

Contact name, address, telephone number and email
address for notices to the Surety

____________________________________________

(Contact Name)

____________________________________________

(Address)

____________________________________________

(Telephone)

____________________________________________

(Email address)
Exhibit E

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, Chevron Energy Solutions, a Division of Chevron as Principal, and _______________________________ as Surety, are held and firmly bound unto SANTA CLARITA COMMUNITY COLLEGE DISTRICT hereinafter collectively “the Obligee”, in the penal sum of Seven Million Ninety Seven Thousand Two Hundred Seven Dollars ($7,097,207) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as Valencia Campus Photovoltaic Project.

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

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

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

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

In the event of the Obligee’s termination of the Contract due to the Principal’s breach or default of the Contract Documents, within twenty (20) days after written notice from the Obligee to the Surety of the Principal’s breach or default of the Contract Documents and Obligee’s termination of the Contract, the Surety shall notify Obligee in writing of Surety’s assumption of obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense (“the Notice of Election”); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Obligee, which approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal’s mere denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety’s prompt,
diligent inquiry and investigation of such denial, be justification for Surety’s failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

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

In the event suit or other proceeding is brought upon this Bond by the Obligee, the Surety shall pay to the Obligee all costs, expenses and fees incurred by the Obligee therewith, including without limitation, attorneys fees.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this _____day of __________, 20__ by their duly authorized agent or representative.

(Principal’s Corporate Seal)                (Principal Name) _____ _____ _______ ___________________

By:________________________________________________________________________

____________________________________________                      (Typed or Printed Name)

Title: _______________________________________

(Surety’s Corporate Seal)                                (Surety Name) _____ ______ __________________

By:________________________________________________________________________

(Attach Attorney-in-Fact Certificate) (Typed or Printed Name)

( ) __________________________________

(Area Code and Telephone Number of Surety)

Contact name, address, telephone number and email address for notices to the Surety
(Contact Name)

(Address)

(Telephone)

(Email address)
ENERGY SERVICES AGREEMENT

THIS ENERGY SERVICES AGREEMENT ("Agreement") is made this 10th day of December, 2008, in the City of Santa Clarita, County of Los Angeles, State of California, by and between SANTA CLARITA COMMUNITY COLLEGE DISTRICT, a California Community College District hereinafter "District", located at 26455 Rockwell Canyon Rd, Santa Clarita, County of Los Angeles, State of California, and CHEVRON ENERGY SOLUTIONS COMPANY, a Division of Chevron U.S.A. Inc., a Pennsylvania corporation, having its principal offices at 345 California Street, 18th Floor, San Francisco, CA, 94104 ("Vendor"). Chevron Energy Solutions Company and the District are hereinafter collectively referred to as "the Parties".

WHEREAS, Vendor provides design and installation services for energy conservation projects.

WHEREAS, Vendor’s design and construction of certain energy conservation measures at the District’s Canyon Country Campus is attached ("the Scope"); the Scope is incorporated herein as Exhibit A.

WHEREAS, pursuant to Government Code §4217.10 et seq. the District has selected Vendor, on the basis of its skills and qualifications, to provide design and construction services for an energy conservation project consisting of a photovoltaic (PV) carport array located on the faculty parking lot of Canyon Country campus ("the Project").

WHEREAS, the District and Vendor desire by this Agreement to establish terms and conditions relating to design, construction and other rights and obligations of the Parties relating to the Project.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged by the Parties and each of them, the Parties agree as follows:

1. The Work. The Work of the Project consists of two components: (a) preparation of Design Documents for the Project ("Design Services") and (b) construction of the Project ("Construction Services"). Vendor shall perform and provide all necessary labor, materials, tools, equipment, utilities, services and transportation to complete all of the Work.

2. Design Services.

2.1. General. All of the Design Services provided by or through Vendor under this Agreement shall be provided and performed consistent with professional skill and care and in such a manner as to avoid hindrance, unnecessary interruption or delay to the orderly progress and completion of the Design Services. Design Services consist generally of the preparation of Drawings and Specifications with sufficient accuracy, clarity and completeness to reflect the Scope.

2.2. Design Consultants; Design Disciplines. Design Services include all architectural, engineering and other design services necessary to complete Project Design Services including without limitation: (a) architectural; and (b) engineering disciplines: structural, mechanical, electrical, plumbing and civil. The Design Services may be completed by Vendor’s personnel or the personnel of Design Consultants to Vendor provided that all of the Design Services hereunder shall be provided by or under the direction and control of a California licensed Architect or California registered engineer as required by the nature of the Design Services being provided.
2.3. **Design Services Standard of Care.** Vendor and/or its Design Consultants shall provide the Design Services: (a) using their best professional skill and judgment; (b) acting with due care and in accordance with professional standards of care and the terms of this Agreement; and (c) in accordance with all applicable codes, laws, rules or regulations in effect or reasonably foreseeable at the time the Design Services are rendered.

2.4. **Vendor Design Services Project Manager.** Vendor shall designate a responsible employee of Vendor to serve as Vendor’s Design Services Project Manager. The Design Services Project Manager shall: (a) be reasonably satisfactory to the District; (b) not be replaced without the prior consent of the District; (c) have the overall responsibility for Vendor’s timely and complete performance of Design Services obligations under this Agreement; and (d) be authorized to act on behalf of Vendor, which shall not be unreasonably withheld, in connection with Design Services of Vendor under this Agreement.

2.5. **Design Development Documents.**

2.5.1. **Scope of Design Development Documents.** Based on the Project scope described in the Exhibit A, Vendor shall develop and prepare Design Development Documents which include: (a) Drawings indicating generally the anticipated layout of photovoltaic cells, locations of utility line runs and equipment locations; and (b) draft outline of Specifications including designation/description of materials/equipment to be incorporated into the Work.

2.5.2. **District Review of Design Development Documents.** Upon completion of the Design Development Documents, Vendor shall submit the same to the District Representative for review and acceptance. If the District Representative fails to provide written acceptance of such Documents within ten (10) calendar days of Vendor’s submittal of said Documents, the Parties agree that the Documents shall be deemed to have been accepted by the District on the tenth (10th) day. Vendor shall modify the Design Development Documents as necessary to obtain the District’s acceptance thereof.

2.5.3. **Vendor Preparation of Design Documents.** Upon the execution and ratification of this Agreement, the Vendor shall be deemed authorized to commence with the preparation of Design Documents and other Design Services under this Agreement and procure long lead time equipment, without further action of the District. If the District fails to provide a written Notice to Proceed within fifteen (15) calendar days after the date of the District’s acceptance of the Design Documents, the Parties agree that the Notice to Proceed shall be deemed to have been issued by the District on the fifteenth (15th) day.

2.6. **Construction Documents.** Based on the comments of the District Representative to the Design Development Documents, Vendor shall prepare Construction Documents consisting of detailed Drawings and Specifications with sufficient clarity, coordination and consistency to construct the Project in accordance with the Construction Contract Time established by the District and within the Project Budget. Vendor shall submit the completed Construction Documents to the District for review, comment and acceptance. If the District Representative fails to provide a written acceptance of such Documents within ten (10) calendar days of Vendor’s submittal of said Documents, the Parties agree that the Documents shall be deemed to have been accepted by the District on the tenth (10th) day. Upon completing revisions, if any, to the Construction Documents to address comments of the District, Vendor shall submit the same to the District Representative for review, comment and acceptance on behalf of the District. Vendor shall revise the Construction Documents as reasonably necessary to obtain the District’s acceptance of the entirety of the Construction Documents. The Construction Documents accepted by the District shall be referred to as the Final Construction Documents. Notwithstanding any provision of this Agreement to the contrary and in addition to other comments/revisions necessary to obtain the District’s acceptance of the Construction Documents, the District’s acceptance of the Construction Documents shall be conditioned upon Vendor’s written statement accompanying the Construction Documents which shall specifically warrant and represent to the District that the
scope of the Project depicted in the Contract Documents is: (a) an 264 kilowatt solar powered photovoltaic power generating system; and (b) that the cost savings realized by the District through the self-generated electrical power capacity resulting from implementation of the Project in lieu of purchasing electrical power through the Southern California Edison (SCE) grid, along with California Solar Initiative (CSI) will exceed the costs, fees and expenses incurred by the District to design and construct the Project over the minimum useful life of the asset, which is 25 years. Unless otherwise indicated in this Agreement, references to the Construction Documents in this Agreement shall be deemed references to the Final Construction Documents.

2.7. Permits, Approvals. Upon completion of the Final Construction Documents, Vendor shall submit the same, on behalf of the District, to all governmental or quasi-governmental agencies or entities with jurisdiction over any portion of the Work depicted therein for review and issuance of permits or other approvals necessary or required for construction of the Work. Vendor shall promptly process such applications and promptly obtain all necessary permits and approvals for construction of the Project. Vendor shall keep the District informed of the status of such applications for permits and approvals. Except for the fee(s) charged by the governmental or quasi-governmental agency issuing a permit or approval relating to Project construction, all costs and expenses associated with or arising out of the submission and processing of necessary permits or approvals for construction of the Project are included and incorporated into the Design and Construction Services Contract Price. The District shall be responsible for payment of the fee(s) charge by the governmental or quasi-governmental agency issuing a permit or approval relating to Project construction.

2.8. Limitations on District Acceptance of Design Documents. The District’s review of Design Documents shall be for the limited purpose of confirming that the Work reflected in the Design Documents generally conforms to the requirements of the Project. The District’s review and acceptance of the Design Documents or any portion thereof shall not relieve or limit Vendor’s obligations, whether pursuant to the terms of this Agreement or by operation of law, relating to its standard of care in preparing Design Documents, nor shall such review/acceptance result in any District assumption of responsibility for the content thereof nor the completeness and accuracy of the Design Documents. If the District fails to provide a written acceptance of such Documents within ten (10) calendar days of Vendor’s submittal of said Documents, the Parties agree that the Documents shall be deemed to have been accepted by the District on the tenth (10th) day. If the District deems the Design Documents unacceptable and the Vendor disagrees with the District’s assessment, a mutual third party shall resolve whether the Design Documents meet the Scope.

3. Construction Services
3.1. General. Vendor shall provide Construction Services, consisting generally of labor, materials, equipment and services necessary to procure install and construct the Work indicated in the Construction Documents. The Work indicated in the Construction Documents shall be installed and constructed in accordance with the Construction Documents and applicable laws, ordinances, rules or regulations.

3.2. District.

3.2.1. Notice to Proceed. After the District’s acceptance of the Final Construction Documents, the District will issue a written Notice to Proceed to Vendor authorizing and directing its commencement of Project construction. If the District fails to provide a written Notice to Proceed within fifteen (15) calendar days after the date of the District’s acceptance of the Final Construction Documents, the Parties agree that the Notice to Proceed shall be deemed to have been issued by the District on the fifteenth (15th) day. The commencement date of the Construction Services Contract Time shall be as set forth in the Notice to Proceed issued by the District to Vendor. The Construction Services Contract Time shall
not be subject to adjustment if Vendor does not commence Project construction as of the commencement date set forth in the Notice to Proceed.

3.2.2. District Right to Stop 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 Vendor to stop the Work, or any portion thereof, until the cause for such stop work order has been eliminated if Vendor: (i) fails to correct Work which is not in conformity and in accordance with the requirements of the Construction Documents, or (ii) otherwise fails to carry out the Work in conformity and accordance with the Contract Documents. 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 Vendor 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.

3.2.3. District Partial Occupancy or Use. 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 Vendor 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 District occupies or use any completed or partially completed portion of the Work; District shall indemnify the Vendor for any damages occurred in association with such occupation or use of the Work. If Vendor 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, and Vendor 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 Vendor 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. Vendor shall be entitled to a reasonable extension of time and reasonable increase in the contract amount in the event that the use by the District results in performance delays or increased project costs or expenses.

3.2.4. No Acceptance of Defective or Non-Conforming Work. Unless otherwise expressly agreed upon by the District and Vendor, 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.

3.2.5. District Representative. The District will designate an employee of the District during construction of the Project to serve as the District Representative. The District Representative is authorized to act on behalf of the District and to enforce the District’s rights under this Agreement. All Work of the Project, whether in place or in progress, shall be available for inspection, observation or review by the District Representative at any time. Without adjustment of the Design and Construction Services Contract Price, Vendor shall provide the District Representative with access to the Work, wherever located and whether in place or in progress.

3.3. Project Inspections. All of the Work shall be subject to inspections.
conducted by public agencies with jurisdiction over the Project or any portion thereof. In addition to inspection of the Work by public agencies with jurisdiction over any portion of the Work, the Work shall be subject to inspection by Southern California Edison (“SCE”) as per the requirements for such inspections specified under the California Solar Initiative (“CSI”) Incentive Program.

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

3.3.2. Limitations on Project Inspections. The Inspectors do 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 Inspectors, and Vendor shall be liable to the District for the consequences of all Work performed on such basis.

3.3.3. Compliance with Inspectors’ Corrective Requirements. If the Inspectors determine that any portion of the Work is defective or not conforming to requirements of the Construction Documents, upon notice of such defective or non-conforming conditions, Vendor shall promptly take all necessary measures to correct such defective or non-conforming conditions. Vendor shall under take and complete corrections to defective/non-conforming conditions identified by the Inspectors. If Vendor fails or refuses to correct defective/non-conforming conditions pursuant to the preceding within ten (10) calendar days of the Inspectors’ determination, the District, with its own forces or its own separate contractor, may complete correction to defective or non-conforming conditions at the cost and expense of Vendor. The District may deduct such cost(s) and expense(s) from any portion of the Design and Construction Services Contract Price then or thereafter due Vendor. If Vendor establishes that the Inspector’s corrective requirements were in error and that Vendor’s work was in conformity with the Contract Documents, Vendor shall be entitled to a change order granting it a reasonable extension of Contract Time and Contract Price based on the time and increased costs and expenses incurred by Vendor in performing the Inspector’s corrective requirements.

3.4. District Separate Contractors. The District reserves the right to perform construction or other operations at or about the Site with its own forces or other contractors. Vendor shall cooperate with the District and the District’s separate contractors to coordinate their respective activities on or about the Site and shall afford the District and the District’s separate contractors a reasonable opportunity for storage of materials/equipment and performance of their respective activities at or about the Site to the same extent that the District has provided to Vendor.

3.5. Vendor Construction Activities.

3.5.1. Field Measurements. Prior to commencement of the Work, or portions thereof, Vendor shall take field measurements and verify field conditions at the Site.

3.5.2. Dimensions; Layouts and Field Engineering. Vendor 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 Vendor at its expense. Any field engineering or other engineering to be provided or performed by Vendor under the Contract Documents and required or necessary for the proper execution or installation of the Work shall be provided and performed by the a registered engineer 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, Vendor is responsible for dimensions of such
item of Work and related Work; without adjustment of the Contract Time or Design and Construction Services Contract Price, Vendor is responsible for making component parts of the Work fit together properly.

3.5.3. **Work in Accordance With Contract Documents.** Vendor shall perform all of the Work in strict conformity with the Contract Documents and applicable laws, codes, regulations and rules. The Project, as completed shall conform to the Construction Documents, except to the extent that the District has accepted a Change and issued a Change Order therefore. Vendor shall furnish and install the materials and equipment as specified in the Construction Documents, unless Vendor shall have obtained the District’s consent and approval to substitution of specified materials or equipment.

3.5.4. **Subsurface Conditions.** If the Work under the Contract Documents involves digging trenches or other excavations that extend deeper than four feet below the surface, Vendor shall promptly and before the following conditions are disturbed, notify the District Representative in writing, of any: (i) material that Vendor 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 the District and the Vendor determine that the conditions so materially differ or involve such hazardous materials which require an adjustment to the Design and Construction Services Contract Price or the Contract Time, the District shall issue a Change Order in accordance with the provisions of this Agreement. If any of the conditions listed in (i), (ii), or (iii) above, are discovered and result in any delays by Vendor or any increases in Contract Price by Vendor, Vendor shall be entitled to a change order granting it a reasonable extension of Contract Time and a reasonable increase in the Contract Price based upon the time and increased costs and expenses incurred by Vendor in stopping or delaying performance under the Contract Documents, working around affected areas of the project site, and restarting performance under the Contract Documents. In accordance with California Public Contract Code §7104, any dispute arising between Vendor and the District as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse Vendor from the completion of the Work within the Contract Time and Vendor shall proceed with all Work to be performed under the Contract Documents. The District reserves the right to terminate the Contract pursuant to the Contract Documents should the District determine not to proceed because of any condition described in (i), (ii) or (iii) above. The District shall notify the Vendor in writing of the Contract termination within five (5) calendar days of the notification provided by the Vendor of such conditions. If the Contract is terminated because of any of the conditions described in (i), (ii) or (iii), the Vendor shall be entitled to payment for all Work performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

3.5.5. **Supervision and Construction Procedures.**

3.5.5.1. **Supervision of the Work.** Vendor shall supervise and direct performance of the Work, using Vendor’s best skill and attention. Vendor 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. Vendor 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.

3.5.5.2. **Responsibility for the Work.** Vendor shall be responsible to the District for negligent acts and omissions of Vendor’s employees, Subcontractors and their agents and employees and all other persons performing any portion of the Work under a contract with Vendor and at Vendor’s discretion. Vendor shall not be relieved of the obligation to perform the Work in accordance with the Contract Documents by tests, inspections or approvals required or performed by persons other than Vendor.

3.5.5.3. **Layouts.** Vendor 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. Vendor 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 Design and Construction Services Contract Price. Vendor shall be solely responsible for all loss or costs resulting from the loss, destruction, disturbance or damage of benchmarks, reference points or stakes by Vendor and its agents, employee’s invitees and other representatives. Vendor shall not be liable for loss, destruction, disturbance or damage caused by vandal or other third parties not under the control or supervision of Vendor. Vendor shall be entitled to a change order granting it a reasonable extension of Contract Time and a reasonable increase in the Contract Price based upon the time and increased costs and expenses incurred by Vendor as a result of such occurrences.

3.5.5.4. **Construction Utilities.** The District will furnish and pay the costs of temporary power and water utility services for the Work. The foregoing notwithstanding, District provided water utility service shall not be used by Vendor for any earthwork or grading operations. All other utilities necessary to complete the Work and to completely perform all of Vendor’s obligations shall be obtained by Vendor without adjustment of the Design and Construction Services Contract Price. Vendor 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 Vendor 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 Vendor and included in the Design and Construction Services Contract Price.

3.5.5.5. **Existing Utilities; Removal, Relocation and Protection.** Vendor and the District acknowledge that under California Government Code §4215, the District assumes 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. Prior to commencing any underground work on this project, Vendor shall contact Underground Service Alert of Northern California (“USA”) and arrange to have the project area marked by USA for underground utilities. In the event that underground utilities or other underground obstacles or site conditions are discovered by Vendor that were not reflected in the results of the USA underground service inspection or in the District’s as-built drawings, survey’s and other site documents produced to Vendor, such matters shall be deemed unforeseen circumstances and Vendor shall be entitled to a change order granting it a reasonable extension of Contract Time and a reasonable increase in the Contract Price based upon the time and increased costs and expenses incurred by Vendor as a result of such inaccuracies. Vendor and the District agree that the provisions of Government Code §4215 shall not apply to this Agreement insofar as Vendor has the responsibility for design of the Project as well as construction of the Project. Further, Vendor and the
District agree that the scope of Vendor’s responsibilities relating to design of the Project includes without limitation, survey, assessment and locating utility lines in or about the area of the Site. Vendor waives all rights under Government Code §4215.

3.5.6. Conferences and Meetings. A material obligation of Vendor under the Contract Documents is the attendance at required meetings by Vendor’s supervisory personnel for the Work and Vendor’s management personnel as required by the Contract Documents or as requested by the District. Vendor’s personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of Vendor and to bind Vendor. Vendor 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.

3.5.6.1. Pre-Construction Conference. Vendor’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, Vendor, Subcontractor, Inspectors 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 Vendor; (e) Progress Schedule development and maintenance; (f) development of Schedule of Values and payment procedures; (g) communication procedures; (h) emergency and safety procedures; (i) Site visitor policies; (j) conduct of Vendor/Subcontractor personnel at the Site; and (k) punchlist/close-out procedures.

3.5.6.2. Progress Meetings. Progress meetings will be conducted on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). Vendor’s representatives and representatives of Subcontractors (as requested by the District) shall attend Progress Meetings. Progress Meetings will be chaired by the District 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.

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

3.5.6.4. Minutes of Meetings. Following conclusion of the Pre-Construction Conference, Progress Meetings and Special Meetings, Vendor will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless the District notifies Vendor 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 District; such objections or corrections shall be submitted to the District through Vendor. If Vendor timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next
scheduled Progress Meeting.

3.5.7. **Temporary Sanitary Facilities.** At all times during Work at the Site, Vendor shall obtain and maintain temporary sanitary facilities in conformity with applicable law, rule or regulation. Vendor 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.

3.5.8. **Noise and Dust Control.**

3.5.8.1. **Noise Control.** Vendor 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, Vendor 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 Design and Construction Services Contract Price or the Contract Time.

3.5.8.2. **Dust Control.** Vendor shall be fully and solely responsible for maintaining and up keep 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, Vendor 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, Vendor 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 Vendor’s failure to comply with these requirements shall be exclusively at the cost of Vendor, 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. Vendor 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, Vendor 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 Design and Construction Services Contract Price or the Construction Contract Time.

3.5.8.3. **Vendor Failure to Comply.** If Vendor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of the Contract Documents, the District shall notify Vendor in writing and Vendor shall take immediate action. Should Vendor 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 reasonable costs incurred by the District in connection with
such actions shall be the sole responsibility of, and be borne by, Vendor; the District may deduct such amounts from the Design and Construction Services Contract Price then or thereafter due Vendor.

3.5.9. Labor and Materials.

3.5.9.1. Payment for Labor, Materials and Services. Vendor 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.

3.5.9.2. Employee Discipline. Vendor shall enforce strict discipline and good order among Vendor’s employees, the employees of any Subcontractor or Sub-subcontractor, and all other persons performing any part of the Work at the Site. Vendor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Vendor 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, Vendor 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.

3.5.9.3. Vendor’s Superintendent. Vendor shall employ a competent superintendent and all necessary assistants who shall be in attendance at the Site at all times during Project construction. Vendor’s communications relating to the Work or the Contract Documents shall be through Vendor’s superintendent. The superintendent shall represent Vendor and communications given to the superintendent shall be binding as if given to Vendor. Vendor 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.

3.5.9.4. Prohibition on Harassment.

3.5.9.4.1. 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.

3.5.9.4.2. Vendor’s Adoption of Anti-Harassment Policy. Vendor 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. Vendor 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. Vendor shall require that any Subcontractor or Sub-subcontractor is performing any portion of the Work to adopt and implement policies in conformity with these provisions relating to prohibition of harassment.

3.5.9.4.3. Prohibition on Harassment at the Site. Vendor shall not permit any person, whether employed by Vendor, 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 these provisions. 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 or entity, performing or providing Work 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 Vendor 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 Vendor 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 and nor shall the Design and Construction Services Contract Price or the Contract Time shall be adjusted on account thereof. Vendor 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 provision; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of Vendor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of Vendor 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.

3.5.10. Taxes. Vendor shall pay, without adjustment of the Design and Construction Services Contract Price, all sales, consumer, use and other taxes for the Work or portions thereof provided by Vendor under the Contract Documents.

3.5.11. Compliance With Laws. All Work and construction operations shall conform to and comply with all applicable laws, rules, regulations and ordinances. Vendor shall comply with and give notices required by laws, ordinances, rules, regulations and other orders of public authorities bearing on performance of the Work.
3.5.12. Submittals.

3.5.12.1. Waiver of Submittals. Provided that Vendor furnishes and installs the materials and equipment indicated in the Construction Documents, Vendor shall not be required to submit Shop Drawings, Product Data, Samples and similar submittals (collectively “Submittals”) of materials, equipment or construction procedures to the District Representative or any other party for review and acceptance.

3.5.12.2. No Substitutions of Materials/Equipment Without District Review. Vendor shall perform no portion of the Work involving substitutions of materials/equipment indicated in the Construction Documents until the District Representative has reviewed and returned the Submittal to Vendor indicating “No Exception Taken” to such Submittal, within three (3) calendar days of receipt of the Submittal by the Vendor. If the District fails to return the Submittal to Vendor, the Parties agree that “No Exception Taken” shall be deemed to have been indicated on the third (3rd) day. If the District deems to “Take Exception” to such Submittal and the Vendor disagrees with the District’s assessment, a mutual third party shall resolve whether the substitution of materials/equipment meets the Scope. Vendor shall not perform any portion of the Work requiring a Submittal or which is affected by a required Submittal until the entirety of the required Submittal or other related required Submittal has been fully processed. Such Work shall be in accordance with the final action taken by the District in their review of Submittals and other applicable portions of the Contract Documents.

3.5.12.3. District Review of Submittals for Substitutions of Materials Equipment. The purpose of the review by the District of Submittals relating to substitutions of materials/equipment indicated in the Construction Documents is for conformity of the proposed substitution of materials/equipment with the design intent of the Construction Documents and conformity with the performance and other requirements of the Project. If a Submittal is returned to Vendor as rejected or requiring correction(s) with re-submission, Vendor, so as not to delay the progress of the Work, shall promptly thereafter resubmit a Submittal conforming with the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in accordance with comments accompanying the rejected Submittal. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals. Acceptance of substitute materials/equipment reflected in a Submittal shall not result in an increase in the Construction Contract Time or the Design and Construction Services Contract Price.

3.5.12.4. Deferred Approval Items. In the event that any portion of the Work is designated in the Contract Documents as a “Deferred Approval” item, Vendor 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.

3.5.13. Materials and Equipment.

3.5.13.1. Specified Materials, Equipment. Vendor acknowledges that the Construction Documents for the Work are prepared by or under the direction of Vendor and that the Construction Documents as prepared by or under the direction of Vendor are in conformity with applicable laws, including without limitation, Public Contract Code §3400. Specifications prepared by on behalf of Vendor do not include any specific article, device, equipment, product, material, fixture, patented process, form, method or
type of construction, by name, make, trade name, or catalog number which could be
construed as limiting competition.

3.5.13.2. **No Substitutions or Alternatives.** Vendor shall furnish and install the materials and
equipment specified in the Construction Documents without material substitutions or
alternatives thereto, unless Vendor shall have notified the District in writing of its intent
to substitute materials/equipment and the proposed substituted materials/equipment are accepted by the District pursuant to the Submittal process described in Paragraph 3.5.12 above.

3.5.13.3. **Placement of Material and Equipment Orders.** Except as stated in Section 2.5.3,
Vendor shall, after issuance of the Notice to Proceed, 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. Vendor 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, Vendor 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.

3.5.13.4. **District's Right to Place Orders for Materials and/or Equipment.** Notwithstanding
any other provision of the Contract Documents, in the event that Vendor shall, upon
request of the District, 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 reasonably 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 Vendor. 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 Vendor.
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 Vendor from any of Vendor's obligations under the Contract
Documents, including without limitation, completion Project construction within the
Contract Time and for the Design and Construction Services Contract Price. If the
District exercises the right hereunder to place orders for materials and/or equipment on
behalf of Vendor pursuant to the foregoing, Vendor 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 Design and Construction Services Contract Price
then or thereafter due to Vendor.

3.5.14. **Safety.**

3.5.14.1. **Safety Programs.** Vendor 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. Vendor'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.). Prior to commencement of construction activities at the Site, an authorized representative of Vendor shall execute the Drug-Free Workplace Certification and deliver the executed Drug-Free Workplace Certification to the District. Without limiting or relieving Vendor of its obligations hereunder, Vendor shall require that its Subcontractors similarly initiate and maintain all appropriate or required safety programs. Prior to commencement of Work at the Site, Vendor shall provide the District Representative with Vendor’s proposed safety program for the Work for the District Representative’s review and acceptance. Without adjustment of the Design and Construction Services Contract Price or the Contract Time, Vendor shall modify and re-submit its proposed safety plan to incorporate modifications thereto requested by the District Representative.

3.5.14.2. Safety Precautions. Vendor 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 Vendor or Vendor’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. Vendor 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 Design and Construction Services Contract Price or the Contract Time, Vendor shall repair, replace or restore any damage or destruction of the foregoing items as a result of performance or installation of the Work.

3.5.14.3. Safety Signs, Barricades. Vendor 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 owners and users of adjacent sites and utilities.

3.5.14.4. Safety Notices. Vendor 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.

3.5.14.5. Safety Coordinator. Vendor shall designate a responsible member of Vendor’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 Vendor’s superintendent unless otherwise designated by Vendor in writing to the District.

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

3.5.15. Hazardous Materials.
3.5.15.1. General. In the event that Vendor, 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”), Vendor 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.

3.5.15.2. Prohibition on Use of Asbestos Construction Building Materials (“ACBMs”). It is the intent of the District that ACBMs not be used or incorporated into any portion of the Work. Vendor warrants to the District that the Construction Documents do not incorporate therein any ACBMs. If the Work depicted in the Construction Documents require materials or products which Vendor knows, or should have known with reasonably diligent investigation, to contain ACBMs, Vendor shall promptly notify the District Representative 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. Vendor 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, Vendor 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. Vendor’s obligations under the preceding sentence shall survive the termination of the Contract, the warranty period provided under the Contract Documents, Vendor’s completion of the Work or the District’s acceptance of the Work. In the event that Vendor 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 Vendor 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 Vendor and Vendor’s Performance Bond Surety.

3.5.15.3. Disposal of Hazardous Materials. Vendor shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about Site resulting from Vendor’s performance of Work, unless such Hazardous Materials were present on or about the Site prior to Vendor’s performance of Work. Vendor’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.

3.5.16. Maintenance of Documents.

3.5.16.1. Documents at Site. Vendor shall maintain at the Site: (i) one record copy of the Drawings, and Specifications; (ii) Change Orders approved by the District and all other modifications to the Contract Documents; (iii) Record Drawings; (iv) Material Safety Data Sheets (“MSDS”) accompanying any materials, equipment or products delivered or stored at the Site or incorporated into the Work; and (v) 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 Vendor at the Site shall be available to the District review, inspection or reproduction. Upon completion of the Work, all documents maintained at the Site by Vendor pursuant to the foregoing shall be assembled and transmitted to the District Representative upon Substantial Completion of the Work.

3.5.16.2. **Maintenance of Record Drawings.** During its performance of the Work, Vendor 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 Construction Documents to adapt 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 Vendor during the performance of the Work. At any time during Vendor’s performance of the Work, upon the request of the District, Vendor shall make the Record Drawings maintained hereunder available for the District’s review and inspection. The District’s review and inspection of the Record Drawings during Vendor’s performance of the Work shall be only for the purpose of generally verifying that Vendor 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 Vendor 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 Vendor’s default of a material obligation hereunder. Without waiving, restricting or limiting any other right or remedy of the District for Vendor’s failure or refusal to continuously maintain the Record Drawings, the District may, upon reasonably determining that Vendor 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 Vendor and the District may deduct the amount of such fees and costs from any portion of the Design and Construction Services Contract Price then or thereafter due Vendor. Prior to receipt of the Final Payment, Vendor shall deliver the Record Drawings to the District.

3.5.17. **Use of Site.** Vendor 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. Vendor shall not unreasonably encumber the Site or adjoining areas with materials or equipment. Vendor shall be solely responsible for providing security at the Site with all such costs included in the Design and Construction Services Contract Price. The District and agencies with jurisdiction over the Work shall at all times have access to the Site.

3.5.18. **Clean-Up.** Vendor 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, Vendor shall maintain the Site in a “broom-clean” standard on a daily basis. Notwithstanding the foregoing, Vendor shall not be responsible for cleaning the Site areas of any waste materials or rubbish generated by other
than Vendor or its employees, subcontractors, agent or representatives. Vendor agrees to promptly notify the District in the event that vandals or other third persons damage or leave waste material or rubbish in or about the Site. 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, Vendor shall remove from the Site all rubbish, waste material, excess excavated material, tools, Construction Equipment, machinery, surplus material that were generated by Vendor or its employees, subcontractors, agent or representatives that are not the property of the District under the Contract Documents. As directed by the District, Vendor shall remove temporary fencing, barricades, planking, temporary sanitary facilities, temporary utility distributions and other temporary facilities. Subject to the foregoing exclusions, upon completion of the Work, the Site and all adjoining areas shall be left in a neat and broom clean condition satisfactory to District. If Vendor 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 Vendor; the District may deduct such costs from any portion of the Design and Construction Services Contract Price then or thereafter due Vendor.

3.5.19. Patents and Royalties. Vendor 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 arising as a result of Vendor’s performance of the Work under the Contract Documents. Notwithstanding the foregoing, Vendor shall not have any indemnity or liability obligation to the extent that the subject infringements pertain to materials specifically required by the District under the Contract Documents.

3.5.20. Cutting and Patching. Vendor shall be responsible for cutting, fitting or patching required to complete the Work or to make the component parts thereof fit together properly. Vendor 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, Vendor shall use reasonable efforts under the existing circumstances to 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. Vendor 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. Vendor shall not unreasonably withhold consent to the request of the District or separate contractor to cut, patch or otherwise alter the Work.

3.5.21. Encountering of Hazardous Materials. In the event Vendor 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, Vendor 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, Vendor shall immediately notify the District Representative, in writing, of such condition. Vendor shall proceed with the Work in such affected area only after such Hazardous Materials have been rendered harmless, contained, removed or abated by the District. In the event such Hazardous Materials are encountered, Vendor 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 Design and Construction Services Contract Price solely on account of Vendor encountering
such Hazardous Materials.

3.5.22. Wage Rates; Employment of Labor.

3.5.22.1. 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. Vendor shall post, at appropriate and conspicuous locations on the Site, a schedule showing all determined general prevailing wage rates.

3.5.22.2. Payment of Prevailing Rates. There shall be paid each worker of Vendor, 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 Vendor or any Subcontractor, of any tier, and such worker.

3.5.22.3. Prevailing Rate Penalty. Vendor shall, as a penalty, forfeit Fifty Dollars ($50.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for the Work by Vendor or by any Subcontractor, of any tier, in connection with the Work. Pursuant to California Labor Code §1775, 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 Vendor.

3.5.22.4. Payroll Records. Pursuant to California Labor Code §1776, Vendor 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 Vendor. 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 Vendor, 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 Vendor; (iv) Vendor 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 Vendor or any Subcontractor, of any tier, performing a part of the Work shall not be marked or obliterated. Vendor 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 Paragraph 3.6.24.4, Vendor shall have ten (10) days in which to comply, subsequent to receipt of written notice specifying in what respects Vendor must comply herewith. Should noncompliance still be evident after such 10-day period, Vendor 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 Design and Construction Services Contract Price then or thereafter due Vendor. Vendor is solely responsible for compliance with the foregoing provisions.

3.5.22.5. Hours of Work.

3.5.22.5.1. 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 Vendor 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 Vendor 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.

3.5.22.5.2. Penalty for Excess Hours. Vendor shall pay to the District a penalty of Twenty-five Dollars ($25.00) for each worker employed on the Work by Vendor 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 Vendor 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.

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

3.5.22.5.4. Apprentices.
3.5.22.5.4.1. **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.

3.5.22.5.4.2. **Apprenticeship Certificate.** When Vendor or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade, Vendor 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 for a certificate approving Vendor 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 Vendor or Subcontractor, shall arrange for the dispatch of apprentices to Vendor or such Subcontractor in order to comply with California Labor Code §1777.5. Vendor 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. Vendor 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.

3.5.22.5.4.3. **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. Vendor shall employ apprentices for the number of hours computed as above before the completion of the Work. Vendor 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. Vendor or any Subcontractor covered by this Paragraph 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 Vendor 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 Vendor from the 1-to-5 ratio as set forth in this Paragraph and California Labor Code §1777.5. This Paragraph 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.

3.5.22.5.4.4. 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 Vendor from the 1-to-5 ratio set forth in this Paragraph 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 members 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.

3.5.22.5.4.5. Contributions to Trust Funds. Vendor or any Subcontractor, of any tier, who, performs any of the Work by employment of journeymen or apprentices in any Apprenticeable Craft or Trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the 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 Design and Construction Services Contract Price.

3.5.22.5.4.6. Vendor’s Compliance. The responsibility of compliance with this Paragraph for all Apprenticeable Trades or Crafts is solely and exclusively that of Vendor. All decisions of the Joint Apprenticeship Committee(s) under this Paragraph are subject to the provisions of California Labor Code §3081. In the event Vendor willfully fails to comply with the provisions of this Paragraph and California Labor Code §1777.5, pursuant to California Labor Code §1777.7, Vendor 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 Design and Construction Services 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 Paragraph 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.

3.5.23. Employment of Independent Contractors. Pursuant to California Labor Code §1021.5, Vendor 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 Vendor shall employ any person in violation of the foregoing, Vendor 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, Vendor’s violation of this provision or the provisions of California Labor Code §1021.5 shall be deemed an event of Vendor’s default under this Agreement. Vendor shall require any Subcontractor or Sub-Subcontractor performing or providing any portion of the Work to adhere to and comply with the foregoing provisions.

3.5.24. Assignment of Antitrust Claims. Pursuant to California Government Code §4551, Vendor 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 Vendor, 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 Design and Construction Services 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 Paragraph 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.

3.5.25. Limitations Upon Site Activities. Except in the circumstances of an emergency, all construction activities shall be permitted at or about the Site Mondays through Fridays, excepting holidays and between the hours of 7:00 a.m. and 6:00 p.m. Work performed outside of the foregoing hours and days will not result in adjustment of the Contract Time or the Design and Construction Services Contract Price.

3.6. Subcontractors

3.6.1. Subcontracts. Any Work performed for Vendor by a Subcontractor shall be pursuant to a written agreement between Vendor 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 by the terms of this Agreement and the termination provisions hereof, and obligates the Subcontractor to assume toward Vendor all the obligations and responsibilities of Vendor which by the Contract Documents Vendor assumes toward the District. 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 the terms of this Agreement, subject to the prior rights of the Surety obligated under a bond relating to the Contract. If this Agreement is terminated for any reason, Vendor shall provide to the District copies of all executed Subcontracts and Purchase Orders to which Vendor is a party. During performance of the Work, Vendor shall, from time to time, as and when requested by the District and mutually agreed upon, provide copies of any and all Subcontracts or Purchase Orders relating to the Work and all modifications thereto. Vendor's failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders in accordance with the two preceding sentences is Vendor's default of a material term of the Contract Documents.

3.6.2. Subcontractors List. Within five (5) days of the District’s issuance of the Notice to Proceed, Vendor shall complete and submit to the District Representative the Subcontractors List attached as Exhibit B hereto. In accordance with Public Contract Code §4100 et seq., Vendor shall identify each Subcontractor performing any Work valued at or greater than one-half of one percent (0.05%) of the Design and Construction Services Contract Price allocated to Construction Services. Vendor shall set forth in the Subcontractors List, the business location of each identified Subcontractor and the portion of Work to be performed by each identified Subcontractor.

3.6.3. Substitution of Listed Subcontractor.

3.6.3.1. Substitution Process. Any request of Vendor to substitute a listed Subcontractor will be considered only if such request is in strict conformity with these provisions and the provisions of California Public Contract Code §4107.
3.6.3.2. **Responsibilities of Vendor Upon Substitution of Subcontractor.** The District’s consent to Vendor’s substitution of a listed Subcontractor shall not relieve Vendor from its obligation to complete the Work within the Contract Time and for the Design and Construction Services 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.

3.6.4. **Subcontractors’ Work.** Whenever the Work of a Subcontractor is dependent upon the Work of Vendor or another Subcontractor, Vendor 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 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 without limitation, the Construction Documents) and required Submittals, if any, 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 Vendor 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.

3.7. **Contract Time.** The Contract Time for achieving Final Completion of the Work is nine (9) months after the date established for the Vendor’s commencement of Project and Design Construction, as set forth in the Notice to Proceed issued by the District to the Vendor. The date for commencement of the Work is the date established by the Notice to Proceed issued by the District or on behalf of the District pursuant to the Agreement, which shall not be postponed by the failure to act of Vendor or of persons or entities for which Vendor is responsible. The date of Final Completion shall be the date of the final permit sign-off by the permit authority.

3.7.1 **Time of Essence.** Time limits stated in the Contract Documents are of the essence. By executing this Agreement, Vendor confirms that the Contract Time is a reasonable period for achieving Final Completion of the Work. Vendor and its Subcontractors 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 Final Completion of the Work within the Contract Time.

3.7.2 **Correction or Completion of the Work After Substantial Completion.**

3.7.2.1 **Punchlist.** Upon achieving Substantial Completion of the Work, the District Representative and Vendor shall jointly inspect the Work and prepare a comprehensive list of items of the Work to be corrected or completed by Vendor (“the Punchlist”). Substantial Completion is that stage in the progress of the Work when the Work is complete in accordance with the Contract Documents so that the District can use and occupy the Work for its intended purposes. The exclusion of, or failure to include, any item on the Punchlist shall not alter or limit the obligation of Vendor to complete or correct any portion of the Work in accordance with the Contract Documents.

3.7.2.2 **Time for Completing Punchlist Items.** In addition to establishing the Punchlist, Vendor and the District Representative shall, after the joint inspection, establish a reasonable time for Vendor’s completion of all Punchlist items. Vendor shall promptly and diligently proceed to complete all Punchlist items within the time established. In the event that Vendor shall fail or refuse, for any reason, to complete all Punchlist items within the time established, Vendor shall be subject to assessment of Liquidated Damages for delayed completion of Punchlist.
3.7.2.3 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 Vendor. Final Completion shall be determined by the District Representative upon request of Vendor. The good faith and reasonable determination of Final Completion by the District Representative shall be controlling and final.

3.7.3 Final Acceptance. Final Acceptance of the Work shall occur upon approval of the Work by the District’s Representative. The commencement of any warranty or guarantee period under the Contract Documents shall be deemed to be the date upon which the District approves of the Final Acceptance of the Work, and in no case shall be later than 45 days after SCE interconnection of the solar system.

3.7.4 Construction Schedule.

3.7.4.1 Submittal of Preliminary Construction Schedule. Within five (5) days following issuance of the Notice to Proceed, Vendor shall prepare and submit to the District Representative a Preliminary Construction Schedule indicating, in graphic form, the estimated rate of progress and sequence of all Work required under the Contract Documents. The purpose of the Preliminary Construction Schedule is to assure adequate planning and execution of the Work so that it is completed within the Contract Time and to permit evaluation of the progress of the Work. Unless otherwise provided in the Special Conditions, the Construction Schedules shall; (i) be prepared utilizing the then most recent edition of Microsoft Excel, Microsoft Project or Primerva Suretrak; (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; and (iv) indicate costs for completion of each Construction Schedule activity. If the Construction Schedules required hereunder incorporate therein any “float” time, such float shall be deemed to jointly belong to and owned by the District and Vendor. As used herein, “float time” shall be deemed to refer to the time between earliest finish date and the latest finish date of each activity shown on the Construction Schedule.

3.7.4.2 Review of Preliminary Construction Schedule. The District Representative shall review the Preliminary Construction Schedule submitted by Vendor for conformity with the requirements of the Contract Documents. Within fifteen (15) days of the date of receipt of the Preliminary Construction Schedule, the Preliminary Construction Schedule will be returned to Vendor with comments to the form or content thereof. Review of the Preliminary Progress Schedule and any comments thereto by the District Representative shall not be deemed to be the assumption of construction means, methods or sequences by the District, all of which remain Vendor’s obligations under the Contract Documents.

3.7.4.2 Preparation and Submittal of Contract Construction Schedule. Within ten (10) days of the District’s return of the Preliminary Construction Schedule to Vendor, Vendor shall prepare and submit to the District Representative a Construction Schedule which incorporates therein the comments to the Preliminary Construction Schedule. Upon Vendor’s submittal of such Construction Schedule, the District Representative shall review the same for purposes of determining conformity with the requirements of the Contract Documents. Within ten (10)
days of the receipt of the Construction Schedule, the District Representative will approve such Construction Schedule or will return the same to Vendor with comments to the form or content. In the event there are comments to the form or content thereof, Vendor, shall within seven (7) days of receipt of such comments, revise and resubmit to the District Representative the Construction Schedule incorporating therein such comments. Upon the District’s approval of the form and content of a Construction Schedule, the same shall be deemed the “Approved Construction Schedule.” The District’s approval of a Construction Schedule shall be for the sole and limited purpose of determining conformity with the requirements of the Contract Documents. By the Approved Construction Schedule, the District shall not be deemed to have exercised control over, or approval of, construction means, methods or sequences, all of which remain the responsibility and obligation of Vendor in accordance with the terms of the Contract Documents. Further, the Approved Construction Schedule shall not operate to limit or restrict any of Vendor’s obligations under the Contract Documents nor relieve Vendor from the full, faithful and timely performance of such obligations in accordance with the terms of the Contract Documents. The activities, commencement and completion dates of activities, and the sequencing of activities depicted on the Approved Construction Schedule shall not be modified or revised by Vendor without the prior consent, or direction, of the District. Updates to the Approved Construction Schedule shall not be deemed revisions to the Approved Construction Schedule. In the event that the Approved Construction Schedule shall depict completion of the Work in a duration shorter than the Contract Time, the same shall not be a basis for an adjustment of the Contract Time or the Design and Construction Services Contract Price in the event that actual completion of the Work shall occur after such the time depicted in such Approved Construction Schedule. In such event, the Design and Construction Services Contract Price shall not be subject to adjustment on account of any additional costs incurred by Vendor to complete the Work prior to the Contract Time, as adjusted in accordance with the terms of the Contract Documents. Any adjustment of the Contract Time or the Design and Construction Services Contract Price shall be based upon the Contract Time set forth in the Contract Documents and not any shorter duration which may depicted in the Approved Construction Schedule.

3.7.4.3 Revisions to Approved Construction Schedule. In the event that the progress of the Work or the sequencing of the activities of the Work shall materially differ from that indicated in the Approved Construction Schedule, as determined by the District in its reasonable discretion and judgment, the District may direct Vendor to revise the Approved Construction Schedule; within fifteen (15) days of the District’s direction, Vendor shall prepare and submit to the District Representative a revised Approved Construction Schedule, for review and acceptance by the District Representative. Vendor may request consent of the District to revise the Approved Construction Schedule. Any such request shall be considered by the District only if in writing setting forth Vendor’s proposed revision(s) to the Approved Construction Schedule and the reason(s) therefor. The District may consent to, or deny, any such request of Vendor to revise the Approved Construction Schedule in its reasonable discretion.

3.7.4.4 Updates to Approved Construction Schedule. Vendor shall monitor and update the Approved Construction Schedule on a monthly basis, or more frequently as required by the conditions or progress of the Work, or as may be requested by the District. Vendor shall provide the District Representative with updated Approved
Construction Schedules indicating progress achieved and activities commenced or completed within the prior updated Approved Construction Schedule. Updates to the Approved Construction Schedule shall not include any revisions to the activities, commencement and completion dates of activities or the sequencing of activities depicted on the Approved Construction Schedule. Any such revisions to the Approved Construction Schedule shall result in the District’s rejection of such update and Vendor shall, within seven (7) days of the District’s rejection of such update, submit to the District Representative an Updated Approved Construction Schedule which does not incorporate any such revisions. If requested by the District, Vendor shall also submit, with its updates to the Approved Construction Schedule a narrative statement including a description of current and anticipated problem areas of the Work, delaying factors and their impact, and an explanation of corrective action taken or proposed by Vendor. If the progress of the Work is behind the Approved Construction Schedule, Vendor shall indicate what measures will be taken to place the Work back on schedule. The District may, from time to time, and in the District’s sole and exclusive discretion, transmit to Vendor’s Performance Bond Surety the Approved Construction Schedule, any updates thereof and the narrative statement described hereinabove. The District’s election to transmit, or not to transmit such information, to Vendor’s Performance Bond Surety shall not limit Vendor’s obligations under the Contract Documents.

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

3.7.5 Adjustment of Contract Time. If Final Completion is delayed, adjustment, if any, to the Contract Time on account of such delay shall be in accordance with the following:

3.7.5.1 Excusable Delays. If Final 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 District Representative; Excusable Delays shall not result in any increase in the Design and Construction Services Contract Price except as provided in Section 3.7.5.2, or otherwise in the Contract Documents. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of Vendor, any Subcontractor, Material Supplier or other person directly or indirectly engaged by Vendor 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 Vendor or any person or entity directly or indirectly engaged by Vendor in performance of any portion of the Work shall be deemed conditions beyond the control of Vendor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if Vendor
establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Vendor’s notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Vendor’s request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of Vendor or any person or entity directly or indirectly engaged by Vendor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Vendor’s request to adjust the Contract Time directly and adversely impacted the progress 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.

3.7.5.2 Compensable Delays. If Final Completion of the Work is delayed and such delay is caused by the acts or omissions of the District, or separate contractor employed by the District (collectively “Compensable Delays”), upon Vendor’s request and notice, in strict conformity with applicable provisions of the Contract Documents, the Contract Time will be adjusted by Change Order for such reasonable period of time as determined by the District Representative and the Vendor, taking into consideration all intervening and interfering events, including without limitation weather, competing uses for the project site, work by other unrelated contractors, and other matters not within the control of Vendor. In accordance with California Public Contract Code §7102, if Vendor’s progress is delayed by any of the events described in the preceding sentence, Vendor shall not be precluded from the recovery of damages directly and proximately resulting therefrom, to the extent that Vendor and its employees, subcontractors, agents or representative are not responsible for the delay, the delay is unreasonable under the circumstances involved and the delay was not within the reasonable contemplation of the District and Vendor at the time of execution of the Agreement. In such event, Vendor’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, Vendor shall not have any other claim, demand or right to adjustment of the Design and Construction Services Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Design and Construction Services 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.

3.7.5.3 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 Paragraphs 3.7.6.1 and 3.7.6.2 above. Neither the Design and Construction Services Contract Price nor the Contract Time shall be adjusted on account of Unexcusable Delays.

3.7.6 Adjustment of Contract Time.

3.7.6.1 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 Vendor to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Vendor’s waiver of the same.

3.7.6.2 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 Approved 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 Vendor 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.

3.8 Liquidated Damages. Should Vendor neglect, fail or refuse to (i) achieve Final Completion of the Work within the Contract Time, being 1 year from date of signed contract (subject to adjustments authorized under the Contract Documents); (ii) or to complete Punchlist items within the time established pursuant to the Contract Documents, Vendor agrees to pay to the District the amount of per diem Liquidated Damages set forth below, not as a penalty but as Liquidated Damages, for every day beyond the Contract Time, as adjusted, until Final Completion or completion of the Punchlist items are achieved. The Liquidated Damages amounts set forth herein are agreed upon by and between Vendor and the District because of the difficulty of fixing the District’s actual damages in the event of delayed submission of Submittals, Final Completion or completion of Punchlist items. Vendor 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 from the Design and Construction Services Contract Price then or thereafter due Vendor. Vendor and the Vendor’s Performance Bond Surety shall be jointly and severally liable to the District for any Liquidated Damages exceeding any amount of the Construction Services Contract Price then held or retained by the District. In the event that Vendor 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 the provisions of this Agreement, 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 Vendor with the cost of completing or correcting such items of the Work in accordance with the provisions of this Agreement. Vendor and the District acknowledge and agree that the provisions of this Paragraph 3.8 are reasonable under the circumstances existing at the time of Vendor’s execution of the Agreement.

8.3.1 Liquidated Damages for Delayed Substantial Completion. Liquidated Damages for delayed Final Completion of the Work shall be Two Hundred Fifty Dollars ($250) per day for the first fourteen (14) days of delayed Final Completion and Four Hundred Fifty Dollars ($450) per day for each day of delayed Final Completion, commencing on the fifteenth (15th) day after the scheduled date of Final Completion, until Final Completion is achieved.

8.3.2 District Right to Take-Over Work. Unless caused by the District, if Vendor 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 one (1) week advance written notice from the District Representative to Vendor of its failure or refusal, the District may thereafter, without terminating this Agreement or waiving/limiting any right or remedy arising therefrom,
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 reasonable 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 Vendor and the District may deduct the same from the
Design and Construction Services Contract Price then or thereafter due Vendor. 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 or
arising by operation of law.

3.9 **Design and Construction Services Contract Price.** The Design and Construction Services
Contract Price is the amount stated in this 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 Vendor for its full and complete performance of Design and Construction
Services under the Contract Documents. The District’s payment of the Design and
Construction Services Contract Price to Vendor shall be in accordance the provisions of this
Paragraph 4.2.

3.10.1 **Cost Breakdown.** Within fifteen (15) days of the execution of the date of issuance of
the Notice to Proceed, Vendor shall furnish, on forms acceptable to the District, a
detailed estimate and complete Cost Breakdown of the Design and Construction
Services Contract Price. The Cost Breakdown shall be subject to review and approval
by the District Representative of the form and content thereof. In the event that the
District Representative objects to any portion of the Cost Breakdown, within ten (10)
days of the District’s receipt of the Cost Breakdown, the District Representative shall
notify Vendor, in writing of such objection(s) to the Cost Breakdown. Within five (5)
days of the date of the District Representative’s written objection(s), Vendor shall
submit a revised Cost Breakdown to the District Representative for review and
approval. The foregoing procedure for the preparation, review and acceptance of the
Cost Breakdown shall continue until the District Representative has approved of the
entirety of the Cost Breakdown. Once the Cost Breakdown is approved by the District
Representative, the Cost Breakdown shall not be thereafter modified or amended by
Vendor without the prior consent and approval of the District Representative, which
may be granted or withheld in their sole reasonable discretion.

3.10.2 **Progress Payments of Design and Construction Services Contract Price.**

3.10.2.1 **Applications for Progress Payments.** During Vendor’s performance of
Construction Services, Vendor shall submit an invoice to the District
Representative, Applications for Progress Payments monthly, setting forth an
itemized estimate of Work completed in the preceding month for the purpose of
the District’s making of Progress Payments of the Design and Construction
Services Contract Price. Within thirty (30) days after the District’s receipt of
invoice, District shall make payment to the Vendor for the work performed
hereunder. Values utilized in the Applications for Progress Payments shall be
based upon the District approved Cost Breakdown and such values shall be only
for determining the basis of Progress Payments to Vendor, and shall not be
considered as fixing a basis for adjustments, whether additive or deductive, to the
Design and Construction Services Contract Price, or for determining the extent of
Work actually completed.

3.10.2.2 **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 will review each Application for Progress
Payment 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. 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 Vendor and such completed Application for Progress Payment is accompanied by: (i) Certified Payrolls of Vendor and all Subcontractors, of any tier, for laborers performing any portion of the Work for which a Progress Payment is requested; (ii) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §3262 of Vendor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment requested; (iii) duly completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code §3262 of Vendor, all Subcontractors of any tier, and Material Suppliers covering the Progress Payment received by Vendor under the prior Application for Progress Payment; (iv) if applicable, a current union statement reflecting that Vendor and any Subcontractor of any tier, are current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining agreement to which Vendor or any such Subcontractor is a party to or is otherwise bound by; and (v) a certification by Vendor 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 prior to disbursement of the Progress Payment. 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 Vendor as soon as is practicable after receipt of the same from Vendor, 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.

3.10.2.3 Review of Applications for Progress Payments. Upon receipt of an Application for Progress Payment, the District Representative 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 Vendor under the terms of the Contract Documents.

3.10.2.4 District’s Disbursement of Progress Payments.

3.10.2.4.1 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 Vendor 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 District Representative; 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 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 Vendor to submit documents with the Application for Progress Payment, as required by the Contract Documents, 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 Vendor accurately and fully completes preparation of the Record Drawings relating to the Work for which the Progress Payment is requested.

3.10.2.5 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 Vendor 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, and the District does not return such Application for Progress Payment within seven (7) days, 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.

3.10.2.6 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 Vendor and such Subcontractor or Material Supplier in satisfaction of its obligation to make Progress Payments or the Final Payment due hereunder.

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

3.10.2.8 Progress Payments for Changed Work. Vendor’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 District Representative 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.

3.10.3 Materials or Equipment Not Incorporated Into the Work.

3.10.3.1 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 Vendor’s
3.10.3.2 **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 Vendor’s submittal of an Application for Progress Payment incorporating therein a request for payment of such materials or equipment if all of the following are complied with: (a) the materials or equipment have been delivered to the Site; (b) adequate arrangements, reasonably satisfactory to the District, have been made by Vendor 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 pursuant to the Contract Documents; and (c) 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. Vendor acknowledges that the discretion to make, or not to make, payment for materials or equipment delivered or stored at the Site 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. If the District elects to make payment for materials or equipment delivered and stored at the Site, the costs and expenses incurred to comply with the requirements of (b) and (c) above shall be borne solely and exclusively by Vendor and no payment shall be made by the District on account of such costs and expenses.

3.10.3.3 **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 Vendor’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: (a) adequate arrangements, reasonably satisfactory to the District, have been made by Vendor 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 pursuant to the Contract Documents; and (b) 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. Vendor 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 (a) and (b) above shall be borne solely and exclusively by Vendor and no payment shall be made by the District on
account of such costs and expenses.

3.10.3.4 **Materials or Equipment in Fabrication or Transit.** 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.

3.10.3.5 **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 Vendor’s Application for Progress Payment shall include, nor shall the District be obligated to disburse any portion of the Design and Construction Services Contract Price for amounts which Vendor does not intend to pay any Subcontractor, of any tier, or Material Supplier because of a dispute or any other reason.

3.10.3.6 **Title to Work.** Vendor 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. Vendor further warrants that upon submittal of an Application for Progress Payment, all Work for which a Progress Payment has been previously issued and Vendor has received payment from the District therefor shall, to the best of Vendor’s knowledge, information and belief, be free and clear of liens, claims, stop notices, security interests or encumbrances in favor of Vendor, Subcontractors, Material Suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

3.10.4 **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 Vendor’s performance under the Contract Documents at the request and expense of Vendor 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 Vendor to request the substitution of eligible and equivalent securities for monies to be withheld by the District within ten (10) days following issuance of the Notice to Proceed shall be deemed a waiver of such right.

3.10.5 **Final Payment.**

3.10.5.1 **Application for Final Payment.** When Vendor has achieved Final Completion of the Work and has otherwise fully performed its obligations under the Contract Documents, Vendor shall submit an Application for Final Payment on such form as approved by the District. Thereupon, the District Representative will promptly make a final inspection of the Work and when the District Representative finds the Work acceptable under the Contract Documents and that the Contract has been fully performed by Vendor, the District Representative will thereupon promptly approve the Application for Final Payment. The Final Payment shall include the remaining balance of the Design and Construction Services Contract Price and any retention from Progress Payments previously withheld by the District.

3.10.5.2 **Conditions Precedent to Disbursement of Final Payment.** Neither Final Payment nor any remaining Design and Construction Services Contract Price shall become due until Vendor 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 Vendor 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 Vendor’s receipt of Final Payment is currently in effect; (iii) a written statement that Vendor 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) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of Vendor, 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; (v) Operations and Maintenance manuals and separate warranties provided by any manufacturer or distributor of any materials or equipment incorporated into the Work; (vi) the Record Drawings; (vii) the form of Guarantee included in the Contract Documents duly executed by an authorized representative of Vendor; (viii) any and all other items or documents required by the Contract Documents to be delivered to the District upon completion of the Work; (ix) 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 (x) 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.

3.10.5.3 Disbursement of Final Payment. Provided that the District is then in receipt of all documents and other items required by the Contract Documents as conditions precedent to the District’s obligation to disburse Final Payment, not later than thirty (30) days following Final Acceptance the District shall disburse the Final Payment to Vendor. Pursuant to California Public Contract Code §7107, if there is any dispute between the District and Vendor 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.

3.10.5.4 Waiver of Claims. Vendor’s acceptance of the Final Payment is a waiver and release by Vendor of any and all claims against the District for compensation or otherwise in connection with Vendor’s performance of the Contract.

3.10.5.5 Claims Asserted After Final Payment. Any lien, stop notice or other claim filed or asserted after Vendor’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 Vendor 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, Vendor 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.
3.10.6 Withholding of Payments. The District may withhold any Progress Payment or the Final Payment, in whole or in part, or backcharge Vendor 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 Vendor 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 Design and Construction Services 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 Vendor; (vii) any amounts due from Vendor to the District under the terms of the Contract Documents; or (viii) Vendor’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 Vendor 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 District Representative and any public authority having jurisdiction over the Work, or any portion thereof, shall not be fully and completely complied with by Vendor. When the District is reasonably satisfied that Vendor has remedied any such deficiency, payment shall be made of the amount withheld. In lieu of making payment of withheld amounts to Vendor, the District may, in its sole exclusive discretion, apply withheld amounts to the payment and satisfactions of debts and obligations of Vendor relating to the Work. In doing, the District shall be an agent of Vendor for the sole and limited purpose of making payment(s) to others for the Work on behalf of Vendor; payments made by the District pursuant to the foregoing shall be deemed payments to Vendor and the Design and Construction Services Contract Price shall be adjusted to reflect such payment(s). The District shall not be liable to Vendor or others for its good faith decision to make or not make payment(s) of amounts withheld from Vendor pursuant to the foregoing. If the District elects to make payments to other of amounts withheld from Vendor, the District may do so without prior judicial determination; the District will render Vendor a complete and accurate accounting of amounts withheld and paid to others on behalf of Vendor.

3.10.7 Payments to Subcontractors. Vendor 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 Vendor’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. Vendor shall timely make payment of retention due Subcontractors in accordance with Public Contract Code §7107.

3.11 Changes

3.11.1 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 delete Work. Vendor shall not proceed with any Change involving an increase or decrease in the Design and Construction Services Contract Price or the Contract Time without prior written authorization from the District. The foregoing notwithstanding, Vendor shall promptly commence and diligently complete any Change to the Work subject to the District’s written authorized issued pursuant to the preceding sentence; Vendor 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 Vendor and the District to agree upon the extent of any adjustment to the Contract Time or the Design and Construction Services Contract Price on account of such Change. The issuance of a Change Order in connection with any Change authorized by the District shall not be deemed a condition precedent to Vendor’s obligation to promptly commence and diligently complete any such Change authorized by the District hereunder. Any requirement of notice of Changes in the scope of Work to the Surety shall be the responsibility of Vendor. Changes to the Work are subject to approval by governmental and/or quasi-governmental agencies with jurisdiction over the Change or the Project.

3.11.2 Oral Order of Change in the Work. Any oral order, direction, instruction, interpretation, or determination from the District, Inspectors or the District Representative which in the opinion of Vendor causes any change to the scope of the Work, or otherwise requires an adjustment to the Design and Construction Services Contract Price or the Contract Time, shall be treated as a Change only if Vendor gives the District Representative written notice within fifteen (15) days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith. Time is of the essence in Vendor’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 Vendor’s notice. Accordingly, Vendor acknowledges that its failure, for any reason, to give written notice within fifteen (15) days of such order, direction, instruction, interpretation or determination shall be deemed Vendor’s waiver of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Design and Construction Services 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 Design and Construction Services Contract Price or the Contract Time, if any, requested, and the source of the order, directions, instructions, interpretation or determination that Vendor regards as a Change. Unless Vendor acts in strict accordance with this procedure, any such order, direction, instruction, interpretation or determination shall not be treated as a Change and Vendor hereby waives any claim for any adjustment to the Design and Construction Services Contract Price or the Contract Time on account thereof.

3.11.3 Vendor Submittal of Data. Within thirty (30) 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, Vendor shall submit to the District Representative a detailed written statement setting forth the general nature of the Change, the amount of any adjustment to the Design and Construction Services 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 Design and Construction Services Contract Price or the Contract Time shall be allowed if not asserted by Vendor in strict conformity herewith or if asserted after Final Payment is made under the Contract Documents.
3.11.4 Adjustment to Design and Construction Services Contract Price and Contract Time on Account of Changes to the Work.

3.11.4.1 Adjustment to Design and Construction Services Contract Price.

Adjustments to the Design and Construction Services 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:

3.11.4.1.1 Mutual Agreement. By negotiation and mutual agreement, on a lump sum basis, between the District and Vendor on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change. Vendor’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 Representative to review and assess the completeness and accuracy thereof. Vendor 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 Representative for such estimate.

3.11.4.1.2 Determination by the District. By the District, whether or not negotiations are initiated pursuant to the preceding Paragraph based upon actual and necessary costs incurred by Vendor as determined by the District on the basis of Vendor’s records. In the event that the procedure set forth in this Paragraph is utilized to determine the adjustment to the Design and Construction Services Contract Price for Changes to the Work, promptly upon determining the extent of adjustment to the Design and Construction Services Contract Price, the District shall notifyVendor in writing of the same; Vendor shall be deemed to have accepted the District’s determination of the amount of adjustment to the Design and Construction Services Contract Price on account of a Change to the Work unless Vendor shall notify the District Representative, 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. Notwithstanding any objection of Vendor to the District’s determination of the extent of any adjustment to the Design and Construction Services Contract Price, Vendor shall diligently proceed to perform and complete any such Change.

3.11.4.1.3 Basis for Adjustment of Design and Construction Services Contract Price.

If Changes in the Work require an adjustment of the Design and Construction Services Contract Price the basis for adjustment of the Design and Construction Services Contract Price shall be as follows:

3.11.4.1.3.1 Labor. Vendor shall be compensated for the costs of field labor actually and directly utilized in the performance of the Change. Wage rates for labor shall not exceed the prevailing wage rates for the labor classification(s) necessary for the performance of the Change. Labor costs exclude costs incurred by Vendor to prepare estimate(s) of the costs of the Change, maintenance of records relating to the Change, coordination and assembly of materials and information relating to the Change or performance thereof, or the supervision, general overhead and administrative functions and general conditions costs associated with the Change or performance thereof.
3.11.4.1.3.2 **Materials and Equipment.** Vendor shall be compensated for the actual costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. If, in the reasonable opinion of the District, the costs asserted by Vendor for materials and/or equipment in connection with any Change is excessive, or if Vendor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment, 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 Vendor shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

3.11.4.1.3.3 **Construction Equipment.** Vendor 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 includes time required to move such Construction Equipment to the Site from the nearest available rental source. If Construction Equipment is not moved to the Site by its own power, Vendor 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 Vendor from the District Representative and the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. Vendor 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 Vendor in connection with the performance of any Change to the Work shall not exceed commercial rental rates in the locality of the Site. The allowable rate for Construction Equipment in connection with Changes to the Work is full compensation to Vendor 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 Vendor incidental to the use of such Construction Equipment.

3.11.4.1.3.4 **Mark-up on Costs of Changes to the Work.** In determining the cost to the District and the extent of increase to the Design and Construction Services 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 herein. For the portion of any Change performed by Subcontractors of any tier, the percentage mark-up on the allowable actual direct labor and materials costs cumulatively incurred by all Subcontractors of any tier shall be Fifteen Percent (15%). In addition, for the portion of any Change performed by Subcontractors of any tier, Vendor may add an amount equal to Twenty Five Percent (25%) of the allowable actual direct labor and materials costs of Subcontractors performing the Change. For the portion of any Change performed by the Vendor'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%). If a Change to the Work reduces the Design and Construction Services Contract Price, no profit, general conditions or overhead costs shall be paid by the District to Vendor for the reduced or deleted Work. In the event of deductive changes, the adjustment to the Design and Construction Services 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.

3.11.4.1.3.5 Vendor Maintenance of Records. In the event that Vendor shall be directed to perform any Changes to the Work, or should Vendor encounter conditions which Vendor believes would obligate the District to adjust the Design and Construction Services Contract Price and/or the Contract Time, Vendor 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. If more than one Change to the Work is performed by Vendor in a calendar day, Vendor shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. If Subcontractors provide or perform any portion of Change to the Work, Vendor shall require that each such Subcontractor maintain records in accordance with this Paragraph. Each daily record maintained hereunder shall be signed by Vendor's Superintendent or Vendor's authorized representative; such signature shall be deemed Vendor's representation and warranty that all information contained therein is true, accurate, and complete and relate only to the Change referenced therein. All records maintained by a Subcontractor, 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 Representative upon request. If Vendor fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Design and Construction Services Contract Price on account of any Change to the Work is determined by the district, the District's reasonable good faith determination of the extent of adjustment to the Design and Construction Services Contract Price shall be final, conclusive,
dispositive and binding upon Vendor. Vendor’s obligation to maintain records hereunder is in addition to, and not in lieu of, any other Vendor obligation under the Contract Documents with respect to Changes to the Work.

3.11.4.2 Adjustment to Contract Time. In the event of Change(s) to the Work 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.

3.11.5 Change Orders. If the District approves of a Change, a written Change Order prepared by the District Representative on behalf of the District shall be forwarded to Vendor describing the Change and setting forth the adjustment to the Contract Time and the Design and Construction Services 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 Vendor for inclusion in the Change Order shall be deemed waived. Once the Change Order has been prepared and forwarded to Vendor for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, Vendor shall not modify or amend the form or content of such Change Order, or any portion thereof. Vendor’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.

3.11.6 Vendor Notice of Changes. If Vendor should claim that any instruction, request, action, condition, omission, default, or other situation obligates the District to increase the Design and Construction Services Contract Price or to extend the Contract Time, Vendor shall notify the District Representative, 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 Vendor only if sufficient supporting documentation is submitted with Vendor’s notice to the District Representative. Time is of the essence in Vendor’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, action, condition, omission, default or other situation. Accordingly, Vendor 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, action, condition, omission, default or other situation for which Vendor believes there should an adjustment of the Contract Time or the Design and Construction Services Contract Price shall be deemed Vendor’s waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Design and Construction Services 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 Design and Construction Services Contract Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with Vendor’s written notice under this Paragraph, any such adjustment shall be determined
in accordance with the Contract Documents.

3.11.7 Disputed Changes. In the event of any dispute or disagreement between Vendor and the District regarding the characterization of any item as a Change to the Work or as to the appropriate adjustment of the Design and Construction Services Contract Price or the Contract Time on account thereof, Vendor shall promptly proceed with the performance of such item of the Work, subject to a prompt resolution of such dispute or disagreement in accordance with the terms of the Contract Documents. Vendor’s failure or refusal to so proceed with such Work is Vendor’s default of a material obligation.

3.11.8 Emergencies. In an emergency affecting the safety of life, or of the Work, or of property, Vendor, without special instruction or prior authorization from the District or the District Representative, is permitted to act at its discretion to prevent such threatened loss or injury.

3.11.9 Minor Changes in the Work. The District Representative may order minor Changes in the Work not involving an adjustment in the Design and Construction Services 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 Vendor.

3.11.10 Unauthorized Changes. Any Work beyond the lines and grades shown on the Contract Documents, or any extra Work performed or provided by Vendor without notice to the District Representative in the manner and within the time set forth in the Contract Documents. 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 Vendor’s sole cost and expense. The failure of the District to order removal of such Work is not acceptance of such Work nor relieves Vendor from any liability on account thereof.

3.12 Correction of Work; Warranties.

3.12.1 Uncovering of Work. If any portion of the Work is covered contrary to the request of the District Representative or the requirements of the Contract Documents, it must, if required by the District Representative, be uncovered for observation by the District Representative and be replaced without adjustment of the Contract Time or the Design and Construction Services Contract Price.

3.12.2 Rejection of Work. Prior to the District’s Final Acceptance of the Work, any Work which is defective or not in conformity with the Contract Documents may be rejected by the District Representative and Vendor shall correct such rejected Work without adjustment to the Design and Construction Services Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected or even if they failed to observe the defective or non-conforming Work, materials or equipment. Vendor 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 Vendor nor accepted by the District.

3.12.3 Correction of Work. Vendor shall promptly correct any portion of the Work properly rejected by the District Representative 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. Vendor shall bear all costs of correcting such rejected Work,
including additional testing and inspections and compensation for the services and expenses made necessary thereby. Vendor shall bear all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the District or separate contractors, caused by Vendor’s correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective.

3.12.4 Failure of Vendor to Correct Work. If Vendor fails to commence to correct defective or non-conforming Work within five (5) days of notice of such condition and promptly thereafter complete the same within a reasonable time, the District may correct the same at Vendor’s expense.

3.12.5 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 Design and Construction Services Contract Price may be reduced as appropriate and equitable.

3.12.6 Workmanship and Materials. Vendor 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 District Representative,Vendor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Vendor 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.

3.12.7 Warranty Work. In addition to the CSI required warranty provisions, if, within one year after the date of Final Acceptance, 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, Vendor shall commence necessary corrective action not more than Four (4) business days after receipt of a written notice from the District to do so, and to thereafter diligently complete the same. If Vendor fails or refuses to commence correction of any such item within said Four (4) business day period or to diligently prosecute such corrective actions to completion, the District may, without further notice to Vendor, cause such corrective Work to be performed and completed. In such event, Vendor and Vendor’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 Vendor under the Contract Documents. The obligations of Vendor hereunder are in addition to, and not in lieu of, any 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 Vendor from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein.

3.12.8 Survival of Warranties. Vendor’s warranty obligations survive Vendor’s completion of Work, the District’s Final Acceptance of the Work or the termination
of the Contract.

4 **Contract Price.** The Contract Price under this Agreement consists of: the Design and Construction Services Contract Price as follows:

4.1 **Design and Construction Services Contract Price.** The Design and Construction Services Contract Price is included in the total cost of the project, defined in Section 4.2 of this Contract.

4.1.1 **No Adjustment to Design and Construction Services Contract Price.** Except for Reimbursable Expenses for permit fees and reproduction of the Design and Construction Documents for Subcontractors, the Design and Construction Services Contract Price is the full and complete amount due Vendor from the District for Vendor’s completion of Design and Construction Services. Except as expressly set forth hereinafore, Vendor is not entitled to payments for other expenses or costs incurred by Vendor in connection with completion of Design and Construction Services.

4.1.2 **Vendor Billings for Payment of the Design and Construction Services Contract Price.** During its performance of Design and Construction Services, Vendor shall submit monthly billing statements for payment of portions of the Design and Construction Services Contract Price. Each monthly billing statement shall reflect the costs of the Design and Construction Services rendered in the immediately preceding month, provided that the monthly billing statements shall be limited the amount allocated to each phase of the Design and Construction Services. Billing statements shall be in such form and format and with such detail as required by the District.

4.1.3 **District Payments for Design and Construction Services.** Within thirty (30) days of receipt of Vendor’s billing statements for Design and Construction Services, District will make payment to Vendor of undisputed amounts of the Design and Construction Services Contract Price. The District may, however, withhold or deduct from amounts otherwise due Vendor for Design and Construction Services if Vendor fails to timely and completely perform material obligations to be performed on its part under this Agreement, with the amounts withheld or deducted being released after Vendor has fully cured such failure of performance, less costs, damages or losses sustained by the District resulting therefrom. Notwithstanding any provision of this Agreement to the contrary, if the District shall, in good faith, dispute the amount due Vendor for Design and Construction Services under any billing statement for Design and Construction Services rendered by Vendor under this Agreement, pursuant to Civil Code §3320(a), the District may withhold from payment to Vendor an amount not to exceed one hundred and fifty percent (150%) of the disputed amount.

4.1.4 **Reimbursable Expenses.** There are no Reimbursable Expenses due from the District to Vendor in connection with Vendor’s Design and Construction Services, except for the actual direct costs of permits or approvals of the Design and Construction Documents for construction of the Project or if the District directs Vendor to reproduce the Design and Construction Documents for use by Subcontractors during construction. Reimbursable Expenses, if any, shall be billed by Vendor to the District at actual cost without mark-up.

4.2 **Design and Construction Services Contract Price.** The Design and Construction Services Contract Price for Vendor’s installation and construction of the Work depicted in the Construction Documents is Three Million Two Hundred Seven Thousand Two Hundred Eighty Nine Dollars ($3,207,289).
4.2.1 District’s Disbursement of the Design and Construction Services Contract Price. The District will disburse the Design and Construction Services Contract Price by Progress Payments as set forth in this Agreement.

4.3 Funding and Disbursement of Contract Price.

4.3.1 Funding Sources. Vendor and the District acknowledge and agree that funds for payment of the Contract Price is derived from one (1) source: District funds in the amount of Three Million Two Hundred Seven Thousand Two Hundred Eighty Nine Dollars ($3,207,289).

4.3.2 SCE Rebate. Assignment of SCE Application. Vendor and the District acknowledge that an application for the SCE Rebate Reservations under the California Solar Initiative (“the SCE Application”); has been developed and is in the process of being executed by the District in preparation for submission to SCE. The SCE Application will be submitted by the Vendor as soon as received from the District. Vendor shall support the District in the Application Process of the SCE Rebate. District shall be the Recipient of the SCE Rebate.

4.3.3 Payment of the Design and Construction Services Contract Price. Amounts due to Vendor under this Agreement for the Design and Construction Services Contract Price shall be paid or disbursed by the District from the Lease Proceeds or the District funds, in the sole discretion of the District. Payment of the Design and Construction Contract Price shall be in accordance with the Progress Payment Schedule (Exhibit C). Notwithstanding any provision of this Agreement to the contrary, the District’s liability to Vendor for payment of the Design and Construction Services Contract Price shall be limited to the Lease Proceeds and District funds. Disbursement of any portion of the Design Services Contract Price or the Construction Services Contract Price shall be subject to the Vendor’s payment requests and substantiating data comply with and conform to requirements set forth in the Equipment Lease relating to the review, evaluation and disbursement of Lease Proceeds. For the limited purposes of the conditions and requirements established in the Lease relating to disbursement of the Lease Proceeds, the Lease is incorporated herein by this reference as if set forth in full herein.

5 Insurance; Indemnity and Bonds.

5.1 Design and Construction Phase Insurance Requirements. At all times during performance of obligations under this Agreement, Vendor and its Design Services sub-consultants and its Construction Services Subcontractors shall obtain and maintain the following insurance coverages:

5.1.1 Workers’ Compensation Insurance; Employer’s Liability Insurance. Vendor and each of its Design Consultants and Subcontractors shall purchase and maintain Workers’ Compensation Insurance as will protect them 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. Vendor and each of its Design Consultants and Subcontractors 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 Vendor. The Employer’s Liability Insurance required of Vendor and its Design Consultants and Subcontractors hereunder may be obtained as a separate policy of insurance or as an additional coverage under the Workers’ Compensation Insurance required to be obtained and maintained hereunder. Coverage amounts for Vendor, its Design
Consultants and Subcontractors under their respective Workers Compensation insurance policies shall be in accordance with applicable law. The coverage amount under Employer’s Liability Insurance required hereunder for Vendor, its Design Consultants and Subcontractors shall be One Million Dollars ($1,000,000). Concurrently with execution of this Agreement, Vendor shall execute and deliver to the District the form of Certificate of Workers Compensation Insurance attached hereto as Exhibit B or a Self administered Claims letter per section 5.8 of this Agreement. The foregoing is a material obligation of Vendor hereunder.

5.1.2 Commercial General Liability and Property Insurance. Vendor and each of its Design Consultants and Subcontractors shall purchase and maintain Commercial General Liability Insurance. The coverage under the Commercial General Liability insurance policies of Vendor and its Design Consultants/Subcontractors shall be One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate.

5.2 Design Phase Insurance. In addition to the insurance coverage requirements set forth above, in connection with Vendor’s obligations under the Design Phase of this Agreement, Vendor and each of its Design Services Consultants shall each obtain and maintain a policy of Professional Liability insurance covering their liabilities in completing its obligations in connection with the Design Services under this Agreement. The coverage amounts of the Professional Liability insurance policies of Vendor and each of its Design Phase Consultants shall be One Million Dollars ($1,000,000) per claim/Two Million Dollars ($2,000,000) aggregate.

5.3 Builder’s Risk “All-Risk” Insurance. Builders Risk insurance covering the risks of loss, damage or destruction of Work in progress or in place at the Site resulting from the perils of fire, malicious mischief, vandalism, and collapse will be obtained by the District as part of the scope of coverage under the District’s property casualty insurance policy. If a claim is adjusted under the District obtained Builder’s Risk Insurance, Vendor shall be liable and responsible for payment of the deductible. In lieu of Vendor’s direct payment of the deductible to the insurance carrier issuing the Builder’s Risk Insurance policy, the District may deduct any portion of the deductible from the Design and Construction Services Contract Price then or thereafter due Vendor.

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

5.4.1 Minimum Coverage Amounts. The insurance required of Vendor 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 Vendor hereunder, Vendor shall be solely and exclusively responsible for the payment of the deductible, if any, under such policy of insurance, without adjustment to the Design and Construction Services Contract Price on account thereof.

5.4.2 Required Qualifications of Insurers. Required policies of insurance under this Agreement 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 Vendor obligations under this Agreement, the insurer(s) issuing a required policy of insurance is/are not A.M. Best rated A- or better and is/are not A.M. Best Financial Size Category VII or higher, Vendor or its Design
Consultant/Subcontractor, as applicable shall within thirty (30) days of the District’s written notice of the insufficiency of an insurer to 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 Vendor 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 payment otherwise due hereunder until Vendor has delivered such Certificate(s) of Insurance from an alternative insurer(s).

5.5 Evidence of Insurance; Subcontractor’s Insurance. Concurrently with execution of this Agreement, Vendor shall provide to the District Representative documented evidence of Insurance for itself and all Design Phase Sub-Consultants evidencing the insurance coverages in at least the coverage amounts required by this Agreement during performance of Design Services. Prior to commencing construction activities at the Site, Vendor shall deliver to the District Representative documented evidence of Insurance evidencing the insurance coverages required of Vendor and its Subcontractors during performance of Construction Services. Failure or refusal of Vendor to so deliver documented evidence of Insurance may be deemed by the District to be a default of a material obligation of Vendor 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 documented evidences 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 Vendor hereunder during Construction Services shall also name the District, as an additional insured. Should any policy of insurance be canceled before Final Acceptance of the Work by the District and Vendor 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 Vendor under the Contract Documents. Vendor 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 Vendor to comply with the District’s request may be deemed by the District to be a default of a material obligation of Vendor under the Contract Documents.

5.6 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 Vendor fails to immediately procure replacement insurance as specified, the District reserves the right to procure such insurance and to charge the cost thereof to Vendor. Nothing contained in these insurance requirements is to be construed as limiting the extent of Vendor’s responsibility for payment of damages resulting from its operations or performance of the Work under the Contract Documents, including without limitation Vendor’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 Vendor of its obligation to maintain insurance required under this Paragraph 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.

5.7 Vendor’s Insurance Primary. All insurance and the coverages thereunder required to be
obtained and maintained by Vendor 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 Vendor’s Builder’s Risk Insurance or the Comprehensive General Liability Insurance of Vendor or any Subcontractor, the District, Vendor and all Subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurances coverage required herein of Vendor and its Subcontractors shall be included in the Design and Construction Services Contract Price.

5.8 Vendor's Insurance. In lieu of any insurances required by the Vendor in this Section 5, Vendor may self assume the risks hereunder and use a Self Administered Claims Program for this purpose. Vendor will notify the District in writing 30 days prior to cancellation of the Self Administered Claims Program.

For the insurance policies described above, each Party agrees to name the other Party, its officers, agents, and employees as Additional Insured under its policy(ies), and shall deliver certificate(s) of insurance and Additional Insured Endorsement(s) evidencing the required coverage’s to the other Party. If a Party is self-insured, the Party shall provide a Certificate of Self-Insurance to the other Party prior to the commencement of this Agreement. Such evidence shall provide for written notice by mail at least thirty (30) days in advance of cancellation for all required coverage’s.

5.9 Indemnity. Unless arising out of the negligence, gross negligence or willful misconduct of Vendor or its employees, subcontractors, agents or representatives, the District, Vendor shall indemnify, defend and hold harmless the Indemnified Parties who are: the District and its Board of Trustees, officers, employees, agents and representatives. Vendor’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 reasonable attorneys fees and costs which arise, in whole or in part, from the Design Services/Construction Services provided by or through Vendor, the Work, the Contract Documents or the acts, omissions or other conduct of Vendor, any Design Consultant, Subcontractor or any person or entity engaged by them. Vendor’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 Vendor, any of Vendor’s Design Consultants, Subcontractors, of any tier, or any other person or entity employed directly or indirectly by Vendor in connection with the Design Services or construction services under this Agreement and their respective agents, officers or employees. The obligations of Vendor, 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 Vendor’s obligations hereunder, and such action or proceeding names any of the Indemnified Parties as a party thereto, Vendor 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, Vendor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Vendor 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. Vendor’s obligations hereunder are binding upon Vendor. These obligations shall survive notwithstanding Vendor’s completion of the Work or the termination of the Contract.

5.10 Payment Bond: Performance Bond. Prior to commencement of Construction Services, Vendor shall furnish a Performance Bond as security for Vendor’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 Vendor’s performance of the Work under the Contract Documents. The Payment and Performance Bonds of the Vendor shall be issued with the District and Bank of America, NA as co-obligees thereunder. The amounts of the Performance Bond and the Labor and Materials Payment Bond required hereunder shall be one hundred percent (100%) of the Design and Construction Services Contract Price. Said Labor and Material Payment Bond and Performance Bond shall be in the form and content of the Labor and Material Payment Bond and the Performance Bond, respectively attached as Exhibits D and E. The failure or refusal of Vendor to furnish either the Performance Bond or the Labor and Material Payment Bond in strict conformity with these provisions may be deemed by the District as a default by Vendor of a material obligation hereunder. The Surety on any bond required under the Contract Documents shall be an Admitted Surety Insurer as that term is defined in California Code of Civil Procedure §995.120. The bonds are not being furnished to cover the performance of any energy guaranty or guaranteed savings under this contract. Customer agrees that upon Final Completion, the Performance and Payment Bonds shall be released and all obligations arising thereunder shall be terminated.

6 Termination; Suspension.

6.1 Termination for Default. Either the District or Vendor may terminate this Agreement upon seven (7) days advance written notice to the other if there is a default by the other Party in its performance of a material obligation hereunder and such default in performance is not caused by the Party initiating the termination. Such termination shall be deemed effective the seventh (7th) day following the date of the written termination notice, unless during such seven (7) day period, the Party receiving the written termination notice shall commence to cure it default(s) and diligently thereafter prosecute such cure to completion. In addition to the District’s right to terminate this Agreement pursuant to the foregoing, the District may terminate this Agreement upon written notice to Vendor if: (a) Vendor becomes bankrupt or insolvent, which shall include without limitation, a general assignment for the benefit of creditors or the filing by Vendor or a third party of a petition to reorganize debts or for protection under any bankruptcy or similar law or if a trustee or receiver is appointed for Vendor or any of Vendor’s property on account of Vendor’s insolvency; or (b) if Vendor disregards applicable laws, codes, ordinances, rules or regulations. If District exercises the right of termination hereunder prior to Vendor’s completion of Design and Construction Services, the Contract Price due the Vendor, if any, shall be based upon Design and Construction Services, completed prior the effective date of the District’s termination of this Agreement, reduced by the District’s prior payments of the Design and Construction Services Contract Price and losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement. If the District exercises the right of termination hereunder after Vendor’s completion of Design and Construction Services and prior to Vendor’s completion of Design and Construction Services, the Design and Construction Services Contract Price due Vendor shall be based upon the value of the Work actually completed and in place as of the effective date of termination, reduced by the District’s prior payments of the Design and Construction Services Contract Price and losses, damages, or other costs sustained by the District arising out of the termination of this Agreement or the cause(s) for termination of this Agreement.
Vendor shall remain responsible and liable to District all losses, damages or other costs sustained by District arising out of termination pursuant to the foregoing or otherwise arising out of Vendor’s default hereunder, to the extent that such losses, damages or other costs exceed any amount due Vendor hereunder for the Design and Construction Services Contract Price.

6.2 District’s Right to Suspend. The District may, in its discretion, suspend all or any part of the design or construction of the Project or the Vendor's services under this Agreement; provided, however, that if the District shall suspend design or construction of the Project or Vendor’s services for a period of sixty (60) consecutive days or more and such suspension is not caused by the Vendor’s default or the acts or omissions of Vendor or its Design Consultants or Subcontractors, upon rescission of such suspension, the Design and Construction Services Contract Price will be subject to adjustment to reflect actual costs and expenses incurred by Vendor, if any, as a direct result of the suspension and resumption of Project design/construction.

6.3 District’s Termination for Convenience. The District may, at any time, upon seven (7) days advance written notice to Vendor terminate this Agreement for the District’s convenience and without fault, neglect or default on the part of Vendor. In such event, the Agreement shall be deemed terminated seven (7) days after the date of the District’s written notice to Vendor or such other time as the District and Vendor may mutually agree upon. In such event, the District shall make payment of the Design and Construction Services Contract Price to Vendor for services provided through the date of termination plus actual costs incurred by Vendor directly attributable to such termination.

6.4 Vendor Suspension of Services. If the District shall fail to make payment of the Design and Construction Services Contract Price when due Vendor hereunder, Vendor may, upon seven (7) days advance written notice to the District, suspend further performance of services hereunder until payment in full is received.

6.5 Vendor Obligations Upon Termination. Upon the District's exercise of the right of termination under pursuant to the foregoing, Vendor shall take action as directed by the District relative to on-going preparation of the Design Documents or construction of the Project. If requested by the District, the Vendor shall within five (5) days of such request, assemble and deliver to the District all work product, instruments of service and other items of a tangible nature (whether in the form of documents, drawings, samples or electronic files) prepared by or on behalf of the Vendor under this Agreement. Vendor shall deliver the originals of all work product, instruments of service and other items of a tangible nature requested by the District pursuant to the preceding sentence; provided, however, that Vendor may, at its sole cost and expense, make reproductions of the originals delivered to the District.

7 Miscellaneous

7.1 Governing Law; Interpretation. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. The titles of the various Paragraphs of this Agreement 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 Vendor 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 Vendor.

7.2 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 Vendor and their respective heirs, representatives,
successors-in-interest and assigns.

7.3 Cumulative Rights and Remedies; No Waiver. Duties and obligations imposed by the Contract Documents and rights and remedies hereunder are in addition to and not in lieu of nor a limitation of duties, obligations, rights and remedies under law. No action or failure to act by the District is a waiver of a right or remedy under the Contract Documents or at law nor does the District’s failure to act constitute approval of or acquiescence in a breach hereunder.

7.4 Severability. If any provision of the Contract Documents is 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.

7.5 No Assignment by Vendor. Vendor 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 may be withheld or restricted in the sole discretion of the District.

7.6 Gender and Number. Whenever the context of the Contract Documents so require, the neuter gender includes the feminine and masculine, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural number includes the singular.

7.7 Independent Contractor Status. Vendor is an independent contractor to the District and not an agent or employee of the District.

7.8 Notices. Except as otherwise expressly provided for in the Contract Documents, all notices which the District or Vendor 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 Vendor at their respective address set forth in the Special Conditions, or such other address(es) as either the District or Vendor 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.

7.9 Disputes; Continuation of Work. Notwithstanding any claim, dispute or other disagreement between the District and Vendor regarding performance under this Agreement or the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, this Agreement, the Contract Documents or the Work, Vendor 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.

7.10 Dispute Resolution; Arbitration.

7.10.1 Claims Under $375,000.00. Claims between the District and Vendor of $375,000.00 or less shall be resolved in accordance with the procedures established at Public Contract Code, §§20104 et seq

7.10.2 Arbitration. Except as provided above, any other claims, disputes, disagreements or other matters in controversy between the District and Vendor 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) is final and binding upon the District and Vendor. The discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 are applicable, and are 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. If more than one Demand for Arbitration is made by either the District or Vendor, all such controversies shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and Vendor. Vendor’s Surety, a Design Sub-Consultant, Subcontractor or Material Supplier to Vendor 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 Vendor, 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 Vendor, 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 post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.

7.10.3 Vendor Compliance with Government Code §900 et seq. The foregoing provisions relating to dispute resolution procedures notwithstanding, neither this Agreement nor such provisions shall be deemed to waive, limit or modify any requirements under Government Code §900 et seq. relating to the Vendor’s submission of claims to the District as a express condition precedent and prerequisite to filing a Demand for Arbitration, which shall be deemed a “claim” for money or damages under Government Code §900 et seq. The Vendor’s strict compliance with all applicable provisions of Government Code §900 et seq. in connection with any claim, dispute or other disagreement arising hereunder shall be an express condition precedent to the Vendor’s initiation of the binding arbitration procedures under Paragraph 7.10.2.

7.11 Attorneys Fees. Except as expressly provided for in the Contract Documents, or authorized by law, neither the District nor Vendor 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 Work.

7.12 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.

7.13 Creditworthiness. If, at any time, District’s credit rating falls below investment grade as defined by Moody's Investors Services (or other nationally-recognized independent rating agency), District agrees to provide Vendor with current information regarding its creditworthiness upon the request of Vendor. At its sole option, Vendor may then require Customer to provide security satisfactory to Vendor, and the Work may be withheld until such security is received. If District deposits the contract amount into a third-party escrow account with an escrow agent and agreement acceptable to Vendor, then the terms of this paragraph are not applicable.

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

7.15 Entire Agreement. The Contract Documents contain the entire agreement and understanding between the District and Vendor 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 Vendor.

7.16 Use of Design Documents.

7.16.1 Ownership. Subject to the provisions hereof, all of Vendor's Instruments of Service, including without limitation, the originals and reproducible transparencies of the Drawings, Specifications and other Design Documents prepared by or on behalf of Vendor under this Agreement (which include, but are not limited to, working drawings, and master plans, preliminary sketches, architectural presentation drawings, structural and other engineering calculations or computations and estimates) are and shall remain the property of Vendor. The foregoing notwithstanding, if this Agreement is terminated for the default of Vendor, in addition to any other right or remedy arising from Vendor’s default, the District may use any portion of the Design Documents (whether completed or in progress) for purpose of completing the Project. Further, notwithstanding full performance of obligations hereunder and Vendor's ownership rights to the Design Documents, Vendor grants to the District a perpetual license to use the Design Documents, without additional compensation to Vendor, in connection with the District’s use, operation, maintenance, upgrading, downsizing/upsizing of the Project, or components thereof; provided, however, that if the Design Documents are used for expansion of the Project, Vendor shall be entitled to reasonable compensation in an amount comparable to that which a competent design professional in the same general geographic area would charge for comparable design services.

7.16.2 Electronic Files. At each stage of Vendor’s submission of Schematic Design Documents and Construction Documents to the District pursuant to the terms hereof, Vendor shall also submit to the District electronic files of the same. Electronic files of the Drawings shall be prepared in the latest version of commercially available computed aided drafting software. Electronic text files shall be prepared in the latest version of MS Word.

7.17 Definitions.

7.17.1 Design Consultant(s). Design Consultant(s) are individuals or entities retained by Vendor to provide or perform a portion of the Vendor’s Design Services, including
any portion of the Design Documents. Design Consultants shall be duly licensed as required by applicable law, rule or regulation and shall be qualified to perform or provide the portion of Vendor’s services or work product assigned by having previously provided design consulting services for California public school project design and construction. The District shall have the right to reasonably disapprove a Design Consultant. Vendor shall be responsible for the adequacy, timeliness and quality of services or work product provided or performed by Design Consultants; Vendor shall be liable to District for, and shall defend, indemnify and hold harmless District and its Board of Trustees, employees, officers, agents and representatives from and against, all losses, costs, damages, liabilities, actions or demands arising out of the services or work product provided or performed by Design Consultants.

7.17.2 Submittals. Shop Drawings, Product Data or Samples prepared or provided by Vendor or its Subcontractor(s) or supplier(s) illustrating some portion of the Work.

7.17.3 Site. The physical area for construction and related activities of the Project.

7.17.4 Drawings and Specifications. The Drawings are the graphic and pictorial portions of the Design Documents showing generally the location, design and dimensions of the Work, including without limitation, plans, elevations, sections, details, schedules and diagrams. Specifications are the portion of the Design Documents which consist of written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services.

7.17.5 Work. All of the design, construction and other services required by the terms of the Agreement including all labor, materials, equipment and other services required of Vendor to complete design and construction of the Project.

7.17.6 Project Budget. The Project Budget refers to the total costs allocated by the District for construction of the Project, inclusive of the Contract Price under this Agreement. The Project Construction Budget established by the District may be modified by the District upon notice to the Vendor. As used in this Agreement, the term “Project Construction Budget” refers to the then current amount allocated for construction of the Project as modified from time-to-time.

7.17.7 Construction Cost Estimate. Construction Cost Estimates are estimates prepared by or on behalf of the Vendor of the current costs of labor, materials, equipment and services plus a reasonable allowance for Vendor’s profit, overhead and administrative cost as necessary to complete construction of the Project in accordance with the Design Documents. Construction Cost Estimates shall include a reasonable allowance for contingencies relating to market conditions at the time of solicitation of Vendor bids for the Work of the Project and Changes in the Work during construction of the Project; the allowance for contingency costs shall be consistent with the contingency established by the District in the Project Construction Budget, if any.

7.17.8 District. The “District” refers to SANTA CLARITA Community College District and unless otherwise stated, includes the District’s authorized representatives, including the District’s Board of Trustees and the District’s officers, employees, agents and representatives.

7.17.9 Surety. The Surety is the person or entity that executes, as surety, Vendor’s Labor and Material Payment Bond and/or Performance Bond.
7.17.10 **Subcontractors; Sub-Subcontractors.** A Subcontractor is a person or entity under contract with Vendor to perform a portion of Vendor’s Construction Services obligations. A Sub-Subcontractor is a person or entity under contract with a Subcontractor to perform Vendor’s Construction Services obligations. References to “Subcontractor” include Sub-Subcontractors unless otherwise stated or indicated by context.

7.17.11 **Material Supplier.** A Material Supplier is a person or entity who furnishes materials or equipment (including equipment rental) without fabricating, installing or consuming them in construction of the Project.

7.17.12 **Division of State Architect (“DSA”).** The DSA is the California Division of the State Vendor 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 (“CCR”).

7.17.13 **Vendor’s Superintendent.** Vendor’s Superintendent is an individual employed by Vendor whose principal responsibility is supervision and coordination of the Construction Services; Vendor’s Superintendent shall not perform routine construction labor.

7.17.14 **Record Drawings.** The Record Drawings are the Drawings marked by Vendor during performance of its Construction Services to completely and accurately indicate as-built condition of the Project.

7.17.15 **Construction Equipment.** “Construction Equipment” is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.

7.17.16 **Site.** The Site is the physical area designated in the Contract Documents for Vendor’s performance, construction and installation of the Work.

7.17.17 **Defective or Non-Conforming Work.** Defective or non-conforming Work is any Project construction 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.

7.17.18 **Delivery.** “Delivery” is the unloading and storage of materials, equipment or other items in a protected condition pending incorporation into the Work.

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

7.17.20 **Progress Reports; Verified Reports.** Progress Reports, if required, are written reports prepared by Vendor and periodically submitted to the District in the form and content as required by the Contract Documents.

7.17.21 **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: the Scope, Subcontractors List, Agreement, Performance Bond, Labor and Materials Payment Bond, Drug-Free Workplace Certification, and Certification of Workers Compensation Insurance, and Special Conditions. In the event of conflicts or inconsistencies between the terms of this Agreement and the Scope, the terms of this Agreement shall govern and prevail.

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

In witness hereof, the District and Vendor have executed this Agreement as of the date set forth above.

“District”
SANTA CLARITA COMMUNITY COLLEGE DISTRICT
By: _______________________________ 
Title: ________________________________ 
Date: ________________________________

“Vendor”
CHEVRON ENERGY SOLUTIONS COMPANY, a Division of Chevron U.S.A. Inc
By: _______________________________ 
Title: ________________________________ 
Date: ________________________________
EXHIBIT A

SCOPE OF WORK

Canyon Country Campus
264kWdc Photovoltaic Covered Parking
(152 Parking spaces)

Chevron Energy Solutions will design, supply, install and commission a fully integrated and operational solar photovoltaic (PV) systems. The PV system(s) will be in the form of solar covered parking structures approximately 264kW for Canyon Country Campus located on the main parking lot. Chevron ES will provide turnkey design, engineering, materials, delivery, installation, testing, and commissioning of a cost-effective and energy efficient PV system that will maximize the solar and renewable energy resource potential at the Colleges.

The System will be composed of the following:

- Purchase and installation of inverter enclosure with chainlink fence/gate.
- Purchase and installation of Schott ASE-300-DGF panels
- Purchase and installation of lighting fixtures under carport canopies, and connect to existing parking lot lighting system.
- Purchase, installation and painting of carport steel structure
- Trenching where necessary for electrical installation; patch surfaces to match existing.

TURNKEY SERVICES

Contractor will provide stamped engineered drawings, materials and installation of photovoltaic modules, installation of electrical systems including inverters, electrical connection to the existing campus electrical infrastructure and construction of mounting structures on which the photovoltaic modules are installed. Contractor shall commission the Photovoltaic System and develop the Utility Interconnection Agreement with Utility. Contractor shall provide on site construction management for the duration of the Project.

Design, Engineering and Permitting.

1. Schematic and Preliminary Designs
2. Electrical, Mechanical, and Structural System Design and Drawings
3. Engineered Drawings
4. · Project Schedule
5. · Schedule of Values
6. · Equipment details and description, specifications
7. · Layout of equipment
8. · Selection of key equipment
9. · Storage and receiving of all freight
10. · Installation of photovoltaic mounting support structures
11. · Installation and electrical connection of panels
12. · Installation of designed electrical infrastructure
13. · Apply for Interconnectivity Agreement
14. · Design Standards, codes and compliance
15. · Design life -coordination with College when trenching is performed
16. · Design calculations
17. · On site construction management
18. · Site clean up
19. · Final As-Built documents upon completion.

Overall Project Scope Exclusions:

- Local jurisdiction or DSA permits and fees.
- Responsibilities and/or removal for existing hazardous materials, including asbestos containing materials, encountered during trenching and/or required to complete construction. If Chevron ES encounters material suspected to be hazardous, we will notify the College representative and stop further work in this area until the material is removed.
- Fire alarm, fire sprinklers, or fire life safety including controls and system devices or programming.
- Repair or replace damaged or inoperable existing equipment that is not specifically being replaced under the scope of work. When such items are discovered we will immediately notify the College representative.
- Repair or replace concrete pads or base repair of existing walkway/parking lot lighting other than included in scope
- All scope of work not shown on final approved drawings and not required to achieve the project design criteria noted above.
- Any emergency generators or special equipment required to maintain the College campus electrical or mechanical needs other than for the work described above.
- Fiber optic cable or labor to install any fiber optics.

Overall Project Scope Clarifications:

- Chevron ES has assumed project construction will be allowed to proceed smoothly and in a
continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions.

- Chevron ES has assumed no bond restrictions.
- System startup, testing, and commissioning on all systems is provided under this contract.
- Chevron ES to provide temporary utilities (construction trailer, phones, copying, etc.) The college will pay actual cost of utilities used to end of construction.
- Chevron ES assumes that the facilities are compliant to all relevant building codes. No allowances have been made to bring existing systems up to code. All newly installed systems will be code compliant.
- No allowance has been made for structural upgrades to existing structures.
- A one year parts and labor warranty is provided on all work performed under this proposal.
- Work will be performed during normal work hours; no overtime hours are included in this proposal unless otherwise stated.
- Chevron ES is not responsible for delays to work by the utility companies or the College.
Subcontractor list will be provided per Section 3.6 following notice to proceed.

**Bidder:** _Chevron Energy Solutions_________
**Address:** __150 E Colorado Blvd..______________
**Telephone:** __626-304-4700_______________
**Telecopier:** __626-304-4701_______________
**Bidder’s Authorized Representative(s):** __________________________

**PROJECT:** SANTA CLARITA COMMUNITY COLLEGE – CANYON COUNTRY CAMPUS SOLAR PROJECT

<table>
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<tr>
<th>NAME OF SUBCONTRACTOR</th>
<th>BUSINESS LOCATION/ADDRESS OF SUBCONTRACTOR</th>
<th>TRADE OR PORTION OF THE WORK</th>
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PHOTOCOPY THIS PAGE AS NECESSARY TO LIST ADDITIONAL SUBCONTRACTORS
A Progress Payment Form or Schedule of Values, AIA form G 703 (SOV) will be provided per Section 3.10.1, after execution of the date of issuance of Notice to Proceed. This SOV will include a breakout of the total cost by billable details for the Scope of Work.

A Mobilization Fee will be invoiced to the Customer upon both parties signing the Energy Services Agreement and due and payable as detailed in Section 3.10.

\[
\begin{array}{|l|c|}
\hline
\text{Mobilization Fee- 20\%} & \$ 641,457.00 \\
\hline
\text{Remaining Implementation Cost} & \$ 2,565,832.00 \\
\hline
\text{Contract Amount} & \$ 3,207,289.00 \\
\hline
\end{array}
\]
SANTA CLARITA COMMUNITY COLLEGE DISTRICT

Exhibit D

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, Chevron Energy Solutions, a Division of Chevron as Principal, and _________________________________________________________ as Surety, are held and firmly bound unto SANTA CLARITA COMMUNITY COLLEGE DISTRICT hereinafter "the Obligee", in the penal sum of Three Million Two Hundred Seven Thousand Two Hundred Eighty Nine Dollars ($3,207,289) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as Canyon Country Campus Photovoltaic Project.

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

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor materials or services used, or reasonably required for use, in the performance of the Work.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully make payment to any Claimant for all labor, materials or services used or reasonably required for use in the performance of the Work then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The term “Claimant” shall refer to any person, corporation, partnership, proprietorship or other entity including without limitation, all persons and entities described in California Civil Code §3181, providing or furnishing labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard for whether such labor, materials or services were sold, leased or rented. This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

In the event suit is brought on this Bond by any Claimant for amounts due such Claimant for labor, materials or services provided or furnished by such Claimant, the Surety shall pay for the same and reasonable attorneys fees pursuant to California Civil Code §3250.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the Obligee of any such change, extension of time, alteration, deletion, addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.
IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this day of __________, 20__ by their duly authorized agent or representative.

(Principal’s Corporate Seal)  
(Principal Name)

By: ____________________________  
(Signature)

(Type or Print Name)

Title: ____________________________

(Surety’s Corporate Seal)  
(Surety Name)

By: ____________________________  
(Signature of Attorney-in-Fact for Surety)

(Attach Attorney-in-Fact Certificate)  
(Type or Print Name of Attorney-in-Fact)

(______) ____________________________  
(Area Code and Telephone Number of Surety)

Contact name, address, telephone number and email address for notices to the Surety

(______) ____________________________  
(Contact Name)

(______) ____________________________  
(Address)

(______) ____________________________  
(Telephone)

(______) ____________________________  
(Email address)
Exhibit E

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, Chevron Energy Solutions, a Division of Chevron as Principal, and _______________________________ as Surety, are held and firmly bound unto SANTA CLARITA COMMUNITY COLLEGE DISTRICT hereinafter collectively “the Obligee”, in the penal sum of Three Million Two Hundred Seven Thousand Two Hundred Eighty Nine Dollars ($3,207,289) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as Canyon Country Campus Photovoltaic Project.

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

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

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

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

In the event of the Obligee’s termination of the Contract due to the Principal’s breach or default of the Contract Documents, within twenty (20) days after written notice from the Obligee to the Surety of the Principal’s breach or default of the Contract Documents and Obligee’s termination of the Contract, the Surety shall notify Obligee in writing of Surety’s assumption of obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense (“the Notice of Election”); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Obligee, which approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal’s mere denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety’s prompt,
diligent inquiry and investigation of such denial, be justification for Surety’s failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

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

In the event suit or other proceeding is brought upon this Bond by the Obligee, the Surety shall pay to the Obligee all costs, expenses and fees incurred by the Obligee therewith, including without limitation, attorneys fees.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this _____day of __________, 20__ by their duly authorized agent or representative.

(Principal’s Corporate Seal)                (Principal Name) _____ _____ _______ ___________________
By:_________________________________________
____________________________                      (Typed or Printed Name)
Title: _______________________________________

(Surety’s Corporate Seal)                                (Surety Name) _____ ______ __________________
By:_________________________________________              (Signature of Attorney-in-Fact for Surety)
____________________________
(Attach Attorney-in-Fact Certificate) (Typed or Printed Name)

(  ) ____________________________________
(Area Code and Telephone Number of Surety)

Contact name, address, telephone number and email address for notices to the Surety
(Contact Name)

(Address)

(Telephone)

(Email address)