



MiraCosta Community College District
Measure MM PMO Office
1 Barnard Dr., Bldg. T-120
Oceanside, CA 92056
Phone: 442.262.2382

BID DOCUMENTS COVER SHEET
for
BID # MM-20-020
MiraCosta San Elijo Campus (“SAN”)
B400 & B900 Building Renovations

Bid Due Date & Time: March 22, 2021 @ 2:00PM

To: Prospective Bidders:

**** ATTENTION: Please review this document as soon as you receive it. ****

**For these Projects, all Bidders are required to have the following valid California Contractor’s Licenses:
License B.**

**Project No. 04102: SAN B900 Student Center Renovation
Project No. 04103: SAN B400 Science Labs Renovation**

Hereinafter referred to collectively as “Projects” and individually as “Project”.

ONLY Bidders who pre-qualified for this procurement will be permitted to submit a bid.

SEE SECTION I – “NOTICE TO CONTRACTORS CALLING FOR BIDS” REGARDING A MANDATORY PRE-BID CONFERENCE.

Any requests for clarifications, interpretation, or corrections, must be made in accordance with **Section II “Information for Bidders”, paragraph A - “Specific”,** paragraph 3 thereof. Please submit in writing all requests for clarification, interpretation and/or correction via email only to edajani@kitchell.com. Failure of a bidder to request clarification, interpretation, and/or correction of apparent errors or ambiguities waives the bidder’s right to object to a clarification, interpretation, and/or correction issued later by the Architect or the Owner.

If you wish to bid, your completed Bid must be returned via US Mail or personal delivery in a sealed envelope, with all required Attachments, no later than the **Bid Opening Date and Time** as stated in **Section I - Notice to Contractors Calling for Bids.**

Note: DLSE/DIR Registration Requirements: The Contractor and the Subcontractors, of every Tier, shall be registered with the Department of Industrial Relations pursuant to Labor Code §§ 1725.5 and 1771.1 for the duration of time that Contractor is performing the Work under the Contract Documents. Neither Contractor nor any Subcontractor shall be qualified to submit a Bid/Proposal or be listed in a Bid/Proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of Work under the Contract Documents unless currently registered and qualified to perform public work pursuant to Section Labor Code §1725.5. Contractor shall not enter into any subcontract without proof of the potential Subcontractor’s registration. If an unregistered Contractor submits a proposal, the District will deem such proposal non-responsive. If any unregistered Contractor or Subcontractor performs Work on these Projects at any time, the District has the right to cancel the Contract for cause.

The District reserves the right to reject any or all Bids, to accept or to reject any one or more items on a Bid, or to waive any minor irregularities or informalities in the Bids or in the bidding process.

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NOTICE TO CONTRACTORS CALLING FOR BIDS

NOTICE IS HEREBY GIVEN that MiraCosta Community College District of San Diego County, California, acting by and through its Governing Board, will receive up to, but not later than **March 22, 2021 @ 2:00PM**, via US Mail or personal delivery sealed Bids for the award of contracts for the following projects: **Bid #MM-20-020 ; Project No. 04102; SAN B900 Student Center Renovation and Project No. 04103 SAN B400 Science Lab Renovation (collectively herein referred to as “Projects” and individually as “Project”)**. **ONLY Bidders who have previously been pre-qualified for this procurement will be permitted to submit a Bid.**

Sealed Bids shall be submitted, as stated above, to 1 Barnard Dr., BLDG 4200 Facilities Building, Conference Room, Oceanside, CA 92056. The Bids appropriately received shall be opened and publicly read aloud via a live broadcasted Zoom meeting to take place immediately after the Bid due date and time. Instructions on how to access the live broadcasted Bid opening via Zoom will be issued via a future Addendum.

Bidders pre-qualified to submit Bids for **Bid #MM-20-020; Project No. 04102; SAN B900 Student Center Renovation and Project No. 04103; SAN B400 Science Lab Renovation** must attend a **Mandatory Pre-Bid Conference and Job Walk** on **February 19, 2021 at 2:00PM**. All pre-qualified prospective Bidders should report to the MiraCosta SAN Campus and meet in front of B400 (see Exhibit 3 SAN Campus Map). Failure to attend the entire Mandatory Pre-Bid Conference and Job Walk on the above-mentioned date will disqualify a Bidder from its Bid being opened and considered.

Due to the ongoing COVID-19 pandemic only general contractors and only one person per general contractor firm will be allowed to attend the Mandatory Pre-Bid Conference and Job Walk. All attendees must wear face coverings and adhere to other recognized guidelines to reduce the risk of contracting or transmitting COVID-19, including but not limited to social distancing, during the entire Mandatory Pre-Bid Conference and Job Walk. Any attendee that fails to do so, will be asked to leave and their attendance will not be recorded for the Mandatory Pre-Bid Conference and Job Walk.

Public Contract Code 6610 requires the Pre-Bid Conference be set 5 days or more after the last publication of the advertisement for bids.

Each Bidder shall be a licensed contractor pursuant to the Business and Professions Code and shall be licensed in the following appropriate classification of contractor's license, for the work for which its Bid is submitted. The successful Bidder must maintain the appropriate and required license, in good standing, throughout the duration of the contract -- **B License**.

Each Bid, as required above, must conform and be responsive to this Request for Bid Documents, copies of which are now on file and may be obtained beginning February 09, 2021 on the MiraCosta College Bid Opportunities Website found at <https://www.miracosta.edu/administrative/purchasing/procurement-and-contracting/measure-mm-bids.html>. Each Bid shall be accompanied by all documents required by the Bid Documents, including without limitation: (i) the security referred to in the Bid Documents; as well as Attachment “A”; and Attachments “C” through “O”. **Attachment “B-1” and Attachment “B-2” for the Projects must be submitted by the Bidder within 48 hours of the Bid Opening Date.** The District reserves the right to reject any or all Bids and waive any minor irregularities or informalities in any Bids or in the Bid process. No Bidder may withdraw his Bid for a period of sixty (60) days after the date set for the opening of the Bids.

In contracts involving expenditure in excess of \$25,000, the successful Bidder shall file Payment Bonds for each Project issued by an admitted Surety approved to conduct business in the State of California approved by the District in the form set forth in the contract documents (Civil Code Sections 9550 through 9566). The successful Bidder shall also be required to file Performance Bonds for each Project issued by an admitted Surety approved to conduct business in the State of California approved by the District in the form set forth in the Contract Documents. The Payment and Performance Bonds shall be submitted and approved by the District before any construction activity for the Projects begin.

The Director of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the contracts, copies of which are on file and will be made available to any interested party upon request at the Facilities Office at the address and phone number stated herein. It shall be mandatory upon the Contractor to whom the contracts are awarded, and upon any Subcontractor under him, to pay not less than the said specified rates to all workers employed by them in the execution of the contracts.

Questions regarding this procurement can be sent to Ed Dajani via email only at edajani@kitchell.com.

Publication Dates:

San Diego Union Tribune: November 23, 2020 and November 30, 2020

II. INFORMATION FOR BIDDERS

A. Specific

The following information is specific to this procurement. Information stated in this Section II - "Information for Bidders, paragraph A - Specific" supersedes any conflicting information which may be contained in Section II B hereof.

1. **BID PROCESS TIMELINE:** The following is the timeline for Bid submittals and the Bid evaluation and selection process:

DATE AND TIME	DEADLINE / PROCESS DESCRIPTION
November 23, 2020 November 30, 2020	Legal Notice to Contactors Calling for Bids is published in the San Diego Union Tribune
February 19, 2021 @ 2:00PM	Mandatory Pre-Bid Conference/Job Walk to be held. MiraCosta College Sam Elijo Campus Building 400
March 10, 2021	Deadline to Submit Request for Clarifications; submit to: Ed Dajani at edajani@kitchell.com
March 17, 2021	Tentative Date for Issuance of Final Addendum
March 22, 2021 @ 2:00PM	BID OPENING DATE AND TIME. <u>Sealed Bids</u> must be received no later than the stated date and time at the following address: MiraCosta College Attn: Kitchell 1 Barnard Dr., BLDG 4200 Facilities Building – Conference Room Oceanside, CA 92056
March 24, 2021	Tentative Date District Issues Notice of Intent to Award to Bidders
April 15, 2021	Board of Trustees to Vote on Award of Contracts to Lowest Responsive and Responsible Bidder

2. **MANDATORY PRE-BID CONFERENCE/JOB WALK:** Each prospective Bidder is responsible for fully acquainting him/herself with the conditions of the Projects' Sites, as well as those relating to the construction and labor of the Projects,

to fully understand the facilities, difficulties and restrictions which may impact the cost or effort required to complete the Projects. To this end, a Mandatory Pre-Bid Conference and Job Walk will be held on the date and time and place as indicated above:

Bidders will be required to sign-in at the Mandatory Pre-Bid Conference. Any Bids submitted by a Bidder whose name does not appear on the sign-in sheet, or who was asked to leave the Mandatory Pre-Bid Conference for refusal to adhere to COVID-19 guidelines, shall be considered Non-Responsive.

The Projects are comprised of two separate contracts, issued under one single procurement. The Contractor will be required to manage each Project and contract separately and distinctly from the other. The Projects are described, separately below. However, for the specific scope of work for these Projects, see also all other Bid Documents pertaining to these Projects.

SAN B400 RENOVATION

Scope Overview:

Modernization of existing building 400 to include building envelope and interior modifications. The main programmatic function of the building is biology lab, biology prep space, physical science lab, lecture/lab classroom with offices as well as idf and storage room. The work includes replacement of all existing doors and windows with new doors and windows, replacement of existing roofing systems, replacement of existing skylight system with new solatubes and mechanical operated louvers, saw cutting the existing concrete slab on grade to install water, gas and plumbing, upgrading existing concrete hardscape to with new hardscape and landscape.

DSA Application Number: 04-119580
(Greenhouse) A04-119774

Project schedule: 179 calendar days
(See Supplementary Conditions for more detail.)

Liquidated Damages Against District: \$1,000.00

Liquidated Damages Against Contractor: \$2,000.00

A/E Estimate: \$3,065,163.00

SAN B900 RENOVATION

Scope Overview:

The modernization of the existing B900 Student Center. Approximately 3,200 sf will be reconfigured and modernized for a new Health Center, ASG and Student Gathering area. Associated spaces in the Health Center include waiting and reception areas, mental health offices, restroom and nurses and exam rooms. The ASG/Student Gathering will include conference rooms, offices, a food pantry and work room. Finish upgrades to the existing restrooms and a new lactation room have been added to the building. The entire building will include new light fixtures and access control. The scope of work will not include changes to either the building area or occupancy. Mechanical, HVAC controls, plumbing, electrical, technology, security, fire alarm and fire sprinkler systems will be relocated or added based on the new floor plan. The unit cooler will be replaced for increased capacity and a new fire alarm head-in panel will be installed. The building envelope will include repair of the clay tile roof where leaks occur, doors, signs, new paint, new exterior light fixtures, security system, access control and wireless upgrades

DSA Application Number: 04- 119576

Project schedule: 179 calendar days
(See Supplementary Conditions for more detail.)

Liquidated Damages Against District: \$800,00

Liquidated Damages Against Contractor: \$1,500.00

A/E Estimate: \$1,773,800.00

3. **INTERPRETATION OF DOCUMENTS AND ADDENDA:** If any person contemplating submitting Bids for the proposed contracts is in doubt as to the true meaning of any part of the plans, specifications, or other proposed contract documents, or finds discrepancies in, or omissions from the specifications, they are instructed to contact Ed Dajani via email only at edajani@kitchell.com with a written request for an interpretation, clarification, or correction thereof as follows:

Within each submitted request for clarification, insert the Building Number in such a way as to clearly identify which Building the request for clarification applies.

Within the Subject Line of the email add "Request for Clarification MM-20-020"

It is acceptable to submit multiple Requests for Clarification in one email as long as the bidder clearly identifies the building number for each clarification item.

- 4.
5. It is the sole and exclusive responsibility of the Bidder to submit such request no later than **March 10, 2021**. Any request of any Bidder, pursuant to the foregoing sentence that is made after the deadline date and time specified in Section II A 1 - "**Bid Process Timeline**" shall be deemed untimely. Any interpretation or correction of the proposed documents will be made only by Addendum duly issued by said Program Management Office (PMO). The MiraCosta Community College District will not be responsible for any other explanation or interpretation of the proposed documents.

Any addenda or bulletins issued by the MiraCosta Community College District during the time of bidding or forming a part of the documents issued to the Bidder for the preparation of the Bids shall be covered in the Bids and shall be made a part of the Contracts. The Bidder shall notate in the applicable spaces provided on the Bid Form any and all addenda numbers issued by the District for this procurement.

The District PMO may e-mail addenda or notification of addenda to prospective Bidders to whom the District already has sent Bid packages or Bid notifications. However, it is Bidder's responsibility to check MiraCosta's website and plan-rooms for issued Addenda.

6. **ATTACHMENTS THAT MUST BE SUBMITTED WITH YOUR BIDS** (note exception for Attachment B-1 and Attachment B-2): A Bidder's Bids submittal **must include the following Attachments**, completely filled out, and signed by the authorized signatory of the Bidder's company and/or business, in order for the Bids to be considered responsive:

Attachments	Description of the Attachment	Number of Attachments for this Procurement
A	Bid Form	One. (See Section II A 4.1 and Attachment A in Section III)
B-1	Summary of Costs and Bid Breakdown for Project No. 04102	One. (See Section II A 4.2 and Attachment B-1 in Section III). An Attachment B-1 for Project No. 04102 must be submitted to the same location as Bids but turned in within 48 hours after the Bid Opening Date.
B-2	Summary of Costs and Bid Breakdown for Project No. 04103	One. (See Section II A 4.2 and Attachment B-2 in Section III). An Attachment B-2 for Project No. 04103 must be submitted to the same location as Bids but turned in within 48 hours after the Bid Opening Date.
C-1	Bid Bond for Project No. 04102	One. (In an amount that is ten percent (10%) of the Total Bid Price listed on Line C of your Bid Form. See Attachments A and C-1 in Section III and Section II A 4.3)
C-2	Bid Bond for Project No. 04103	One. (In an amount that is ten percent (10%) of the Total Bid Price listed on Line F of your Bid Form. See Attachments A and C-2 in Section III and Section II A 4.3)
D	Declaration of Sufficiency of Funds	One. (See Section II A 4.4 and Attachment D in Section III)
E	Non-Collusion Declaration	One. (See Section II A 4.5 and Attachment E in Section III)

F	Non-Discrimination Declaration	One. (See Section II A 4.6 and Attachment F in Section III)
G	Conflict of Interest Certification	One. (See Section II A 4.7 and Attachment G in Section III)
H	Certification Regarding Workers Compensation	One. (See Section II A 4.8 and Attachment H in Section III)
I	Certifications and Representations	One. (See Section II A 4.9 and Attachment I in Section III)
J	Authority to Release Information	One. (See Section II A 4.10 and Attachment J in Section III)
K	Evidence of Required Insurance	One. (See Section II A 4.11 and Attachment K in Section III)
L	Safety Record Statement	One. (See Section II A 4.12 and Attachment L in Section III)
M-1	Designation of Subcontractors for Project No. 04102	One. (See Section II A 4.13 and Attachment M-1 in Section III)
M-2	Designation of Subcontractors for Project No. 04103	One. (See Section II A 4.13 and Attachment M-2 in Section III)
N	References	One. (See Section II A 4.14 and Attachment N in Section III)
O	Acknowledgement of Addenda	One. (See Section II A 4.15 and Attachment O in Section III)

IMPORTANT: Attachments “A”; “C” through “O” are required to be submitted in the Bidder’s Bid Submittal Package. Attachment “B-1” and Attachment “B-2” for the Projects must be submitted within 48 hours of the Bid Opening Date. These are mandatory forms and cannot be altered by the Bidder. Altering any text on the Attachments may cause your Bids to be rejected as Non-Responsive in the discretion of the District PMO.

For further instructions on filling out, signing, submitting, etc. these required Attachments, please see Section III – “Attachments to Bid That Must Be Submitted” below.

4.1 BID FORM: The Bid Form is affixed to the Bid Documents as Attachment “A” and must be filled out and submitted with your Bids as required by the Bid Documents. Note that Bids for both Project No. 04102 and Project No. 04103 are to be included in Attachment “A”. Follow any additional instructions on Attachment “A”.

4.2 Summary of Costs and Bid Breakdown: Two (2) Summary of Costs and Bid Breakdown forms are affixed to the Bid Documents as Attachment “B-1” for Project No. 04102 and Attachment “B-2” for Project No. 04103 and must both be filled out and submitted within 48 hours of the Bid Opening Date. Follow any additional instructions on Attachments “B-1” and “B-2”.

4.3 Bid Bonds: Two (2) Bid Bonds are affixed to the Bid Documents as Attachment “C-1” for Project No. 04102 and Attachment “C-2” for Project No. 04103 and must be filled out and submitted with your Bids as required by the Bid Documents. The Bid Bonds Amounts shall each be equal to Ten Percent (10%) of your Bid Total for each Project shown on Attachment A. Follow any additional instructions on Attachment “C-1” and Attachment “C-2”.

4.4. Declaration of Sufficiency of Funds: The Declaration of Sufficiency of Funds is affixed to the Bid Documents as Attachment “D” and must be filled out and submitted with your Bids as required by the Bid Documents. Follow any additional instructions on Attachment “D”.

4.5 Non-Collusion Declaration: The Non-Collusion Declaration is affixed to the Bid Documents as Attachment “E” and must be filled out and submitted with your Bids as required by the Bid Documents. Follow any additional instructions on Attachment “E”.

4.6 Non-Discrimination Declaration: The Non-Discrimination Declaration is affixed to the Bid Documents as Attachment “F” and must be filled out and submitted with your Bids as required by the Bid Documents. Follow any additional instructions on Attachment “F”.

4.7 Conflict of Interest Certification: The Conflict of Interest Certification is affixed to the Bid Documents as Attachment “G” and must be filled out and submitted with your Bids as required by the Bid Documents. Follow any additional instructions on Attachment “G”.

4.8 Certification Regarding Workers Compensation: The Certification Regarding Workers Compensation is affixed to the Bid Documents as Attachment “H” and must be filled out and submitted with your Bids as required by the Bid Documents. In accordance with the provisions of Section 3700 of Labor Code, Contractor shall secure the payment of compensation to his employees. Contractor shall sign and file with the District the Certification before performing any Work under the Contracts: “I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker’s compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance any of the Work of these Contracts.” Follow any additional instructions on Attachment “H”.

4.9 Certifications and Representations: The Certifications and Representations form is affixed to the Bid Documents as Attachment “I” and must be filled out and submitted with your Bids as required by the Bid Documents. Follow any additional instructions on Attachment “I”.

4.10 Authority to Release Information: The Authority to Release Information form is affixed to the Bid Documents as Attachment “J” and must be filled out and submitted with your Bids as required by the Bid Documents. Follow any additional instructions on Attachment “J”.

4.11 Evidence of Required Insurance: The Evidence of Required Insurance form is affixed to the Bid Documents as Attachment “K” and must be filled out and submitted with your Bids as required by the Bid Documents. Follow any additional instructions on Attachment “K”.

4.12 Safety Record Statement: The Safety Record Statement is affixed to the Bid Documents as Attachment “L” and must be filled out and submitted with your Bids as required by the Bid Documents. Follow any additional instructions on Attachment “L”.

4.13 Designation of Subcontractors: Two Designation of Subcontractors forms are affixed to the Bid Documents as Attachment “M-1”, for Project No. 04102, and Attachment “M-2”, for Project No. 04103. Attachments “M-1” and “M-2” must both be filled out in their entirety and submitted with your Bids as required by the Bid Documents. Subcontractor’s license numbers and DIR registration number must be included on both of the Designation of Subcontractors forms. Bidder shall be solely responsible to correct any errors in the listing of the Subcontractor’s contractor license number and DIR registration numbers. ***Any corrections to contractor license or DIR registration numbers listed on the Designation of Subcontractor’s List forms must be submitted to office of Program Management Office at 1 Barnard Dr. Bldg. T-120, Oceanside, CA 92056 within 24 hours after the Bid opening.*** Follow any additional instructions on Attachments “M-1” and “M-2”.

4.14 References: The References form is affixed to the Bid Documents as Attachment “N” and must be filled out and submitted with your Bids as required by the Bid Documents. Bidder must be able to present evidence of satisfactory experience providing similar goods and/or services as those specified in this Request for Bids. Follow any additional instructions on Attachment “N”.

4.15 Acknowledgement of Addenda: The Acknowledgement of Addenda form is affixed to the Bid Documents as Attachment “O” and must be filled out and submitted with your Bids as required by the Bid Documents. Follow any additional instructions on Attachment “O”.

THE FOREGOING ATTACHMENTS BECOME PART OF THE CONTRACT DOCUMENTS AFTER AWARD OF THE CONTRACT(S).

5. ATTACHMENTS THAT ARE NOT TO BE SUBMITTED WITH YOUR BIDS: The following Attachments, found in Section IV – “Attachments That Are Not Submitted With Bids”, and which are identified immediately below, are provided for the Bidder’s information, reference, and consideration in making its Bids for the Projects as they can all materially affect the cost of construction. **Attachments “P-1” through “X” identified below are not to be turned in with your Bid submittal package:**

Attachments	Description of Attachments	Number of Documents Attached
P-1	Payment Bond Form for Project No. 04102	One
P-2	Payment Bond Form for Project No. 04103	One
Q-1	Performance Bond Form for Project No. 04102	One
Q-2	Performance Bond Form for Project No. 04103	One
R-1	Escrow Agreement Form for Project No. 04102	One
R-2	Escrow Agreement Form for Project No. 04103	One
S-1	Agreement Form for Project No. 04102	One
S-2	Agreement Form for Project No. 04103	One
T	General Conditions Project Nos. 04102 and 04103	One
U.1	Supplementary Conditions	One
.1	Special Conditions Project Nos. 04102 and 04103	One
.2-1	Alternates for Project No. 04102	One
.2-2	Alternates for Project No. 04103	One
.3	Waste Reduction and Recycling Project Nos. 04102 04103	One
V.1	Technical Specifications Project Nos. 04102 and 04103	One
W.1	DSA Approved Plans Project Nos. 04102 and 04103	One
X	Reference Documents/Info Project Nos. 04102 and 04103	

The Attachments identified immediately above are NOT SUBMITTED WITH YOUR BIDS. However, Attachments “P-1” through “W.1”, will and do become part of the Contract Documents after award of the Contracts. Attachment “X” is NOT SUBMITTED WITH YOUR BIDS. SHALL NOT become, part of the Contract Documents for the Projects. The District makes no representation or warranty as to the accuracy and/or completeness of the information contained in the reference documents contained in Attachment X and hereby specifically disclaims the accuracy and/or completeness of such reference documents in Attachment X. However, Bidders should review, ask questions about, and/or request to inspect and/or test areas and/or site locations, to make certain you are fully aware how the information contained therein could materially affect your bid pricing.

5.1 Payment Bond Forms: Two (2) Payment Bond Forms are affixed to the Bid Documents as Attachment “P-1” for Project No. 04102 and Attachment “P-2” for Project No. 04103 and are not turned in with your Bids. They are mandatory forms that the successful Bidder must post with the District for each of the Projects before any work on the Projects begin and will become part of the Contract Documents for each Project. Each Payment Bond must be in the amount of 100 percent of the total amount payable of each Project’s Contract. The Payment Bonds must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish.

5.2 Performance Bond Forms: Two (2) Performance Bond Forms are affixed to the Bid Documents as Attachment “Q-1” for Project No. 04102 and Attachment “Q-2” for Project No. 04103 and are not turned in with your Bids. They are mandatory forms that the successful Bidder must post with the District for each of the Projects before any work for the Projects begin and will become part of the Contract Documents for each Project. Each Performance Bond must be in the amount of 100 percent of the total amount payable of each Project’s Contract and must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish.

5.3 Escrow Agreement Forms: Two (2) Escrow Agreement Forms are affixed to the Bid Documents as Attachment “R-1” for Project No. 04102 and Attachment “R-2” for Project No. 04103 and are not turned in with your Bids. These are optional forms that the successful Bidder may post with the District before any work for the Projects begin and will become part of the Contract Documents for each Project if the Contractor elects to have retention from progress payments placed into an Escrow Account as permitted by Public Contract Code section 22300.

5.4 Agreement Forms: Two (2) Agreement Forms are affixed to the Bid Documents as Attachment “S-1” for Project No. 04102 and Attachment “S-2” for Project No. 04103 and are not turned in with your Bids. These are mandatory forms that the successful Bidder must sign without exception and submit to the District before any work on the Projects begin. The Agreement Forms will become part of the Contract Documents for each Project.

5.5 General Conditions: The General Conditions are affixed to the Bid Documents as Attachment “T” and are not turned in with your Bids. The General Conditions will become part of the Contract Documents for each Project.

5.6 Supplementary Conditions: The Supplementary Conditions are affixed to the Bid Documents as Attachments “U.1.1 through U.1.3” and are not turned in with your Bids. These Supplementary Conditions include, without limitation the: Special Conditions; the Waste Reduction and Recycling forms; and other specific terms and conditions regarding the Projects. Supplementary Conditions will become part of the Contract Documents for each Project.

5.7 Technical Specifications: The Technical Specifications are affixed to the Bid Documents as Attachment “V.1” and are not turned in with your Bids. These are the Technical Specifications Project that is the subject of this procurement and will become part of the Contract Documents for each Project.

5.8 Division of State Architect (“DSA”) Approved Plans (“Plans”): The Division of State Architect Approved Plans are affixed to the Bid Documents as Attachment “W.1” and are not turned in with your Bids. These are Plans for each Project that is the subject of this procurement and will become part of the Contract Documents for each Project, and are to be considered diagrammatic only, unless an express (written) indication to the contrary appears on a particular page/sheet thereof.

5.9 Reference Documents and Information: The Reference Documents and Information pertaining to the Projects are identified as Attachment “X” are found in Section V to the Bid Documents and are not turned in with your Bids. ***The reports, documents, and other information provided in Section V below are provided as “Information Available” for the Projects and for reference only. The reports, documents, and other information are not, and shall not become, part of the Contract Documents for the Projects. The District makes no representation or warranty as to the accuracy and/or completeness of the information contained in the reports, documents, and other information, and hereby specifically disclaims the accuracy and/or completeness of such reports, documents, and other information. The District has no independent information, independent knowledge, and no expertise, as to what the contents of the reports, documents, and other information mean, and/or how same may or may not affect construction of the anticipated Projects. The District makes the disclosure of the existence of the reports, documents, and other information, and all of their contents to ensure that the reports, documents, and other information, and their contents are made known and are equally available to the Bidder/Contractor as they are to the District. The Contractor is solely responsible for determining any impact on the Projects and the Bidder’s/Contractor’s pricing and costs regarding the Projects.***

6. BIDDER’S SAMPLES TO BE SUBMITTED AT TIME OF BID:

Not required.

7. MAILING / DELIVERING THE BID PACKAGE: To ensure that the Bid package remains sealed until the Bid opening date and time, clearly indicate the below on the outside of your Bid Package and personally deliver or mail your Bid Package to the same address below:

MiraCosta Community College District
PMO -- Measure MM Bond Program
1 Barnard Drive, Bldg. B4200
Oceanside, CA 92056
Re: BID # MM-20-020

US Mail and Personal Delivery location on Bid Date: MiraCosta College, Oceanside Campus, Building 4200, Facilities Building, Conference Room, 1 Barnard Dr., Oceanside, CA, 92056

B. General

- 1. PREPARATION OF THE VARIOUS FORMS MAKING UP YOUR BID PACKAGE:** The District invites the submission of Bids on Attachments "A" through "O" to be submitted at such time and place as is stated in the Notice/Invitation to Contractors Calling for Bids, and not later than such date and time. Bids shall be received in the MiraCosta College, Oceanside Campus, Building 4200, Conference Room, 1 Barnard Dr., Oceanside, CA, 92056. All blanks in the Bid forms should be appropriately filled in, and all prices must be stated in words and figures. Where unit pricing is requested, and a calculation is incorrectly made, the District will automatically re-calculate and correct the extended amount(s). All Bids must be submitted in sealed envelopes bearing on the outside the name of the Bidder, his/her address, and the name of the projects for which the Bids are submitted. It is the sole responsibility of the Bidder to see that his/her Bids are received in proper time. All Bids received after the scheduled closing time for receipt of Bids will be returned to the Bidder unopened. Bid Amounts shall be submitted on Attachment "A".
- 2. SUMMARY OF COSTS AND BID BREAKDOWN:** Attachment "B-1" for Project No. 04102 and Attachment "B-2" for Project No. 04103 do not constitute, nor do they take the place of, a Schedule of Values, established post award. An Attachment "B-1" for Project No. 04102 and Attachment "B-2" for Project No. 04103 must be submitted within 48 hours of the Bid Opening Date.
- 3. BID BONDS OR SECURITY:** The Bid for Project No. 04102 and the Bid for Project No. 04103 shall each be accompanied by a certified or cashier's check payable to District, or a satisfactory Bid Bond in favor of District executed by the bidder as principal and an admitted surety approved to conduct business in the State of California as surety, each in an amount that is equal to Ten Percent (10%) of the Total Bid Amount of each Project. If Bid Bonds are submitted, they shall be submitted on the forms affixed hereto as Attachment "C-1" and Attachment "C-2". Note the instructions on Attachment "C-1" and Attachment "C-2". The checks or Bid Bonds shall be given as a guarantee that the Bidder shall execute the Contracts if they are awarded to Contractor in conformity with the Projects' Contract Documents.
- 4. FAXED AND ELECTRONIC MAIL BIDS:** All Bids must be in paper format under sealed cover. To ensure the bid package remains sealed until the bid opening date and time, clearly indicate the Bid # on the outside of the package. The District will not accept any Bids or Bid modifications submitted by facsimile or electronic mail transmission.
- 5. SIGNATURE:** The Bids must be signed in the name of the Bidder and must bear the signature in longhand of the person or persons duly legally authorized to sign the Bids.
- 6. MODIFICATIONS:** Changes in or additions to the Bid Form, recapitulations of the work bid upon, alternative proposals, or any other modification of the Bid Form which is not specifically called for in the Contract Documents may result in the District's rejection of the Bids as being Non-Responsive to the Notice To Contractors Calling for Bids. No oral or telephonic modification of any Bid submitted will be considered and a telegraphic modification may be considered only if the postmark evidences that a confirmation of the telegram duly signed by the Bidder was placed in the mail before the opening of the Bids.
- 7. ERASURES/MUTILATION OF BID DOCUMENTS:** The Bid Form submitted must not contain any erasures, interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the initials of the Bidder's authorized person(s) making said changes. Contractors should not deface or mutilate the Bid Documents to the extent that they may not be usable for construction purposes. Bid Documents obtained under deposit shall be returned within 10 days after Bid opening.
- 8. EXAMINATION OF SITE AND CONTRACT DOCUMENTS:** Each Bidder may visit the sites of the proposed work and fully acquaint itself with the conditions relating to the construction and labor so that it may fully understand the facilities, difficulties, and restrictions attending the execution of the work under the Contract Documents. Bidders shall thoroughly examine and be familiar with the drawings and specifications. The failure or omission of any Bidder to receive or examine any Contract Documents, form, instrument, addendum, or other document or to visit the sites and acquaint itself with conditions there existing shall in no way relieve any Bidder from obligations with respect to its Bids or to the Contract Documents. The Bidder is responsible to obtain any geotechnical and/or soils report pertaining to the sites of the work. Although any such report does not operate as a warranty or guarantee of site conditions, the submission of Bids shall be taken as prima facie evidence of compliance with all terms of this Section. Check thoroughly all Reference Documents and information as such could materially affect the cost of your Bids.

Each Bidder, by making its Bids represents and warrants that it has read and understands the Contract Documents, Bid Documents, sites and other existing conditions in any facilities that are a part of the Projects, and any and all related reports and information. After executing the Contracts, no consideration will be given to any claim of misunderstanding of the Bid Documents and/or Contract Documents.

Each Bidder, by making its Bids, represents and warrants that it has visited the sites, inspected the areas of the work, and familiarized itself with the local conditions under which the work is to be performed, including sub-surface conditions. Such inspections shall specifically consider requirements for accessing the sites and determining that the work can be completed as required by, and as shown in, the Contract Documents.

With District's approval, including provision of insurance as required, and after scheduling access with the District, each Bidder may conduct additional site investigations at the Bidder's sole cost within the time frame before the date Bids are due.

- 9. WITHDRAWAL OF BIDS:** Any Bidder may withdraw its Bids either personally, by written request, or by email request to Ed Dajani at edajani@kitchell.com confirmed in the manner specified above at any time before the scheduled closing time for receipt of Bids.
- 10. AGREEMENTS AND BONDS:** The Agreement Forms (Attachment "S-1" for Project No. 04102 and Attachment "S-2" for Project No. 04103) which the successful Bidder, as Contractor, will be required to execute, and the forms and amounts of the Payment Bonds and, Performance Bonds, which Contractor will be required to furnish at the time of execution of the Agreement Forms, are included in the Bid/Contract Documents and shall be carefully examined by the Bidder. The required number of executed copies of the Agreements, the Performance Bonds, and the Payment Bonds is as specified in the Bid Documents.

The Payment Bonds (Attachment "P-1" for Project No. 04102 and Attachment "P-2" for Project No. 04103) must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish and which it has established and each Payment Bond must be in the amount of 100 percent of the total amount payable under the Contract of each Project.

The Performance Bonds (Attachment "Q-1" for Project No. 04102 and Attachment "Q-2" for Project No. 04103) must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish and which it has established and each Performance Bond must be in the amount of 100 percent of the total amount payable under the Contract of each Project.

Bonds shall be in the form set forth in the Bid Documents and Contract Documents.

- 11. INTERPRETATION OF PLANS AND DOCUMENTS:** If any person and/or entity contemplating submitting Bids for the proposed contracts is in doubt as to the true meaning of any part of the drawings, specifications, or other information pertaining to the sites (including any available soils or geotechnical report) or finds discrepancies in, or omissions from the drawings and specifications, Bidder is hereby required in accordance with Public Contract Code section 1104 to submit to the District a written request for an interpretation or correction thereof. If any Bidder contemplating submitting Bids for the proposed contracts is in doubt as to the true meaning of any other Contract Documents, Bidder is hereby required to submit to the District a written request for interpretation or correction thereof. The person submitting such requests will be responsible for its/their prompt delivery. Any interpretation or correction of the contract documents or other available information will be made only by addendum duly issued and a copy of such addendum will be mailed or delivered to each person receiving a set of the contract documents. At the option of the District, all addenda may be mailed, delivered, faxed, made available for pick-up, will be posted on planrooms listed on Notice to Contractors Calling for Bids herein and on the MiraCosta website or sent via electronic mail. District shall have the option to send a hard copy via regular mail or overnight delivery, at the option of District. No oral interpretation of any provision in the contract documents will be made to any bidder. Numbers spelled out in words will take precedence over numerals/figures.
- 12. BIDDERS INTERESTED IN MORE THAN ONE BID AND BIDDERS NOT QUALIFIED TO BID:** No person, firm, or corporation shall be allowed to make, or file, or be interested in more than one Bid for the same work unless Alternate Bids are specifically called for. A person, firm, or corporation that has submitted a sub-proposal to a Bidder, or that has quoted prices of materials to a Bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Bidders or making a prime proposal. **No person, firm, or corporation shall be allowed to Bid who has participated in the preparation of contract specifications; a Bid by such a person, firm or corporation shall be determined to be Non-Responsive.**
- 13. AWARD OF CONTRACT(S):** The District reserves the right to reject any or all Bids, or to waive any minor irregularities or informalities in any Bids or in the Bidding process. The award of the contracts, if made by the District, will be to the lowest responsive and responsible prequalified Bidder.
- 14. METHOD OF DETERMINING LOWEST BID:** See Attachment "A" (Bid Form) for the method to be used to determine the Low Bid for this procurement. Notwithstanding the method used by the District to determine the lowest responsible bidder,

the District retains the right to add to or deduct from the Contracts any of the additive or deductive items, if any, included in the bid solicitation, including by way of any Addenda, after the lowest responsible bidder has been determined.”

- 15. EVIDENCE OF RESPONSIBILITY:** The Bidder shall submit with its Bids satisfactory evidence showing the Bidder's financial resources using Attachment “D” (Declaration of Sufficiency of Funds). Additionally, a Bidder's Bids that are under consideration for award of the Contracts, and upon request by the District, the Bidder shall submit promptly to the District satisfactory evidence showing the Bidder's construction experience in the type of work being required by the District, and his/her organization available for the performance of the contracts and any other required evidence of the Bidder's qualifications to perform the proposed contracts. The District may consider such evidence before making its decision awarding the proposed contracts. Failure to submit this requested evidence may result in rejection of the Bids.
- 16. LISTING SUBCONTRACTORS:** Each Bidder shall submit with his/her sealed Bids a list of the proposed subcontractors for the Projects that are the subject of the Bid Solicitation as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code sections 4100, et seq.). Use the forms provided as Attachment “M-1” for Project No. 04102 and Attachment “M-2” for Project No. 04103 to the Bid Documents to comply with this Bid requirement.
- 17. WORKERS' COMPENSATION:** In accordance with the provisions of section 3700 of the Labor Code, the selected Contractor shall secure the payment of compensation to his/her employees. Contractor shall sign and submit with its Bids the Certification provided as Attachment “H” to the Bid Documents to comply with this Bid requirement.
- 18. SUBSTITUTION OF SECURITY:** Monies withheld by the District to ensure performance under the contract(s) may be released in accordance with Public Contract Code section 22300 and the Contract Documents.
- 19. CONTRACTOR'S LICENSE:** If, at the time the Bids are opened, Bidder is not licensed to perform the Projects in accordance with Division 3, chapter 9 of the Business and Professions Code of the State of California (Section 7028.15) and the Notice to Contractors Calling for Bids, the Bids will not be considered.
- 20. STORM WATER PERMIT FOR CONSTRUCTION ACTIVITY:** It shall be the responsibility of the successful Bidder to adhere to and comply with all requirements of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit). The successful Bidder shall be solely responsible for implementing a Storm Water Pollution Prevention Plan (SWPPP) before initiating work; including compliance with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by Permit and as required by the General Conditions. It shall be the responsibility of all Bidders to evaluate and include in the Bid price for each Project the cost of complying with the SWPPP and any necessary revisions to the SWPPP. The successful Bidder shall also include in his Bids the cost of monitoring as required by the Permit.

Where applicable to the work of the Contracts, District shall make available to Contractor a copy of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (the "Permit"). Contractor shall obtain the Permit from District before Bidding on the Contracts. District shall also provide Contractor with a copy of the Storm Water Pollution Prevention Plan (SWPPP) at least two weeks before the opening of Bids. Contractor shall be responsible for implementing and complying with the provisions of the Permit and the SWPPP pursuant to the General Conditions hereof, including requirements specified in other parts of the Contract Documents. It shall be Contractor's responsibility to evaluate and include in the Bid price for each Project the cost of compliance with the SWPPP and the cost of monitoring as required by the Permit.

- 21. ETHICS IN BIDDING:** The District expects the Bidders to maintain high ethical standards in engaging in the competitive bidding process. The Bid(s) amount of one Bidder should not be divulged to another before the award of the Contracts, nor should it be used by Contractor to secure a lower proposal from another Bidder on the Projects (bid shopping). Subcontractors or Suppliers should not request information from the Contractor regarding any other sub-bid in order to submit a lower proposal on the Projects (bid peddling). District will consider any Bidder found to be engaging in such practices to be a Non-Responsible Bidder and may reject its Bids on that ground.
- 22. CONFLICT OF INTEREST AND PROHIBITED INTERESTS:** No officer, employee, or any other agent of the District authorized in any capacity on behalf of the District to exercise any fiduciary, executive, or other similar functions, shall be allowed to possess or accept, directly or indirectly, or in any part thereof, any financial interest in any contract(s), Bid or other procurement activity of the District. Additionally, no officer, employee, or any other agent of the District similarly authorized, shall be allowed to possess or accept any form of gift, payment, undue advantage or influence, directly or indirectly, or in any part thereof. Use Attachment “G” to comply with this Bid requirement. The District reserves the right to reject any Bidder or Contractor if any such conflict is discovered, and subsequently award to the next lowest responsive and responsible Bidder. All District contracts, bids and procurement transactions are executed in compliance with

Government Codes 1090 *et sequitur*, 87100 *et sequitur*, and 89503 *et sequitur*, as stated in District Purchasing and Contracting Policy BP6330.

- 23. SUBSTITUTIONS AND SPECIAL BRAND NAMES:** In accordance with Public Contract Code section 3400 "before or after the award of the contract(s)", district must provide for "submission of data substantiating a request for a substitution of 'an equal' item." Therefore, no later than thirty-five (35) days after award of the Contracts, if the Bidder is requesting substitution of "an equal" item or product or work, the make and grade of the item, product or work which is to be substituted shall be provided to the District representative. The documentation submitted must include any and all illustrations, specifications, and other relevant data including catalogue information which describes the substituted item or product or work and substantiates that it is an "or equal" to the specified item or product or work. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution will reduce or increase the contract price. The documentation submitted must also include information regarding the durability and life cycle cost of the substituted item, product or work. Substantiating data shall include a Declaration signed by the Bidder-Contractor under penalty of perjury stating that the substituted item or product or work is equivalent to the specified item or product or work in every way except as listed on the Declaration. Whenever possible, the same substitution information is to be included in the sealed Bid Submittal package. Failure to submit all the needed substantiating data, including the signed Declaration, may result in a determination that the Bids are Non-Responsive. **BIDDERS ARE SPECIFICALLY NOTIFIED THAT THE SUBMISSION OF HIS/HER DOCUMENTATION IN NO WAY OBLIGATES THE DISTRICT OR IT'S REPRESENTATIVE TO REVIEW SUCH DOCUMENTATION BEFORE THE AWARD OF THE CONTRACTS. FURTHERMORE, AFTER AWARD OF THE CONTRACTS, IF A PROPOSED SUBSTITUTION IS REJECTED, BIDDER SHALL BE RESPONSIBLE TO PROVIDE THE ITEM OR PRODUCT OR WORK AS ORIGINALLY SPECIFIED AT NO ADDITIONAL COST TO THE DISTRICT. DISTRICT HAS THE COMPLETE AND SOLE DISCRETION TO DETERMINE IF AN ITEM OR ARTICLE IS AN "EQUAL" ITEM.**

Products, Materials, Equipment, Systems, and/or Things ("Items") Found to be an Exception to Public Contract Code Section 3400:

The District has considered and approved Items as exceptions to Public Contract Code section 3400. Please see: <https://www.miracosta.edu/administrative/purchasing/procurement-and-contracting/measure-mm-bids.html> for a list of those Items for which substitutions will NOT BE ACCEPTED. Price your Bids accordingly.

- 24. LABOR COMPLIANCE:** The contract(s) to be awarded under this procurement are subject to relevant provisions of the Labor Code including, but not limited to, Labor Code Section 1771.4 including, but not limited to, compliance monitoring and enforcement by the Department of Industrial Relations.

Contractor and any subcontractors are required to review and comply with the provisions of the California Labor Code, Part 7, Chapter 1, beginning with Section 1720, and the regulations of the Department of Industrial Relations. These statutory and regulatory provisions contain specific requirements, for example, including maintaining, certifying and submitting payroll records to the Department of Industrial Relations, concerning the determination and payment of prevailing wages, retention, inspection, and auditing of payroll records, use of apprentices, payment of overtime compensation, securing of workers compensation insurance, and various criminal penalties or fines which may be imposed for violations of the requirements of the chapter. Submission of a bid constitutes Contractor's representation that it has thoroughly reviewed these requirements.

- 25. DISABLED VETERANS PARTICIPATION GOALS:** In accordance with Education Code section 17076.11, this District has a participation goal for disabled veteran business enterprises ("DVBE") of at least 3 percent per year of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization and expended each year by the District. Before and as a condition precedent for final payment under any contract for such project, the Contractor shall provide appropriate documentation to the District identifying the amount paid to disabled veteran business enterprises in conjunction with the Contracts, so that the District can assess its success at meeting this goal.

The Contractor agrees that, for all contracts subject to the DVBE participation goals, the State and the District have the right to review, obtain and copy all records pertaining to performance of the contract in accordance with DVBE requirements. The Contractor agrees to provide the State or the District with any relevant information requested and shall permit the State and/or District access to its premises upon reasonable notice for purposes of interviewing employees and inspecting records. The Contractor agrees to maintain such records for a period of three years after payment under the Contracts.

The Office of Small Business and DVBE Certification (OSDC), (916) 375-4940, www.osmb.dgs.ca.gov/BIS/bis_queries/bis_queries_menu.asp, is an information resource to assist Bidders in locating Disabled Veteran Business Enterprises. (Please note: while the OSDC may be used as a resource, the DVBE Program administered by OSDC applies to state contracts not local agency (school district) contracts.)

26. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR OTHER INELIGIBILITY. This is applicable to all contracts and/or agreements funded in part or in whole with federal funds. The Contractor agrees to comply with applicable federal suspension and debarment regulations, including, but not limited to, regulations implementing Executive Order 12549 (29 C.F.R. Part 98). The Supplier certifies to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not, within a three-year period preceding the receipt of the contract(s) and/or agreement(s), been convicted of, or had a civil judgment rendered against them, for: (1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) or private transaction or contract; (2) Violation of Federal or State antitrust statutes; (3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or (4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects Supplier's present responsibility;
- (c) Are not presently indicted for, or otherwise criminally or civilly charged by any government entity (federal, state or local), with commission of any of the offenses enumerated above;
- (d) Have not, within a three-year period preceding the receipt of the contract(s) and/or agreement(s), had one or more public transactions (federal state or local) terminated for cause or default;
- (e) Shall not, except as otherwise provided under applicable federal regulations, knowingly enter into any lower tier covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded by any federal department or agency from participation in such transaction; and
- (f) Include in all lower tier covered transactions, and all solicitations for covered transactions, provisions substantially similar to those set forth herein.

27. COMPLIANCE WITH LOCAL, STATE AND FEDERAL REGULATIONS. The Contractor shall comply with all lawful requirements of the United States, the State of California, the District, and all applicable municipalities and local agencies. Such compliance shall include, but is not limited to, all laws, regulations and guidelines regarding the health and safety of Contractor's employees, subcontractors, vendors, etc., as well as discharges to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

28. BID PROTEST:

OVERVIEW - It is the intent of the District to afford due process to bidders, proposers and professional service vendors (hereinafter collectively referred to as "bidders/proposers" and/or "bidders and proposers"), that have participated in a procurement process and believe that the intended award of a contract did not comply with: (1) the procurement's terms and/or conditions; and/or (2) applicable law.

Accordingly, this Procedure establishes the rules and procedures for bidders and proposers to file a protest regarding recommended award(s) as a result of a procurement issued by the District.

Compliance with this Procedure is mandatory, as further explained below.

- (a) **Filing of Protest:** A bidder or proposer that has submitted a bid or proposal to the District and wishes to file a protest against an intended award to another bidder/ proposer shall comply with the following:
 - a. Submit the protest in writing to the Vice President for Administrative Services at the District Administrative Offices, located at 1 Barnard Drive, Oceanside, CA 92056;
 - b. The protest letter must state the basis for the protest, all facts and information in support thereof, the remedy sought, be signed under penalty of perjury under the laws of the state of California, and be accompanied by all documents that support the basis of the protest;
 - c. Protests must be submitted within five (5) business days of notification of the proposed award;

- d. The filing of a Public Records Act Request will not extend the five (5) business day deadline within which a protest must be filed.
- e. The filing of a protest will not suspend the intended award. The District retains its discretion to move forward with the intended award as permitted by law; and
- f. Any protest filed after the required deadline will not be considered, except in the District's sole discretion.

(b) Disposition of Protest: Upon receipt of a protest, the Vice President for Administrative Services will:

- a. Decide to respond; or decide to delegate the obligation to respond to a designee, such as the Facilities Director;
- b. Promptly notify the intended awardee by sending a full copy of the protest to the intended awardee and permitting the intended awardee to respond to the protest within three (3) business days of the notice by providing a response to the District addressing the points raised in the protest and/or by submitting any other information in support of the District making the intended award.
- c. Upon receipt of a response from the intended awardee, the intended awardee's response may, subject to the District's discretion, be sent or not, to the protester for a reply to be made within three (3) business days of a request for a reply. The District may or may not require the protester to provide additional information and/or documentation as part of its reply;
- d. A final decision on the protest will be sent to the protestor within ten (10) business days of the protest being filed. The time for issuance of the decision may be extended in the sole discretion of the District.
- e. If the Vice President for Administrative Services or designee decides to reject or uphold the protest, this decision and its basis will be conveyed in writing/email to the protester, the intended awardee, and all other proposers and/or bidders that submitted a proposal or bid. In addition to the written/email notice, the decision may also be posted on the District's website.
- f. If the Vice President for Administrative Services or designee decides to reject the protest, the communication will also declare the District's intention to: (a) award to another bidder/proposer, or (b) re-open the bid/proposal process after curing any irregularities via and Addendum issued to all bidders/proposers; or (c) cancel the solicitation altogether, or (d) cancel the solicitation and re-solicit bids/proposals.
- g. Alternatively, the Vice President for Administrative Services or designee can declare the District's intention to (a) re-open the bid/proposal process after curing any irregularities via and Addendum issued to all bidders/proposers; (b) cancel the solicitation altogether, or (c) cancel the solicitation and re-solicit bids/, without ruling on the protest.

(c) Appeal

- a. If the Vice President for Administrative Services' or designee's decision is to (a) cancel the solicitation altogether, or (b) cancel the solicitation and re-solicit proposals or bids, without ruling on the protest, there is no right to appeal.
- b. If the Vice President for Administrative Services or designee's decision is to reject the protest, the protestor has three (3) business days from such notice within which to file an appeal in writing to the Vice President for Administrative Services setting forth all grounds for the appeal.
- c. The Vice President for Administrative Services will immediately forward any such appeal to the District's President/Superintendent who shall determine the appeal. A hearing will be set within seven (7) business days at which time the protestor, intended awardee, and District representatives may present their positions to the District's President/Superintendent.
- d. The District's President/Superintendent will send a recommendation to the Board of Trustees (the "Board"). The Board will then either accept or reject the District's President/Superintendent's recommendation. The Board's decision will constitute the District's final decision on the appeal.

(d) Other Terms and Conditions

- a. A protester's compliance with this Protest Procedure is mandatory, and is a condition precedent, to the

filing of any writ with the Superior Court.

- b. If any other public entity and/or authority provides funding to a specific procurement subject to this Procedure, and mandates protest procedures different from those stated herein as a condition for providing such funding, then this Procedure may be modified to include such requirements, subject to the sole discretion of the District.
- c. A true and accurate summary of the rules and procedures for filing a protest as described herein will be included in full or by reference in all requests for bids or requests for proposals and if not, is hereby deemed incorporated therein by reference.
- d. File records containing documentation on protests and appeals, including but not limited to correspondence and written decisions, will be maintained by the District's Program Management Office and all and/or a portion of such files may be discoverable in response to a California Public Records Act Request. By the foregoing statement, the District does not intend to waive, nor does it waive, any of its potential rights, remedies, defenses, privileges and/or protections, all of which are hereby expressly and fully reserved.
- e. The District's Administrative Procedure 6380, entitled "Purchasing and Contracts Best Practices", specifically only the section entitled "Bid Protest/Contract Award Appeals Procedure" found on page 5 thereof, is incorporated herein by reference as if set forth at length hereat and to the extent that text is not in conflict with the text stated herein above.
- f. This Procedure is also made with reference to Board of Trustees Administrative Procedures 6340 entitled "Purchasing and Contracts".

29. PROLOG CONVERGE: The Contractor shall utilize the PMO's Prolog Converge system to submit any and all documentation required to be provided by the Contractor for the Projects, including, but not limited to, (i) requests for information; and (ii) submittals. The Contractor also shall require all major subcontractors and subconsultants to utilize Prolog for the Projects.

30. Set Off: Contractor agrees that District shall have the right, without the necessity of a prior judgment by a court of law, to set off against amounts owing to Contractor under the Contracts any Loss that District suffers as a result of a breach by Contractor of any other agreement between Contractor and District, whether or not such agreement is related or unrelated to the Projects.

[SECTION III BEGINS ON THE NEXT PAGE]

III. ATTACHMENTS THAT MUST BE SUBMITTED WITH YOUR BIDS

Attachments "A"; "C" through "O" must all be completely and correctly filled out using the following required Forms without erasure or alteration, except as permitted by these Bid Documents, and submitted with your Bid Package on the due date for receiving Bids.

Attachment "B-1" and Attachment "B-2"; must be completely and correctly filled out using the required Forms without erasure or alteration and turned into the District at the location of the Bid mailing or personal delivery within 48 hours after the Bid Opening Date.

Only those potential Bidders who previously pre-qualified will be permitted to submit Bids including Attachments "A" through "O" for this procurement.

The Attachments must also be signed and/or notarized as indicated on the particular Form and submitted as part of your Bid Submittal Package.

Follow any additional instructions on each Attachment.

The Attachments begin on the next page.

BID FORM
Attachment "A"

To: Prospective Bidders

From: MiraCosta Community College District, acting by and through its Governing Board, herein called the "District":

1. Pursuant to and in compliance with the Notice/Invitation to Contractors Calling for Bids and the other Bid Documents relating thereto, the undersigned Bidder, having thoroughly examined and familiarized himself with the terms of the contracts, the local conditions affecting the performance of the contracts and the cost of the work at the places where the work is to be done, and with the drawings and specifications and other Contract Documents, hereby proposes and agrees to perform, within the time stipulated, the Projects pursuant to all requirements of the Contract Documents, including all of its/their component parts, and everything required to be performed, including its acceptance by the District, and to provide and furnish any and all of the labor, materials, tools, services, supplies, expendable equipment, apparatus, and the like, all utility and transportation services and California sales and other applicable taxes, permits, licenses and fees required by the agencies with authority in the jurisdiction in which the work will be located necessary to perform the contracts and complete in a workmanlike manner all of the work required in connection with:

**Project No. 04102: SAN B900 Student Center Renovation and
Project No. 04103: SAN B400 Science Labs Renovation**

BID MM-20-020

and all in strict conformity with the drawings and specifications and other Contract Documents for the Projects, including all Addenda issued for this procurement which are on file at the office of the PMO of said District for amounts set forth herein.

BASE BIDS: Base Bids shall include all costs required to perform the work as required by the Contract Documents and is inclusive of any and all Contractor or Subcontractor insurance coverage(s). Contractor acknowledges that they and any subcontractors meet minimum standards in order to bid on these Projects.

The Bidder agrees to perform all work required for Project No. 04102 for the lump sum of:

BASE BID AMOUNT FOR PROJECT NO. 04102: SAN B900 STUDENT CENTER RENOVATION:

A. For the Sum of the Total Base Bid Amount of:

_____ Dollars (\$ _____)

Said prices in Line A above to include all applicable taxes and costs.

A.1 Additive Alternate #1 – Exterior Light Fixtures (See Sheets D6.01, D10.01, A10.01, ED201 and E2.01):

_____ Dollars (\$ _____)

A.2 Additive Alternate #2 – Dining Hall Light Fixtures (See Sheets D10.01, ED201 and E201):

_____ Dollars (\$ _____)

A.3 Additive Alternate #3 – SolaTubes (See Sheets A3.01 and A10.01):

_____ Dollars (\$_____)

B. District Controlled Construction Contingency – Unforeseen Conditions:

_____ Seventy-Five Thousand Dollars (\$75,000.00)

Said price for the Bid District Controlled Construction Contingency to include all applicable taxes and costs.

C. Total Bid Amount for Project No. 04102: SAN B900 Student Center Renovation: Place the Total from Lines A, A.1, A.2, A.3 and B above on the line below:

_____ Dollars (\$_____)

All said pricing to include all applicable taxes and costs.

The Bidder agrees to perform all work required for Project No. 04103 for the lump sum of:

BASE BID AMOUNT FOR PROJECT NO. 04103: SAN B400 SCIENCE LABS RENOVATION:

D. For the Sum of the Total Base Bid Amount of:

_____ Dollars (\$_____)

Said prices in Line D above to include all applicable taxes and costs.

D.1 Additive Alternate #1 – Removal of All Skylights (See Sheets ALT1 A2.10, ALT1 A2.30 and ALT1 A5.01):

_____ Dollars (\$_____)

D.2 Additive Alternate #2 – Removal of Glass at Full Height Storage Cabinets (See Sheets ALT2 A2.10, ALT2 A5.01 and ALT2 A7.01)

_____ Dollars (\$_____)

D.3 Additive Alternate #3 – Enhanced Courtyard Hardscape (See Sheets ALT3 A1.02 and ALT3 L1.01)

_____ Dollars (\$_____)

E. District Controlled Construction Contingency – Unforeseen Conditions:

_____ One Hundred Fifty Thousand Dollars (\$150,000.00)

Said price for the Bid District Controlled Construction Contingency to include all applicable taxes and costs.

F. Total Bid Amount for Project No. 04103: SAN B400 Science Labs Renovation: Place the Total from Lines D, D.1, D.2, D.3 and E above on the line below:

_____ Dollars (\$_____)

All said pricing to include all applicable taxes and costs.

3. It is understood that the District reserves the right to reject these Bids and that these Bids shall remain open and not be withdrawn for a period of sixty (60) days after the date Bids are opened.

4. Bid Security

a. Attached is bid security in the amount of not less than ten percent (10%) of the bid for Project No. 04102:
 \$ _____. Bid Bond, Certified Check, Cashier's Check, or Cash. (check one of the foregoing boxes)

b. Attached is bid security in the amount of not less than ten percent (10%) of the bid for Project No. 04103:
 \$ _____. Bid Bond, Certified Check, Cashier's Check, or Cash. (check one of the foregoing boxes)

5. Attachments "A"; "C" through "O" are all correctly filled out, attached hereto and by this reference incorporated herein and made part of these completed Contract Bid Forms. *Attachment "B-1" for Project No. 04102 and Attachment "B-2" for the Project No. 04103 will be submitted to the District at the location of the Bid Opening within 48 hours after the Bids are opened or Bidder's Bid may be rejected as Non-Responsive.* Attachment "B-1" for Project No. 04102 and Attachment "B-2" for the Project No. 04103" by this reference are incorporated herein and made part of these completed Contract Bid Forms.

6. It is understood and agreed that if written notice of the acceptance of these Bids is mailed, emailed, telegraphed, or personally delivered, to the undersigned after the Bid Opening of the Bids, and within the time this Bid is required to remain open, or at any time thereafter before this Bid is withdrawn, the undersigned will execute and deliver to the District the Contracts in the form attached hereto in accordance with the Bids as accepted. The undersigned will also furnish and deliver to the District the Performance Bonds and Payment Bonds for Public Works as specified, all within five (5) days after receipt of acceptance of these Bids. The work under the Contracts shall be commenced by the undersigned Bidder, if awarded the Contracts, on the date stated in the District's Notices to the Contractor to Proceed and shall be completed by the Contractor in the time specified in the Contract Documents for the Projects.

7. Notice of Acceptance or requests for additional information should be addressed to the undersigned at the address stated below:

8. The names of all persons interested in the foregoing proposal as principals are as follows:

Name	Name
Title	Title
Address	Address
City, State & Zip Code	City, State & Zip Code
Telephone Number	Telephone Number
E-mail Address	E-mail Address

(IMPORTANT NOTICE: If Bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a co-partnership, state true name of firm, also names of all individual copartners comprising the firm; if Bidder or other interested person is an individual, state first and last names in full.)

9. Bidder certifies that he/she/it is licensed in accordance with the law providing for the Registration of Contractors. The undersigned bidder shall provide the following information:

Bidder's California Contractor's License No.: _____

Expiration Date: _____

Name on License: _____

Type of License: _____

If the undersigned bidder is a joint venture, each member of the joint venture must include the above information.

11. The undersigned bidder shall be registered with the DIR and shall provide the following information:

Bidder's California DIR
Registration Number: _____

Registration expiration date: _____

Name on Registration: _____

12. The Low Bid, assuming the Bidder's Bids are responsive, and the Bidder has not been determined to be a "non-responsible bidder", shall be determined as follows:

For this procurement, the Low Bid shall be:

- the lowest of the combined Total Bid Amounts on Line C and Line F above, inclusive of any alternates and the District Controlled Construction Contingency, provided the combined Total Bid Amounts on Line C and Line F above is less than, or equal to, the funding amount publicly disclosed by the District before the first Bid is opened; or
- If the aggregate amount described above exceeds the funding amount previously disclosed by the District before the first Bid is opened, then the low bid shall be determined based on the combined total amount of the lowest Base Bids on Line A and Line D above only, subject to available funding.
- The District reserves the right to add to either or both of the lowest Base Bids, at time of award of the contract for the Projects, any District Controlled Construction Contingency Amount determined by the District, as well as any or all alternates.

13. Time is of the essence regarding the award of the Contracts for the Projects. Therefore, in the event the bidder to whom the Notice of Intent to Award Contracts is given fails or refuses to post the required bonds and return executed copies of the Agreement forms for the Projects within ten (10) calendar days from the date of receiving the Notice of Intent to Award Contracts, the District may declare the bidder's bid deposits or bonds forfeited as damages.

Pursuant to Government Code section 4552, in submitting a bid to the District, the bidder offers and agrees that if the bid is accepted, it will assign to the District all rights, title, and interest in, and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Business and Professions Code sections 16700, et. seq.), arising from the purchase of goods, materials, or services by the bidder for sale to the District pursuant to the bid. Such assignment shall be made and become effective at the time the District tenders final payment to the bidder.

The bidder declares that he/she has carefully examined the location of the proposed work, that he/she has examined the Plans, General Conditions of the contracts, Special Conditions of the contracts, and Specifications, and read the accompanying instructions to bidders, and hereby proposes and agrees, if this proposal is accepted, to furnish all materials and do all work required to complete the said work in accordance with the Plans, General Conditions of the contracts, Special Conditions of the contracts, and Specifications, in the time and manner therein prescribed for the unit cost and lump sum amounts set forth in this Bid Form.

In the event of ambiguity due to a conflict between words and numbers with respect to the amount of the bid, words shall govern over numbers.

The bidder is familiar with Government Code sections 12650, et. seq., and Penal Code section 72 and understands that false claims can lead to imprisonment.

The bidder acknowledges that they have reviewed the work outlined in the contract documents and fully understands the Scope of work required in the Proposal, and further acknowledges that this proposal includes the scope of work within this Bid Proposal. It is further understood that no exceptions, exclusions, or clarifications will be considered.

I, _____, the _____ of the Bidder, hereby certify under penalty of perjury under the laws of the State of California, that all of the information submitted by the Bidder in connection with this Bid, and all of the representations made herein are true and correct.

Executed on this _____ day of _____, 2021 at _____ County, California.

Proper Name of Bidder

Address

By: _____
Signature of Authorized Agent/Officer

City, State & Zip Code

Print Name

Telephone Number

Title

E-mail Address

NOTE: If Bidder is a corporation, the legal name of the corporation shall be set forth above together with the signature(s) of authorized officers or agents; if Bidder is a partnership, the true name of the firm shall be set forth above together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership; if Bidder is a Joint Venture, the legal name of the Joint Venture shall be set forth above together with the signature(s) of the Joint Venture's Managing partner(s); and if Bidder is an individual, his/her or her signature shall be placed above

[End of Attachment A - "Bid Form"]

SUMMARY OF COSTS AND BID BREAKDOWN

Attachment "B-1"

Project No. 04102: SAN B900 Student Center Renovation

(Attachment "B-1" must be turned into the District within 48 hours of the Bid Opening Date)

Division #	Division Description (as applicable)	Division Total
<i>Insert Div. #'s</i>	General Conditions/Requirements	
	Site Work	
	Concrete	
	Masonry	
	Metals	
	Wood & Plastics	
	Thermal & Moisture Protection	
	Doors & Windows	
	Finishes	
	Specialties	
	Equipment	
	Furnishings	
	Special Construction	
	Conveying System	
	Mechanical	
	Electrical	
	Others (Abatement)	
	Divisions Total	
	Overhead and Profit	
	Insurance	
	Bid Additive Alternate #1 – Exterior Light Fixtures	
	Bid Additive Alternate #2 – Dining Hall Light Fixtures	
	Bid Additive Alternate #3 – SolaTubes	
	District Controlled Construction Contingency – Unforeseen Conditions	\$ 75,000.00
	Cost of Payment and Performance Bonds	
	TOTAL BID AMOUNT	
	(This amount must match the amount entered on Line "C" of Attachment "A" - Bid Form)	
<p>This is a preliminary breakdown. It must be submitted within 48 hours after the Bid Opening Date. This form does not replace or take precedence over the Schedule of Values set and agreed to after award of the Contract.</p>		

Bid No.: MM-20-020
Project Nos.: 04102, 04103

MiraCosta Community College District
San Elijo Campus
SAN B900 Reno and SAN B400 Reno

Firm Name (as indicated on the Bid Form): _____

By: _____

Signature: _____

Date: _____

Title: _____



SUMMARY OF COSTS AND BID BREAKDOWN

Attachment "B-2"

Project No. 04103: SAN B400 Science Labs Renovation

(Attachment "B-2" must be turned into the District within 48 hours of the Bid Opening Date)

Division #	Division Description (as applicable)	Division Total
Insert Div. #'s	General Conditions/Requirements	
	Site Work	
	Concrete	
	Masonry	
	Metals	
	Wood & Plastics	
	Thermal & Moisture Protection	
	Doors & Windows	
	Finishes	
	Specialties	
	Equipment	
	Furnishings	
	Special Construction	
	Conveying System	
	Mechanical	
	Electrical	
	Others (Abatement)	
	Divisions Total	
	Overhead and Profit	
	Insurance	
	Bid Additive Alternate #1 – Remove all Skylights	
	Bid Additive Alternate #2 – Removal of Glass at Full Height Storage Cabinets	
	Bid Additive Alternate #3 – Enhanced Courtyard Hardscape	
	District Controlled Construction Contingency – Unforeseen Conditions	\$ 150,000.00
	Cost of Payment and Performance Bonds	
	TOTAL BID AMOUNT	
	(This amount must match the amount entered on Line "F" of Attachment "A" - Bid Form)	
<p>This is a preliminary breakdown. It must be submitted within 48 hours after the Bid Opening Date. This form does not replace or take precedence over the Schedule of Values set and agreed to after award of the Contract.</p>		

Bid No.: MM-20-020
Project Nos.: 04102, 04103

MiraCosta Community College District
San Elijo Campus
SAN B900 Reno and SAN B400 Reno

Firm Name (as indicated on the Bid Form): _____

By: _

Signature: _____

Date: _____

Title _____

BID BOND

Attachment "C-1"

KNOW ALL MEN BY THESE PRESENTS: THAT we, _____, as Principal, and _____, as Surety, are held and firmly bound unto the MiraCosta Community College District, hereinafter called the District, in the penal sum of TEN PERCENT (10%) OF THE TOTAL AGGREGATE AMOUNT OF THE BID of the Principal submitted to the said District on Line "C" of Attachment "A" (Bid Form) for the work described below for the payment of which sum 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, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated _____, 2021 for the MiraCosta Community College District procurement commonly referred to as:

MiraCosta Community College District:
Project No. 04102: SAN B900 Student Center Renovation

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

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

In the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all litigation expenses incurred by the District in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this _____ day of _____, 2021, the name and corporate seal of each corporate party being hereto affixed and these presents duly assigned by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

PRINCIPAL _____

By: _____

Title: _____

SURETY: _____

By: _____
Attorney-in Fact

(Attach Attorney-in-Fact Certificate)

BID BOND

Attachment "C-2"

KNOW ALL MEN BY THESE PRESENTS: THAT we, _____, as Principal, and _____, as Surety, are held and firmly bound unto the MiraCosta Community College District, hereinafter called the District, in the penal sum of TEN PERCENT (10%) OF THE TOTAL AGGREGATE AMOUNT OF THE BID of the Principal submitted to the said District on Line "F of Attachment "A" (Bid Form) for the work described below for the payment of which sum 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, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted the accompanying bid dated _____, 2021 for the MiraCosta Community College District procurement commonly referred to as:

MiraCosta Community College District:
Project No. 04103: SAN B400 Science Labs Renovation

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

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

In the event suit is brought upon this bond by the District and judgment is recovered, the Surety shall pay all litigation expenses incurred by the District in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals this _____ day of _____, 2021, the name and corporate seal of each corporate party being hereto affixed and these presents duly assigned by its undersigned representative, pursuant to authority of its governing body.

(Corporate Seal)

PRINCIPAL _____

By: _____

Title: _____

SURETY: _____

By: _____

Attorney-in Fact

(Attach Attorney-in-Fact Certificate)

DECLARATION OF SUFFICIENCY OF FUNDS

Attachment "D"

(California Labor Code Section 2810)

I, the undersigned, an authorized representative of the Bidder, with authority to make the statements contained in this Declaration on behalf of Bidder, hereby declare the following:

1. The Bidder's employer identification number for state tax purposes is: _____.
2. The Bidder's workers' compensation insurance policy number is: _____. The name, address, and telephone number of the insurance carrier providing said insurance is:
 _____.

3. The following information is provided concerning any and all vehicles that are owned by the Bidder and that will be used for transportation in connection with any service provided for the performance of the Work that is the subject of the Bids that will form the basis for the Award of the Contracts for the Projects. Insert all required information in the table below. **[Attach additional sheets, if needed]:**

<i>Vehicle</i>	<i>Vehicle ID #</i>	<i>Vehicle. Liability Insurance Policy Number (of policy covering vehicle)</i>	<i>Name, Address and Telephone Number of Vehicle Liability Insurance Carrier (issuing policy covering vehicle)</i>

4. The following is the address of any real property that will be used to house workers in connection with the performance of the Work that is the subject of the Bids:

_____. **[Insert the information requested. If no such housing will be provided, enter "none"]**

5. The actual or estimated number of workers that will be employed to perform the Work that is the subject of the Bids, the total amount of wages to be paid to said workers, and the dates on which said wages will be paid are as follows **[attach additional sheets, if needed]:**

<i>Total Number of Workers</i>	<i>Total Amount of Wages</i>	<i>Date(s) for Payment of Wages</i>

6. Check only one of the following boxes, as applicable:
 The statement of number of workers declared in Paragraph 5, above, is a statement of the actual number of workers that will be employed; or

The actual number of workers requested in Paragraph 5, above, is unknown at this time and therefore the statement of number of workers declared herein is based on the Bidder's best estimate available at the time of submission of its Bids, rather than the actual number of workers that will be employed and if and when the actual number of workers and the other information requested above is available, it will be reported to the District by the Bidder in writing.

7. The actual or estimated total number of persons who will be utilized as "Independent Contractors" (defined as anyone not receiving a W-2 form) to perform the Work that is the subject of the Bids (together with their known, current local, state, and federal contractor license identification numbers that each is required to have under local, state or federal laws or regulations) are as follows [attach additional sheets, if needed]:

<i>List of Independent Contractors</i>	<i>Current, local, state and federal contractor license identification number</i>

8. Check only one of the following boxes, as applicable:

The statement of number of Independent Contractors declared in Paragraph 7, above, is a statement of the actual number of Independent Contractors that will be utilized; or,

The actual number of Independent Contractors requested in Paragraph 7, above, is unknown at this time and therefore the statement of number of Independent Contractors declared herein is based on the Bidder's best estimate available at the time of submission of its Bids, rather than the actual number of Independent Contractors that will be utilized, and if and when the actual number of Independent Contractors and the other information requested above is available, it will be reported to the District by the Bidder in writing.

I, the undersigned, declare under penalty of perjury that the foregoing statements are within my personal knowledge and are true and correct. Executed on this ___ day of _____, in the year ____ at _____, California.

(signature)

Type Name of Signer: _____

Type Name of Bidder Business: _____

NON-COLLUSION DECLARATION

Attachment "E"

State of California)
County of _____)

The undersigned declares:

I am the President of _____, the party submitting to the MiraCosta Community College District Bids and/or Proposals regarding the San Elijo Campus – **04102: SAN B900 Student Center Renovation 04103 and SAN B400 Science Labs Renovation** ("Projects"). The Bids and/or Proposals are not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Bids and/or Proposals are genuine and not collusive or a sham. I/We have not directly or indirectly induced or solicited any other bidder or proposer to put in false or sham Bids and/or Proposals. I/We have not directly or indirectly colluded, conspired, connived, or agreed with any other bidder or proposer or anyone else to put in sham Bids and/or Proposals, or to refrain from applying. I/We have not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix any price of our Bids and/or Proposals or that of any other bidder or proposer, nor to fix any overhead, profit, or cost element of our price, or of that of any other bidder or proposer regarding the Projects. All statements contained in the Bids and/or Proposals are true. I/We have not, directly or indirectly, submitted these Bids and/or Proposals, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, or to any member or agent thereof, to effectuate collusive or sham Bids and/or Proposals and have not paid, and will not pay, any person or entity for such purpose.

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

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

Signature

Print Name

NON-DISCRIMINATION DECLARATION

Attachment "F"

I, the undersigned, certify and declare that I am an authorized agent or officer of the entity submitting these Bids and/or Proposals to the MiraCosta Community College District for the following projects at the San Elijo Campus : Project No. **04102: SAN B900 Student Center Renovation and Project No. 04103: SAN B400 Science Labs Renovation** ("Projects"), and that I am empowered to submit the Bids and/or Proposals on behalf of:
_____;

In connection with the procurement process for the Projects, I hereby certify and declare that neither my firm, or any one employed by my firm, will discriminate in the employment of persons working on the Projects because of the race, religious creed, color, national origin, or ancestry, physical disability, medical condition, marital status, sex of gender of such persons except as provided in Section 12940 of the Government Code. I acknowledge that every vendor working for the MiraCosta Community College District violating that section is subject to all the penalties imposed for a violation of all applicable laws, including without limitation, Labor Code section 1735.

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

BY: Signature: _____

Printed Name: _____

Position/Title: _____

Date of Execution: _____

CONFLICT OF INTEREST CERTIFICATION

Attachment "G"

Regarding the Bids and/or Proposals that I and/or my Firm has submitted to the MiraCosta Community College District for the following projects at the San Elijo Campus, Project No. **04102: SAN B900 Student Center Renovation and Project No. 04103: SAN B400 Science Labs Renovation ("Projects")**

I and we hereby certify that we have no conflict of interest within the meaning of the laws of the state of California; that no one in my firm has a business or personal relationship with any Member of the District, and/or Program Management Office, or any person in a decision making position regarding the potential contract for the Projects; and that in submitting these Bids and/or Proposals, I and we have not used any undue influence or taken advantage of any relationship that would cause the award of the contract for the Projects to be made other than on the basis as permitted by law.

The undersigned Bidder hereby also certifies that:

1. No officer, director, agent, employee, or affiliate of the Bidder has a financial interest in any consultant or contractor currently under agreement to perform work or services for the District, or for any of its consultants or sub-consultants, excepting the following firms:

_____.

2. No officer, director, agent, employee, or affiliate of the Bidder has received or given, either directly or indirectly through an intermediary, any gift or gratuity to any consultant or contractor currently under agreement to perform work or services for the District, or for any of its consultants or sub-consultants, except for the following:

_____.

3. No officer, director, agent, employee, or affiliate of the Bidder has any affiliation or business relationship with any official, officer, agent, or employee of the District, or any of its consultants or sub-consultants, who make recommendations to the District with respect to the expenditure of money, except for the following affiliation or business relationship:

_____.

4. No officer, director, agent, employee, or affiliate of the Bidder has any family or business affiliation or relationship with any official, officer, agent, or employee of the District, except for the following affiliation or business relationship:

_____.

5. No portion of the services covered by the Bidder's Bids are anticipated to be performed by a person or entity that is already providing, or that the Bidder has reason to believe may provide in the future, services, advice, or consultation to (1) the District; (2) any consultant or contractor retained by the District; or (3) any sub-consultant or subcontractor of any consultant or contractor retained by District, except for the following:

_____.

6. The Bidder does not know of any other circumstances, not described above, that create or could be reasonably interpreted as creating, a conflict of interest, except for the following:

_____.

7. The Bidder agrees to assume a continuing duty to disclose to the District any circumstances that may arise in the future within the scope of the requests for disclosure of conflicts of interests stated above.

Bidder's Name: _____

Date: _____, 2021

Signature: _____

Name and Title: _____

CONTRACTOR'S CERTIFICATION REGARDING WORKERS' COMPENSATION

Attachment "H"

Labor Code Section 3700 states:

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

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

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

"(c) For any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state, including each member of a pooling arrangement under a joint exercise of powers agreement (but not the state itself), by securing from the Director of Industrial Relations a certificate of consent to self-insure against workers' compensation claims, which certificate may be given upon furnishing proof satisfactory to the director of ability to administer workers' compensation claims properly, and to pay workers' compensation claims that may become due to its employees. On or before March 31, 1979, a political subdivision of the state which, on December 31, 1978, was uninsured for its liability to pay compensation, shall file a properly completed and executed application for a certificate of consent to self-insure against workers' compensation claims. The certificate shall be issued and be subject to the provisions of Section 3702.

"For purposes of this section, 'state shall include the superior courts of California."

I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of these Contracts and Projects at San Elijo Campus and the Projects commonly known as Project No. **04102: SAN B900 Student Center Renovation and Project No. 04103: SAN B400 Science Labs Renovation.**

WCIRB # _____

(Proper Name of Contractor)

By _____

(Signature of Contractor)

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

BIDDER'S CERTIFICATIONS and REPRESENTATIONS

Attachment "I"

Without limitation on any other statements or representations made by the Bidder as part of its participation in the Bid process described herein for the Projects commonly known as Project No. 04102: SAN B900 Student Center Renovation and Project No. 04103: SAN B400 Science Labs Renovation located at the San Elijo Campus, each Bidder who submits Bids in response to this Invitation/Solicitation for Bids is deemed to have made the following representations to the District:

1. Bidder represents that its Bids fully complies with the requirements of the Invitation for Bids process;
2. Bidder represents that all of the statements and representations made, or incorporated by reference, by Bidder in its Bids, and in the attachments or exhibits submitted with its Bids, are true, correct, and materially complete;
3. Bidder represents that matters stated in the Bids are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true;
4. Bidder represents that, if it is a requirement of this procurement, that Bidder attended the Mandatory Pre-Bid Conference and Job Walk;
5. Bidder represents that each person who signed a document that is included in the Bids was at the time of signing, and for the duration of Bidder's participation in the Bid process provided for in these Instructions shall remain, authorized to so sign on behalf of and to bind the Bidder;
6. If the Bidder is a corporation, limited liability company, limited partnership, or joint venture, Bidder represents that it is, and for the duration of Bidder's participation in the Bid process provided for by these Instructions shall remain, registered with the Office of the Secretary of State for the State of California and authorized under Applicable Laws to business in the State of California with a legal status determined by said Office of the Secretary of State of "active and in good standing";
7. Bidder represents that it possesses at the time of submission of its Bids, and shall possess for the duration of Bidder's participation in the Bid process provided for by these Instructions, all licenses that it is required to hold under the provisions of these Instructions and/or that it is required to hold under applicable laws in order to perform the services and work contemplated by the Bid process;
8. Bidder represents that it is, and at all times during its participation in the Bid process shall be, in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA"), as well any similar provisions of applicable laws setting forth proscriptions or penalties relating to the employment or hiring of undocumented aliens;
9. Bidder, being familiar with California Government Code §§1090 *et. seq.* and §§ 87100 *et seq.*, represents that it does not know of any facts occurring in connection with the Bidder's preparation for, or participation in, the herein described Bid process that constitute a violation thereof and has disclosed to District in "Attachment G - Conflict of Interest Certification" any possible interests, direct or indirect, which Bidder believes any official, officer, agent, or employee of the District has that might cause such official, officer, agent, or employee to be "financially interested" (as that term is defined the aforesaid statutes) in any decision made by District in connection with the Bid process that is the subject of these Instructions;
10. For projects over \$1Million, In accordance with Public Contract Code section 2204 (a), the Bidder certifies and represents that at the time its Bids are submitted, the Bidder is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5,

as applicable. Bidder is cautioned that making a false certification and representation may subject the Bidder to civil penalties, termination of existing contract(s), and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205.

- 11.** Bidder represents and warrants that neither Contractor, nor any Subcontractor, shall be qualified to submit a Bid, or be listed in a Bid, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of Work under the Contract Documents unless currently registered and qualified to perform public work pursuant to Section Labor Code §1725.5. Contractor shall not enter into any subcontract without proof of the potential Subcontractor's registration. If an unregistered Contractor submits a proposal, the District will deem such proposal as Non-Responsive.
- 12.** Bidder represents and warrants that Contractor and the Subcontractors, of every Tier, shall be registered with the Department of Industrial Relations pursuant to Labor Code §§ 1725.5 and 1771.1 for the duration of time that Contractor is performing the Work under the Contract Documents. If any Contractor or Subcontractor performs Work on these Projects at any time, the District has the right to cancel the Contracts for cause.
- 13.** Bidder represents and warrants that all information set forth in its Pre-Qualification Questionnaire is full, complete, accurate and truthful.

Date: _____

Name of Bidder

Signature of Bidder (if individual) or its Officer

Typed Name of Person Signing

Office or Title

AUTHORIZATION TO RELEASE INFORMATION

Attachment "J"

Regarding the procurement commonly referred to as: *MiraCosta Community College District – San Elijo Campus ("SAN") Project No. 04102: SAN B900 Student Center Renovation and Project No. 04103: SAN B400 Science Labs Renovation - #MM-20-020* (hereinafter collectively referred to as "Projects"), the undersigned Bidder hereby authorizes and consents to the District and its representatives, acting on behalf of the District, to obtain information from any third parties, including, but not limited to, any: individuals; firms; entities; persons; representatives, or organizations listed by Bidder in any of its Bid Documents for the Projects, for the purpose of verifying the information provided therein by the Bidder, or for any other purpose related to the evaluation of the Bidder's qualifications and/or Bids for the Projects.

The Bidder recognizes that to ensure the effectiveness of the Bid process, such individuals must be able to speak frankly and openly to the District and its' representatives.

Accordingly, the Bidder hereby fully and unconditionally provides authority to such third parties to release any information requested by the District and/or the District's representatives. Bidder hereby also releases and discharges such third parties, and the firms, entities and organizations they represent, from any claim or liability relating to information provided by it/him/her/them to the District and/or the District's representatives in connection with the processing, investigation and evaluation by District and/or the District's representatives of the information submitted by the Bidder for the Projects.

Bidder hereby certifies that all its listed subcontractors have read this Authorization to Release Information, and the Bidder's signature below represents its and its subcontractor's agreement to the terms and conditions hereof, regarding both the Bidder and all of its subcontractors, in connection with the Projects.

BY: Signature: _____

Printed Name: _____

Position/Title: _____

Date of Execution: _____

EVIDENCE OF INSURANCE CERTIFICATION

Attachment "K"

I, the undersigned, certify and declare that I am an authorized agent or officer of the entity submitting these Bids and responses for the procurement commonly referred to as: *MiraCosta Community College District – San Elijo Campus ("SAN") Project No. 04102: SAN B900 Student Center Renovation and Project No. 04103: SAN B400 Science Labs Renovation - #MM-20-020* (hereinafter collectively referred to as the "Projects"), and that I am empowered to submit the Bids and responses on behalf of:

I/We acknowledge and am aware that as required by the Contract Documents, and if awarded the Contracts for the Projects, that I/We are required to have, obtain, and provided, as a condition precedent to being able to perform any services and/or work under the Contracts for the Projects, the insurance required by the Bid and Contract documents.

In that regard, I/We have read all of the Bid Documents and Contract Documents, and I/We affirm and certify that I/We am familiar with all insurance requirements called for by the Bid Documents and Contract Documents for the Projects, including without limitation, those insurance requirements set forth in the General Conditions to the Contract, and that I/We have, and/or shall have, all said insurance requirements for the Projects as required by the Bid Documents and Contract Documents.

The matters stated herein above are true and correct based on my own personal knowledge.

I certify that the foregoing is true and correct.

BY: Signature: _____

Printed Name: _____

Position/Title: _____

Date of Execution: _____

Statement of Safety Record

Attachment "L"

General Contractor to complete each item below:

1. EMR Rating for the last three (3) years
2018_____ 2019_____ 2020_____;
2. Number of serious or willful safety citations in last ten (10) years _____. Add explanation on back of this form;
3. Annual TRIR for the last three (3) years and attach by annual filing documents;
2018_____ 2019_____ 2020_____;
4. Number of fatalities within last 10 years, and attach OSHA 200/300 logs and add explanation on back of this form;
5. Contractor's Standard Industrial Classification (SIC) code _____ and North American Industry Classification System (NAICS) code _____

Applicant/Proposer hereby certifies that the above stated information is true and correct.

IN WITNESS WHEREOF, the undersigned has executed this this Statement of Safety Record

_____ day of _____, 2021.

[Name of Proposer]

[Signature of Proposer (if individual) or its Officer]

[Typed Name of Person Signing]

[Office or Title]

DESIGNATION OF SUBCONTRACTORS

Attachment "M-1"

Project No. 04102: SAN B900 Student Center Renovation

In compliance with the Subletting and Subcontracting Fair Practices Act of the Public Contract Code of the State of California, each Bidder shall set forth below: (a) the name and the location of the place of business and (b) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work in an amount in excess of one-half of one percent of the Contractor's Total Bid Price for Project No. 04102: SAN B900 Student Center Renovation ("Project"). Notwithstanding the foregoing, if the work involves streets and highways, then the Contractor shall list each subcontractor who will perform work or labor or render service to Contractor in or about the work in an amount in excess of one-half of one percent of the Contractor's Total Bid Price for the Project. No additional time shall be granted to provide the below requested information.

If no subcontractor is specified, for a portion of the work, or if more than one subcontractor is specified for the same portion of Work, to be performed under the Contract in excess of one-half of one percent of the Contractor's Total Bid Price for the Project or \$10,000, whichever is greater if the work involves streets or highways, then the Contractor shall be deemed to have agreed that it is fully qualified to perform that Work, and that it shall perform that portion itself.

NOTE: If alternate Bids are called for and Bidder intends to use a different or additional subcontractor on the alternates, a separate list of subcontractors must be provided for each such alternate. Identify additional list of subcontractors by Alternate Bid No.

_____ *If no subcontractors will be listed please initial to certify that work will be self-performed.*

Portion of Work	Subcontractor	Location of Business (address)	Sub Contractor's License Number	Sub Contractor's DIR Number

Portion of Work	Subcontractor	Location of Business (address)	Sub Contractor's License Number	Sub Contractor's DIR Number

Name of Bidder _____

Signature _____

Name and Title _____

Date: _____

DESIGNATION OF SUBCONTRACTORS

Attachment “M-2”

Project No. 04103: SAN B400 Science Labs Renovation

In compliance with the Subletting and Subcontracting Fair Practices Act of the Public Contract Code of the State of California, each Bidder shall set forth below: (a) the name and the location of the place of business and (b) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work in an amount in excess of one-half of one percent of the Contractor’s Total Bid Price for Project No. 04103: SAN B400 Science Labs Renovation (“Project”). Notwithstanding the foregoing, if the work involves streets and highways, then the Contractor shall list each subcontractor who will perform work or labor or render service to Contractor in or about the work in an amount in excess of one-half of one percent of the Contractor’s Total Bid Price for the Project. No additional time shall be granted to provide the below requested information.

If no subcontractor is specified, for a portion of the work, or if more than one subcontractor is specified for the same portion of Work, to be performed under the Contract in excess of one-half of one percent of the Contractor’s Total Bid Price for the Project or \$10,000, whichever is greater if the work involves streets or highways, then the Contractor shall be deemed to have agreed that it is fully qualified to perform that Work, and that it shall perform that portion itself.

NOTE: If alternate Bids are called for and Bidder intends to use a different or additional subcontractor on the alternates, a separate list of subcontractors must be provided for each such alternate. Identify additional list of subcontractors by Alternate Bid No.

_____ *If no subcontractors will be listed please initial to certify that work will be self-performed.*

Portion of Work	Subcontractor	Location of Business (address)	Sub Contractor’s License Number	Sub Contractor’s DIR Number

Portion of Work	Subcontractor	Location of Business (address)	Sub Contractor's License Number	Sub Contractor's DIR Number

Name of Bidder _____

Signature _____

Name and Title _____

Date: _____

REFERENCES

Attachment "N"

<u>Firm Name</u>	<u>Person to Contact</u>	<u>Email</u>	<u>Cell Number</u>	<u>Address</u>	<u>Project # and Name</u>
1.					
2.					
3.					

Name of Bidder _____

Signature _____

Name and Title _____

Date: _____



ACKNOWLEDGMENT OF ADDENDA

Attachment "O"

I, the undersigned, certify that I am an authorized agent or officer of the entity submitting these Bids to the MiraCosta Community College District for the SAN B900 Student Center Renovation and the SAN B400 Science Labs Renovation (hereinafter referred to as the "Projects") and that I am empowered to submit the Bids and/or Proposals on behalf of:

_____;

In connection with the procurement process for the Projects, I hereby acknowledge that my firm has received and considered the following number of addenda issued for the Projects:

Addendum No.	Date Received

Total Number Addenda issued and reviewed: _____
insert total # of Addenda above

Failure to acknowledge all Addenda issued for the Projects will result in your Bids being deemed Non-Responsive.

By: Signature: _____
 Print Name: _____
 Title: _____
 Date: _____

ATTACHMENTS THAT ARE NOT SUBMITTED WITH YOUR BIDS

Attachments “P-1” through “X” are for the Bidder’s information, reference and careful evaluation as they each can have a material effect on the cost of construction and must all be considered by the Bidder in preparing its Bids for the Projects.

Attachments “P-1” through “W.1” will become part of the Contract Documents after award of the Contracts.

Attachment “X” is Reference Documents and will and do not become part of the Contract Documents.

Attachments “P-1” through “X” begin on the next page.

PAYMENT BOND

Attachment "P-1"

Project Name: San B900 Renovation
Bond Number:

(MUST BE submitted before any construction work begins)

KNOW ALL PERSONS BY THESE PRESENTS THAT:

WHEREAS, the **MIRACOASTA COMMUNITY COLLEGE DISTRICT** ("District") by action of the Board of Trustees on [insert board approval date], 2021, has awarded Construction Contract Number [insert contract number] ("Contract") to the undersigned [insert contractor name] as Principal ("Principal") to perform the work ("Work") for the following project: PROJECT NO. 04102 SAN B900 STUDENT CENTER RENOVATION:

AND, WHEREAS, said Principal is required by the Contract and/or by Division 3, Part IV, Title XV, Chapter 7 (commencing at Section 9550) of the California Civil Code to furnish a payment bond in connection with the Contract;

NOW THEREFORE, we, the Principal and [insert surety name], the Surety, an admitted surety insurer pursuant to Code of Civil Procedure, Section 995.120, and/or any subsequent amendment thereof, are held and firmly bound unto District in the penal sum of _____ Dollars (\$_____), this amount being not less than one hundred percent (100%) of the total sum payable by District under the Contract at the time the Contract is awarded by District to the Principal, lawful money of the United States of America, for the payment of which sum well and truly to be made, we, Principal and Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Principal, its heirs, executors, administrators, successors, or assigns approved by District, or its subcontractors, of any contracting tier, shall fail to pay any person or persons named in California Civil Code, Section 9554, or as otherwise required by law, then Surety will pay for the same, in or to an amount not exceeding the penal amount hereinabove set forth, and Surety will also pay to the prevailing party, if suit is brought upon this bond, reasonable attorney's fees as provided in California Civil Code, Section 9554.

Surety, for value received, agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, nor any rescission or attempted rescission of the Contract or this bond, nor any conditions precedent or subsequent in the bond or Contract attempting to limit the right of recovery of any claimant otherwise entitled to recover under the Contract or this bond shall in any way impair or affect Surety's obligation under this bond, and Surety does hereby waive notice of any such changes, extensions of time, alterations or additions.

Surety is not released from liability to those for whose benefit this bond has been given, by reason of any breach of the Contract by District or Principal.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, joint and severally, or against any one or more

of them or against less than all of them, without impairing District's rights against the others.

(Proper name of Bidder)

(Corporate Seal of Principal, if Corporation)

By:

Signature of Bidder

Print or type Bidder's Name

Print or type Bidder's Address

(Corporate Seal of Surety)

Surety

By:

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate and Required Acknowledgments)

Name and Address of California Agent of Surety

Telephone Number of California Agent of Surety

Note: Notary acknowledgment for Surety and Surety's Power of Attorney must be included or attached.

This is a Mandatory Form and cannot be altered by the Principal or the Surety.

PAYMENT BOND

Attachment "P-2"

Project Name: SAN B400 Renovation

Bond Number:

(MUST BE submitted before any construction work begins)

KNOW ALL PERSONS BY THESE PRESENTS THAT:

WHEREAS, the **MIRACOASTA COMMUNITY COLLEGE DISTRICT** ("District") by action of the Board of Trustees on [insert board approval date], 2021, has awarded Construction Contract Number [insert contract number] ("Contract") to the undersigned [insert contractor name] as Principal ("Principal") to perform the work ("Work") for the following project: PROJECT NO. 04103: SAN B400 SCIENCE LABS RENOVATION:

AND, WHEREAS, said Principal is required by the Contract and/or by Division 3, Part IV, Title XV, Chapter 7 (commencing at Section 9550) of the California Civil Code to furnish a payment bond in connection with the Contract;

NOW THEREFORE, we, the Principal and [insert surety name], the Surety, an admitted surety insurer pursuant to Code of Civil Procedure, Section 995.120, and/or any subsequent amendment thereof, are held and firmly bound unto District in the penal sum of _____ Dollars (\$ _____), this amount being not less than one hundred percent (100%) of the total sum payable by District under the Contract at the time the Contract is awarded by District to the Principal, lawful money of the United States of America, for the payment of which sum well and truly to be made, we, Principal and Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, and firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Principal, its heirs, executors, administrators, successors, or assigns approved by District, or its subcontractors, of any contracting tier, shall fail to pay any person or persons named in California Civil Code, Section 9554, or as otherwise required by law, then Surety will pay for the same, in or to an amount not exceeding the penal amount hereinabove set forth, and Surety will also pay to the prevailing party, if suit is brought upon this bond, reasonable attorney's fees as provided in California Civil Code, Section 9554.

Surety, for value received, agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, nor any rescission or attempted rescission of the Contract or this bond, nor any conditions precedent or subsequent in the bond or Contract attempting to limit the right of recovery of any claimant otherwise entitled to recover under the Contract or this bond shall in any way impair or affect Surety's obligation under this bond, and Surety does hereby waive notice of any such changes, extensions of time, alterations or additions.

Surety is not released from liability to those for whose benefit this bond has been given, by reason of any breach of the Contract by District or Principal.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract,

and suit may be brought against Surety and such other sureties, joint and severally, or against any one or more of them or against less than all of them, without impairing District's rights against the others.

(Proper name of Bidder)

(Corporate Seal of Principal, if Corporation)

By:

Signature of Bidder

Print or type Bidder's Name

Print or type Bidder's Address

(Corporate Seal of Surety)

Surety

By:

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate and Required Acknowledgments)

Name and Address of California Agent of Surety

Telephone Number of California Agent of Surety

Note: Notary acknowledgment for Surety and Surety's Power of Attorney must be included or attached.

This is a Mandatory Form and cannot be altered by the Principal or the Surety.

PERFORMANCE BOND

Attachment "Q-1"

Project Name: SAN B900 Renovation

Bond Number: _____

(MUST BE submitted before any construction work begins)

KNOW ALL PERSONS BY THESE PRESENTS THAT:

WHEREAS, the **MIRACOSTA COMMUNITY COLLEGE DISTRICT** ("District"), by action of the Board of Trustees on [insert board approval date] has awarded Construction Contract Number [insert contract number] ("Contract") to the undersigned [insert contractor name] as Principal ("Principal") to perform the work and services ("Work") for the following project: PROJECT NO. 04102 SAN B900 STUDENT CENTER RENOVATION which Contract is by this reference hereby incorporated herein and made a part hereof;

AND, WHEREAS, said Principal is required by the Contract to furnish a performance bond for the prompt, competent and faithful performance of all the undertakings, terms, covenants, conditions and agreements of the Contract, said Contract incorporated herein by this reference;

NOW THEREFORE, we, the Principal and [insert surety name] ("Surety"), an admitted surety insurer pursuant to Code of Civil Procedure, Section 995.120, are held and firmly bound unto District in the penal sum of _____ dollars (\$ _____), this amount being not less than one hundred percent (100%) of the Contract Amount payable by District to the Principal under the Contract at the time the Contract is awarded, and/or as otherwise increased and/or decreased by change order to the Contract ("Penal Sum"), lawful money of the United States of America, for the payment of which sum well and truly to be made, we, Principal and Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Principal, its heirs, executors, administrators, successors or assigns approved by District, shall in all things stand to and abide by and well and truly keep and perform in a prompt, competent, and faithful manner, all the undertakings, terms, covenants, conditions and agreements in the Contract, including, without limitation, all obligations during the original term and any extensions thereof as may be granted by District, with or without notice to Surety thereof (including, without limitation, the obligation for Principal to pay liquidated damages), all obligations during the period of any warranties and guarantees required under the Contract and all other obligations otherwise arising under the terms of the Contract (such as, but not limited to, obligations of indemnification), all within the time and in the manner therein designated in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Whenever Principal shall be, and is declared by District in writing to be in default under the Contract, the Surety shall promptly either remedy the default within the time stated in the Contract Documents, or, if the Contract is terminated by District or the Principal's performance of the Work is discontinued, Surety shall promptly complete the Contract through its agents or independent contractors, subject to acceptance of such agents or independent contractors by District as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract (including, without limitation, all obligations with respect to payment of liquidated damages) less the "Balance of the Contract Sum Payable"; subject to the penal amount of this bond. The term "Balance of the Contract Sum Payable," as used in this paragraph, shall mean the total amount payable to Principal by District under the Contract and any modifications thereto, less the amount previously paid by District to the Principal, and less amounts that District is authorized to withhold under the terms of the Contract.

If District determines that completion of the Contract by Surety or its agents or independent contractors must be performed by a lowest responsible bidder selected pursuant to a competitive bidding process, then Surety shall comply with such processes in accordance with the requirements of District and applicable laws. Unless otherwise approved by District, in the exercise of its sole and absolute discretion, Surety shall not utilize Principal in completing performance of the Work.

No right of action shall accrue on this bond to or for the use of any person or entity other than District or its successors or assigns.

In the event an arbitration or other legal proceeding or arbitration is brought upon this bond and an award or judgment is entered in favor of District as the prevailing party against Surety or in favor of Surety as prevailing party against District, such prevailing party, whether District or Surety, shall be entitled to its reasonable costs and attorney's fees from the non-prevailing party, even if such amounts exceed the Penal Sum of this Bond. The foregoing is not intended to confer, and nothing stated herein or elsewhere in this bond or in any other document executed in connection with the issuance of this bond shall be interpreted as conferring upon the District or Principal the right of recovery of costs or attorney's fees from or against the other that are incurred in any arbitration or other legal proceeding brought by District against Principal or by Principal against District, whether or not Surety is also a party to such arbitration or other legal proceeding.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

Surety, for value received, agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, shall in any way impair or affect Surety's obligation under this bond, and Surety does hereby waive notice of any such changes, extensions of time, alterations or additions.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, joint and severally, or against any one or more of them or against less than all of them, without impairing District's rights against the others.

(Corporate Seal of Principal, if Corporation)

By: _____
(Proper name of Bidder)

Signature of Bidder

Print or type Bidder's Name

Print or type Bidder's Address

(Corporate Seal of Surety)

Surety
By:
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate and Required Acknowledgments)

Name and Address of California Agent of Surety

Telephone Number of California Agent of Surety

Note: Notary acknowledgment for Surety and Surety's Power of Attorney must be included or attached.

This is a mandatory form and cannot be altered by the Principal

PERFORMANCE BOND

Attachment "Q-2"

Project Name: SAN B400 Renovation

Bond Number: _____

(MUST BE submitted before any construction work begins)

KNOW ALL PERSONS BY THESE PRESENTS THAT:

WHEREAS, the **MIRACOSTA COMMUNITY COLLEGE DISTRICT** ("District"), by action of the Board of Trustees on [insert board approval date] has awarded Construction Contract Number [insert contract number] ("Contract") to the undersigned [insert contractor name] as Principal ("Principal") to perform the work and services ("Work") for the following project: PROJECT NO. 04103 SAN B400 SCIENCE LABS RENOVATION which Contract is by this reference hereby incorporated herein and made a part hereof;

AND, WHEREAS, said Principal is required by the Contract to furnish a performance bond for the prompt, competent and faithful performance of all the undertakings, terms, covenants, conditions and agreements of the Contract, said Contract incorporated herein by this reference;

NOW THEREFORE, we, the Principal and [insert surety name] ("Surety"), an admitted surety insurer pursuant to Code of Civil Procedure, Section 995.120, are held and firmly bound unto District in the penal sum of _____ dollars (\$ _____), this amount being not less than one hundred percent (100%) of the Contract Amount payable by District to the Principal under the Contract at the time the Contract is awarded, and/or as otherwise increased and/or decreased by change order to the Contract ("Penal Sum"), lawful money of the United States of America, for the payment of which sum well and truly to be made, we, Principal and Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Principal, its heirs, executors, administrators, successors or assigns approved by District, shall in all things stand to and abide by and well and truly keep and perform in a prompt, competent, and faithful manner, all the undertakings, terms, covenants, conditions and agreements in the Contract, including, without limitation, all obligations during the original term and any extensions thereof as may be granted by District, with or without notice to Surety thereof (including, without limitation, the obligation for Principal to pay liquidated damages), all obligations during the period of any warranties and guarantees required under the Contract and all other obligations otherwise arising under the terms of the Contract (such as, but not limited to, obligations of indemnification), all within the time and in the manner therein designated in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Whenever Principal shall be, and is declared by District in writing to be in default under the Contract, the Surety shall promptly either remedy the default within the time stated in the Contract Documents, or, if the Contract is terminated by District or the Principal's performance of the Work is discontinued, Surety shall promptly complete the Contract through its agents or independent contractors, subject to acceptance of such agents or independent contractors by District as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract (including, without limitation, all obligations with respect to payment of liquidated damages) less the "Balance of the Contract Sum Payable"; subject to the penal amount of this bond. The term "Balance of the Contract Sum Payable," as used in this paragraph, shall mean the total amount payable to Principal by District under the Contract and any modifications thereto, less the amount previously paid by District to the Principal, and less amounts that District is authorized to withhold under the terms of the Contract.

If District determines that completion of the Contract by Surety or its agents or independent contractors must be performed by a lowest responsible bidder selected pursuant to a competitive bidding process, then Surety shall comply with such processes in accordance with the requirements of District and applicable laws. Unless otherwise approved by District, in the exercise of its sole and absolute discretion, Surety shall not utilize Principal in completing performance of the Work.

No right of action shall accrue on this bond to or for the use of any person or entity other than District or its successors or assigns.

In the event an arbitration or other legal proceeding or arbitration is brought upon this bond and an award or judgment is entered in favor of District as the prevailing party against Surety or in favor of Surety as prevailing party against District, such prevailing party, whether District or Surety, shall be entitled to its reasonable costs and attorney's fees from the non-prevailing party, even if such amounts exceed the Penal Sum of this Bond. The foregoing is not intended to confer, and nothing stated herein or elsewhere in this bond or in any other document executed in connection with the issuance of this bond shall be interpreted as conferring upon the District or Principal the right of recovery of costs or attorney's fees from or against the other that are incurred in any arbitration or other legal proceeding brought by District against Principal or by Principal against District, whether or not Surety is also a party to such arbitration or other legal proceeding.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

Surety, for value received, agrees that no change, extension of time, alteration or addition to the terms of the Contract, or to the work to be performed thereunder, shall in any way impair or affect Surety's obligation under this bond, and Surety does hereby waive notice of any such changes, extensions of time, alterations or additions.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, joint and severally, or against any one or more of them or against less than all of them, without impairing District's rights against the others.

(Corporate Seal of Principal, if Corporation)

By:

(Proper name of Bidder)

Signature of Bidder

Print or type Bidder's Name

Print or type Bidder's Address

(Corporate Seal of Surety)

Surety
By:
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate and Required Acknowledgments)

Name and Address of California Agent of Surety

Telephone Number of California Agent of Surety

Note: Notary acknowledgment for Surety and Surety's Power of Attorney must be included or attached.

This is a mandatory form and cannot be altered by the Principal or Surety.

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

Attachment "R-1"

This Escrow Agreement is made and entered into, as of _____, 2021 by and between the MiraCosta Community College District, whose address is: 1 Barnard Dr., Oceanside, CA 92056, hereinafter called "District"; and Contractor, whose name is: _____, and whose address is _____, hereinafter called "Contractor"; and the Escrow Company whose name is: _____, and whose address is _____, hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the District, Contractor, and Escrow Agent agree as follows:

- (1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract entered into between the District and Contractor for Project No. 04102 SAN B900 Student Center Renovation in the amount of _____, dated _____, 2021 (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the District shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agency shall notify the District within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the District and Contractor. Securities shall be held in the name of _____ and shall designate the Contractor as the beneficial owner.
- (2) The District shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
- (3) When the District makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this Agreement is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the District pays the Escrow Agent directly.
- (4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the District. These expenses and payment terms shall be determined by the District, Contractor, and Escrow Agent.
- (5) The interest earned on the securities or the money market accounts held in Escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the District.
- (6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the District to the Escrow Agent that District consents to the withdrawal of the amount sought to be withdrawn by Contractor.
- (7) The District shall have a right to draw upon the securities or the funds in the account if the District declares in writing a default by the Contractor. Upon seven days' written notice to the Escrow Agent from the District of the default, the Escrow Agent shall immediately convert the securities to cash and/or shall distribute the funds in the account as instructed by the District.
- (8) Upon receipt of written notification from the District certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less Escrow fees and charges of the Escrow Account. The Escrow

shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notification from the District and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the District and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the District and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as set forth following:

On behalf of District:

On behalf of Contractor:

Title

Title

Name

Name

Signature

Signature

Address

Address

On behalf of Escrow Agent:

Title

Name

Signature

[Escrow Agreement continues on the next page]

At the time the Escrow Account is opened, the District and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

On behalf of District:

On behalf of Contractor:

Title

Title

Name

Name

Signature

Signature

Address

Address

On behalf of Escrow Agent:

Title

Name

Signature

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

Attachment "R-2"

This Escrow Agreement is made and entered into, as of _____, 2021 by and between the MiraCosta Community College District, whose address is: 1 Barnard Dr., Oceanside, CA 92056, hereinafter called "District"; and Contractor, whose name is: _____, and whose address is _____, hereinafter called "Contractor"; and the Escrow Company whose name is: _____, and whose address is _____, hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the District, Contractor, and Escrow Agent agree as follows:

- (1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by District pursuant to the Construction Contract entered into between the District and Contractor for Project No. 04103 SAN B400 Science Labs Renovation in the amount of _____, dated _____, 2021 (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the District shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agency shall notify the District within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the District and Contractor. Securities shall be held in the name of _____ and shall designate the Contractor as the beneficial owner.
- (2) The District shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.
- (3) When the District makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this Agreement is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the District pays the Escrow Agent directly.
- (4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the District. These expenses and payment terms shall be determined by the District, Contractor, and Escrow Agent.
- (5) The interest earned on the securities or the money market accounts held in Escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the District.
- (6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the District to the Escrow Agent that District consents to the withdrawal of the amount sought to be withdrawn by Contractor.
- (7) The District shall have a right to draw upon the securities or the funds in the account if the District declares in writing a default by the Contractor. Upon seven days' written notice to the Escrow Agent from the District of the default, the Escrow Agent shall immediately convert the securities to cash and/or shall distribute the funds in the account as instructed by the District.
- (8) Upon receipt of written notification from the District certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release

to Contractor all securities and interest on deposit less Escrow fees and charges of the Escrow Account. The Escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notification from the District and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the District and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the District and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as set forth following:

On behalf of District:

On behalf of Contractor:

Title

Name

Signature

Address

Title

Name

Signature

Address

On behalf of Escrow Agent:

Title

Name

Signature

[Escrow Agreement continues on the next page]

At the time the Escrow Account is opened, the District and Contractor shall deliver to the Escrow Agent a fully executed

counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

On behalf of District:

On behalf of Contractor:

Title

Title

Name

Name

Signature

Signature

Address

Address

On behalf of Escrow Agent:

Title

Name

Signature



AGREEMENT **Attachment "S-1"**

To be executed between the District and the selected/awarded contractor

THIS AGREEMENT, made this ___ day of _____, 2021, in the County of San Diego, State of California, by and between the **MiraCosta Community College District**, hereinafter called the District, and _____, hereinafter called the Contractor, for the Project generally known as **PROJECT NO. 04102 SAN B900 STUDENT CENTER RENOVATION LOCATED AT THE SAN ELIJO CAMPUS ("SAN")** (HEREINAFTER Referred to as the "Contract"/"Agreement" or "Project", as applicable).

WITNESSETH that the District and the Contractor for the considerations stated herein agree as follows:

1. SCOPE OF WORK: The Contractor shall perform within the time stipulated the Contract as herein defined, and shall provide all labor, materials, tools, utility services, and transportation to complete in a workmanlike manner all of the work required in strict compliance with the Contract Documents (as specified below) regarding the following titled Project:

Project No. 04102: SAN B900 Student Center Renovation
Bid # - MM-20-020

2. STANDARD OF PERFORMANCE

Without limitation to Contractor's other obligations under the Contract Documents, Contractor shall at all times in its performance of its obligations under the Contract Documents conform to the following general standards of performance, in the order in which they are listed:

- 2.1** comply with Applicable Laws;
- 2.2** comply with the requirements of the Contract Documents;
- 2.3** apply its best and highest skill and attention to completing the Work in an expeditious and economical manner, consistent with the expressed best interests of the District and within the limitations of the Contract Sum Payable and Contract Time.
- 2.4** furnish efficient business administration of the Work, utilizing sufficient senior level management and other qualified personnel to manage the Work; and
- 2.5** conform to the standard of care applicable to those who provide construction of the type called for by the Contract Documents for projects of a scope and complexity that is comparable to the Project.

3. CONTRACT TIME/TIME FOR COMPLETION: The work shall be commenced on the date stated in the District's Notice to Proceed.

- 3.1 Substantial Completion of Construction.** Contractor shall achieve Substantial Completion of the entire Work not later than 179 calendar Days after the date of the District's Notice to Proceed (NTP) with construction, subject only to Contract Adjustments to the Contract Time permitted by the Contract Documents.
- 3.2 Final Completion of Construction.** Contractor shall achieve Final Completion of the work not later than 30 calendar Days after the original Substantial Completion date so as to achieve the Project duration of 209 calendar Days from NTP for construction, subject only to Contract Adjustments to the Contract Time permitted by the Contract Documents.

4. LIQUIDATED DAMAGES TO DISTRICT

4.1 District's Right. District and Contractor acknowledge and agree that if Contractor fails to Substantially Complete the Work within the Contract Time for Substantial Completion, District will suffer substantial Losses, which would be both extremely difficult and impracticable to ascertain. On that basis they agree, as a reasonable estimate of those

Losses and not a penalty, to the assessment by District of liquidated damages as provided in this Section 4.

4.2 Compensable Delay. For the District, "Compensable Delay" means a Delay to an activity on the critical path(s) on the Project that extends the Substantial Completion of the entirety of the Work and that is caused by the Contractor and/or anyone for whom the Contractor is legally responsible for to the District.

4.3 Per Diem Rate.

a. If Contractor fails to achieve Substantial Completion of the entire Work within the Contract Time for Substantial Completion, Contractor shall pay District, or District may deduct from money due or to become due to the Contractor or its Surety, liquidated damages in the amount of One Thousand Five Hundred Dollars **(\$1,500.00)** per Day for each Day thereafter until Contractor achieves Substantial Completion of the entire Work.

4.3 Adjustment for Extensions of Time. Liquidated damages payable under this Section 4 shall be subject to adjustment for Delays to Substantial Completion for which the Contractor is entitled under the Contract Documents to receive a Contract Adjustment to the Contract Time for Substantial Completion.

4.4 No Apportionment for Partial Completion. Liquidated damages payable to the District under this Section 4 shall not be apportioned for portions of the Work that are Substantially Complete before expiration of the Contract Time for Substantial Completion if Contractor has not achieved Substantial Completion of the entirety of the Work before expiration of the Contract Time for Substantial Completion.

4.5 Other Remedies. The District's rights under this Section 4 shall not be interpreted as either: (1) limiting any right or remedy of the District arising from an Event of Contractor Default other than a failure to Substantially Complete the Work within the Contract Time; or (2) precluding the District's right to order an acceleration, at Contractor's Own Expense, of Contractor's performance of the Work to overcome a Delay with respect to which the District would have the right to assess liquidated damages in the absence of such acceleration.

5. LIQUIDATED DAMAGES TO CONTRACTOR

5.1 Contractor's Right. District and Contractor acknowledge and agree that if Contractor is unable, due to Compensable Delay, to Substantially Complete the Work within the Contract Time, the Contractor and its affected Subcontractors will suffer Losses which are both extremely difficult and impracticable to ascertain. On that basis they agree, as a reasonable estimate of those Losses and not a penalty, to the payment by District of liquidated damages as provided in this Section 5.

5.2 Compensable Delays. For the Contractor, "Compensable Delay" means a Delay to an activity on the critical path(s) of the Project affecting the Contractor's ability to achieve Substantial Completion of the entirety of the Work within the Contract Time, provided that: (1) Delay is the result of (a) a Compensable Change, (b) the active negligence of District, a District Consultant, or a Separate Contractor performing work at the campus, (c) a breach by District of an obligation under the Contract Documents, or (d) other circumstances involving Delay for which Contractor is given under the Contract Documents a specific and express right to a Contract Adjustment adjusting the Contract Sum Payable; (2) that is not caused, in whole or in part, by (a) an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, or a violation of an Applicable Law, or (b) a failure by Contractor to comply with the Contract Documents; and (3) for which a Contract Adjustment to the Contract Time is neither prohibited by nor waived under the terms of the Contract Documents.

5.3 Per Diem Rate. The Contract Sum Payable shall be increased by Change Order or Partial Change Order by the sum of **Seven hundred and fifty Dollars (\$750.00)** per Day as liquidated damages for each Day for which Contractor is entitled under the Contract Documents to a Contract Adjustment extending the Contract Time for Substantial Completion due to Compensable Delay, with no additional amount for Allowable Markup or any other markup for overhead or profit thereon.

5.4 Payment by District. Notwithstanding any other provision of the Contract Documents to the contrary, any Change Order or Partial Change Order for a Contract Adjustment to the Contract Sum Payable for liquidated damages permitted by this Section 5 shall be executed following, and not before, the actual occurrence of Substantial

Completion and prior to Final Completion. All sums due to the Contractor pursuant to this Section 5 shall be due and payable, subject to the District's rights of withholding payment permitted by the Contract Documents or Applicable Laws, as part of the Final Payment to Contractor.

5.5 Exclusive Recovery. Liquidated damages payable pursuant to this Section 5 constitute the Contractor's sole and exclusive right and remedy for recovery from District of Losses to Contractor and its Subcontractors, of any Tier, due to Delay, regardless of the cause, duration or timing, attributable to Compensable Delay.

5.6 Deleted Work. A credit shall be given to District reducing the Contract Sum Payable due to Deleted Work that results in a shortening of the Contract Time. Such reduction in the Contract Sum Payable shall be effected by means of a Contract Adjustment that is based on the product derived from multiplying (1) the number of Days that the Contract Time is shortened by (2) the amount of liquidated damages set forth in Section 5.2 above, without any additional credit to District for Allowable Markups.

5.7 Termination. District shall have no liability to Contractor to pay any liquidated damages provided for under this Section 5, nor shall District have any other liability to Contractor or any Subcontractor for any Loss due to Delay (including, without limitation, Compensable Delay) in the event there is a termination of the Contract (whether such termination is a termination for cause by District or Contractor or is a termination for convenience by District) before expiration of the period of time set forth in forth in Section 3.1 above, for Substantial Completion of the overall Work.

5.8 Non-Compensable Delay. No Contract Adjustment or other form of compensation or reimbursement, of any kind, to Contractor or a Subcontractor, of any Tier, shall be permitted for any Loss resulting, directly or indirectly, from or attributable to any of the following: (1) Unexcused Delay or acceleration to overcome Unexcused Delay; (2) Excusable Delay or any acceleration not authorized by District in writing to overcome Excusable Delay; (3) any delay, disruption, loss of productivity, acceleration, to Contractor's Work caused by a force majeure event; or (4) concurrency of a Compensable Delay with any different type or class of Unexcused Delay or Excusable Delay, whether such concurrency is a concurrency in cause or in effect.

6. CONTRACT PRICE/CONTRACT SUM/AMOUNT PAYABLE: The District shall pay to the Contractor as full consideration for the faithful performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including any applicable sales, use or other taxes or costs, the sum of [INSERT AMOUNT IN WORDS] Dollars-__(\$ [INSERT AMOUNT IN NUMBERS]), which includes an Owner Controlled Construction Contingency of [INSERT AMOUNT IN WORDS] \$[INSERT AMOUNT IN NUMBERS] dollars, said sum being the total amount of such items stipulated in the Bid for the Project and subject to use as stated in the Contract for the Project.

7. CONTRACT DOCUMENTS: The complete Contract consists of any/all of the documents listed in the Bid Documents Cover Sheet, including all Addenda issued as part of the Bid process, all of which are incorporated by reference herein as if set forth at length hereat. Any and all obligations of the District and the Contractor or fully set forth and described therein or are reasonable inferable that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in said documents. The documents comprising the complete Contract for the Project are sometimes referred to in the Contract Documents as the Contract Documents, the Agreement, and/or the Contract.

Contractor:

District:

MiraCosta Community College District

By: _____
Official Authorized Signature

By: _____
Official Authorized Signature

Printed Name

Tim Flood

Printed Name

Its: _____
Title

Its: Vice President for Administrative Services

Title

Date

Date

Award Approved by Governing Board on: _____, 2021

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the registrar of the board whose address is:

*Contractors State License Board
9821 Business Park Drive
Sacramento, CA 95827
Phone (800) 321-CSLB
<http://www.cslb.ca.gov>*



AGREEMENT
Attachment "S-2"

To be executed between the District and the selected/awarded contractor

THIS AGREEMENT, made this ___ day of _____, 2021, in the County of San Diego, State of California, by and between the **MiraCosta Community College District**, hereinafter called the District, and _____, hereinafter called the Contractor, for the Project generally known as **PROJECT NO. 04103 SAN B400 SCIENCE LABS RENOVATION** located at the **San Elijo Campus ("SAN")** (hereinafter referred to as the "Contract"/"Agreement" or "Project", as applicable).

WITNESSETH that the District and the Contractor for the considerations stated herein agree as follows:

1. SCOPE OF WORK: The Contractor shall perform within the time stipulated the Contract as herein defined, and shall provide all labor, materials, tools, utility services, and transportation to complete in a workmanlike manner all of the work required in strict compliance with the Contract Documents (as specified below) regarding the following titled Project:

Project No. 04103: SAN B400 SCIENCE LABS RENOVATION
Bid # - MM-20-020

2. STANDARD OF PERFORMANCE

Without limitation to Contractor's other obligations under the Contract Documents, Contractor shall at all times in its performance of its obligations under the Contract Documents conform to the following general standards of performance, in the order in which they are listed:

2.3 comply with Applicable Laws;

2.4 comply with the requirements of the Contract Documents;

2.3 apply its best and highest skill and attention to completing the Work in an expeditious and economical manner, consistent with the expressed best interests of the District and within the limitations of the Contract Sum Payable and Contract Time.

2.6 furnish efficient business administration of the Work, utilizing sufficient senior level management and other qualified personnel to manage the Work; and

2.7 conform to the standard of care applicable to those who provide construction of the type called for by the Contract Documents for projects of a scope and complexity that is comparable to the Project.

3. CONTRACT TIME/TIME FOR COMPLETION: The work shall be commenced on the date stated in the District's Notice to Proceed.

3.1 Substantial Completion of Construction. Contractor shall achieve Substantial Completion of the entire Work not later than 179 calendar Days after the date of the District's Notice to Proceed (NTP) with construction, subject only to Contract Adjustments to the Contract Time permitted by the Contract Documents.

3.2 Final Completion of Construction. Contractor shall achieve Final Completion of the work not later than 30 calendar Days after the original Substantial Completion date so as to achieve the Project duration of 209 calendar Days from NTP for construction, subject only to Contract Adjustments to the Contract Time permitted by the Contract Documents.

4. LIQUIDATED DAMAGES TO DISTRICT

4.1 District's Right. District and Contractor acknowledge and agree that if Contractor fails to Substantially Complete

the Work within the Contract Time for Substantial Completion, District will suffer substantial Losses, which would be both extremely difficult and impracticable to ascertain. On that basis they agree, as a reasonable estimate of those Losses and not a penalty, to the assessment by District of liquidated damages as provided in this Section 4.

4.2 Compensable Delay. For the District, "Compensable Delay" means a Delay to an activity on the critical path(s) on the Project that extends the Substantial Completion of the entirety of the Work and that is caused by the Contractor and/or anyone for whom the Contractor is legally responsible for to the District.

4.3 Per Diem Rate.

a. If Contractor fails to achieve Substantial Completion of the entire Work within the Contract Time for Substantial Completion, Contractor shall pay District, or District may deduct from money due or to become due to the Contractor or its Surety, liquidated damages in the amount of One Thousand Five Hundred Dollars **(\$1,500.00)** per Day for each Day thereafter until Contractor achieves Substantial Completion of the entire Work.

4.3 Adjustment for Extensions of Time. Liquidated damages payable under this Section 4 shall be subject to adjustment for Delays to Substantial Completion for which the Contractor is entitled under the Contract Documents to receive a Contract Adjustment to the Contract Time for Substantial Completion.

4.4 No Apportionment for Partial Completion. Liquidated damages payable to the District under this Section 4 shall not be apportioned for portions of the Work that are Substantially Complete before expiration of the Contract Time for Substantial Completion if Contractor has not achieved Substantial Completion of the entirety of the Work before expiration of the Contract Time for Substantial Completion.

4.5 Other Remedies. The District's rights under this Section 4 shall not be interpreted as either: (1) limiting any right or remedy of the District arising from an Event of Contractor Default other than a failure to Substantially Complete the Work within the Contract Time; or (2) precluding the District's right to order an acceleration, at Contractor's Own Expense, of Contractor's performance of the Work to overcome a Delay with respect to which the District would have the right to assess liquidated damages in the absence of such acceleration.

5. LIQUIDATED DAMAGES TO CONTRACTOR

5.1 Contractor's Right. District and Contractor acknowledge and agree that if Contractor is unable, due to Compensable Delay, to Substantially Complete the Work within the Contract Time, the Contractor and its affected Subcontractors will suffer Losses which are both extremely difficult and impracticable to ascertain. On that basis they agree, as a reasonable estimate of those Losses and not a penalty, to the payment by District of liquidated damages as provided in this Section 5.

5.2 Compensable Delays. For the Contractor, "Compensable Delay" means a Delay to an activity on the critical path(s) of the Project affecting the Contractor's ability to achieve Substantial Completion of the entirety of the Work within the Contract Time, provided that: (1) Delay is the result of (a) a Compensable Change, (b) the active negligence of District, a District Consultant, or a Separate Contractor performing work at the campus, (c) a breach by District of an obligation under the Contract Documents, or (d) other circumstances involving Delay for which Contractor is given under the Contract Documents a specific and express right to a Contract Adjustment adjusting the Contract Sum Payable; (2) that is not caused, in whole or in part, by (a) an act or omission of Contractor or a Subcontractor, of any Tier, constituting negligence, willful misconduct, or a violation of an Applicable Law, or (b) a failure by Contractor to comply with the Contract Documents; and (3) for which a Contract Adjustment to the Contract Time is neither prohibited by nor waived under the terms of the Contract Documents.

5.3 Per Diem Rate. The Contract Sum Payable shall be increased by Change Order or Partial Change Order by the sum of **Seven hundred and fifty Dollars (\$750.00)** per Day as liquidated damages for each Day for which Contractor is entitled under the Contract Documents to a Contract Adjustment extending the Contract Time for Substantial Completion due to Compensable Delay, with no additional amount for Allowable Markup or any other markup for overhead or profit thereon.

5.4 Payment by District. Notwithstanding any other provision of the Contract Documents to the contrary, any

Change Order or Partial Change Order for a Contract Adjustment to the Contract Sum Payable for liquidated damages permitted by this Section 5 shall be executed following, and not before, the actual occurrence of Substantial Completion and prior to Final Completion. All sums due to the Contractor pursuant to this Section 5 shall be due and payable, subject to the District's rights of withholding payment permitted by the Contract Documents or Applicable Laws, as part of the Final Payment to Contractor.

5.5 Exclusive Recovery. Liquidated damages payable pursuant to this Section 5 constitute the Contractor's sole and exclusive right and remedy for recovery from District of Losses to Contractor and its Subcontractors, of any Tier, due to Delay, regardless of the cause, duration or timing, attributable to Compensable Delay.

5.6 Deleted Work. A credit shall be given to District reducing the Contract Sum Payable due to Deleted Work that results in a shortening of the Contract Time. Such reduction in the Contract Sum Payable shall be effected by means of a Contract Adjustment that is based on the product derived from multiplying (1) the number of Days that the Contract Time is shortened by (2) the amount of liquidated damages set forth in Section 5.2 above, without any additional credit to District for Allowable Markups.

5.7 Termination. District shall have no liability to Contractor to pay any liquidated damages provided for under this Section 5, nor shall District have any other liability to Contractor or any Subcontractor for any Loss due to Delay (including, without limitation, Compensable Delay) in the event there is a termination of the Contract (whether such termination is a termination for cause by District or Contractor or is a termination for convenience by District) before expiration of the period of time set forth in forth in Section 3.1 above, for Substantial Completion of the overall Work.

5.8 Non-Compensable Delay. No Contract Adjustment or other form of compensation or reimbursement, of any kind, to Contractor or a Subcontractor, of any Tier, shall be permitted for any Loss resulting, directly or indirectly, from or attributable to any of the following: (1) Unexcused Delay or acceleration to overcome Unexcused Delay; (2) Excusable Delay or any acceleration not authorized by District in writing to overcome Excusable Delay; (3) any delay, disruption, loss of productivity, acceleration, to Contractor's Work caused by a force majeure event; or (4) concurrency of a Compensable Delay with any different type or class of Unexcused Delay or Excusable Delay, whether such concurrency is a concurrency in cause or in effect.

6. CONTRACT PRICE/CONTRACT SUM/AMOUNT PAYABLE: The District shall pay to the Contractor as full consideration for the faithful performance of the Contract, subject to any additions or deductions as provided in the Contract Documents, and including any applicable sales, use or other taxes or costs, the sum of [INSERT AMOUNT IN WORDS] Dollars-__(\$ [INSERT AMOUNT IN NUMBERS]), which includes an Owner Controlled Construction Contingency of [INSERT AMOUNT IN WORDS] \$[INSERT AMOUNT IN NUMBERS] dollars, said sum being the total amount of such items stipulated in the Bid for the Project and subject to use as stated in the Contract for the Project.

7. CONTRACT DOCUMENTS: The complete Contract consists of any/all of the documents listed in the Bid Documents Cover Sheet, including all Addenda issued as part of the Bid process, all of which are incorporated by reference herein as if set forth at length hereat. Any and all obligations of the District and the Contractor or fully set forth and described therein or are reasonable inferable that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in said documents. The documents comprising the complete Contract for the Project are sometimes referred to in the Contract Documents as the Contract Documents, the Agreement, and/or the Contract.

Contractor:

District:

MiraCosta Community College District

By: _____
Official Authorized Signature

By: _____
Official Authorized Signature



Printed Name

Tim Flood

Printed Name

Its: _____
Title

Its: Vice President for Administrative Services
Title

Date

Date

Award Approved by Governing Board on: _____, 2021

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the registrar of the board whose address is:

*Contractors State License Board
9821 Business Park Drive
Sacramento, CA 95827
Phone (800) 321-CSLB*

**General Conditions
Attachment "T"**

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Article 1. DEFINITIONS

- a. The "District" and "Contractor" are those mentioned as such in the Agreement. For convenience and brevity, these terms, as well as terms identifying other persons involved in the contract are treated throughout the contract documents as if they are of singular number and masculine gender.
- b. "Subcontractor," as used herein, includes those having a direct contract with Contractor and one who furnishes material worked to a special design according to plans and specifications of this work, but does not include one who merely furnishes material not so worked.
- c. "Construction Manager" as used herein is the District's representative that is managing the Projects or a portion of the Projects on behalf of the District.
- d. "Surety" is the person, firm, or corporation, admitted as a California admitted surety that executes as surety the Contractor's Performance Bond and Payment Bond for Public Works.
- e. "Provide" shall include "provide complete in place," that is, "furnish and install."
- f. Words such as "indicated," "shown," "detailed," "noted," "scheduled," or words of similar meaning shall mean that reference is made to the drawings, unless otherwise noted. It shall be understood that the direction, designation, selection, or similar import of the Architect is intended, unless stated otherwise.
- g. "Work" of the Contractor or subcontractor includes labor or materials or both.
- h. The term "day" as used herein shall mean calendar day unless otherwise specifically designated.
- i. Where the words "equal," "equivalent," "satisfactory," "directed," "designated," "selected," "as required," and words of similar meaning are used, the written approval, selection, satisfaction, direction, or similar action of the Architect is required.
- j. Where the word "required" and words of similar meaning are used, it shall mean, "as required to properly complete the work as required by the Architect," unless stated otherwise.
- k. The word "perform" shall be understood to mean that the Contractor, at Contractor's expense, shall perform all operations necessary to complete the work, including furnishing of necessary labor, tools, and equipment, and further including the furnishing and installing of materials that are indicated, specified, or required to complete such performance.
- l. Where the words "acceptable," "acceptance," or words of similar import are used, it shall be understood that the acceptance of the Architect and District is intended.
- m. Where shown, the words "includes," and "including," do not limit the work to the items following those words.
- n. "Holiday" means a Day recognized by District as being a legal holiday for its staff and employees, which shall include the following, each of which shall constitute a one Day holiday unless otherwise stated herein: Martin Luther King Day; Presidents' Day; Cesar Chavez Day; Memorial Day; Fourth of July; Labor Day; Veteran's Day; Thanksgiving (two Days); Christmas (two Days); New Year's (two Days); and any other Holidays observed by the District.
- o. "Force Majeure Event" means an event that cannot be controlled by either Party, which affects one or both Parties' ability to fulfill an obligation(s) under the Contracts and is restricted to any of the following: (1) Acts of God occurring at the Site and/or if not at the Site, then which affects the Site; (2) terrorism or other acts of a public enemy; (3) orders of Governmental Authorities (including, without limitation, unreasonable and unforeseeable Delay in the issuance of permits or approvals by Governmental Authorities that are required for the Work); (4) pandemics, epidemics or quarantine restrictions; (5) strikes and other organized labor action occurring at the Site and the effects thereof on the Work to the extent such strikes and other organized labor action are beyond the reasonable control of Contractor and its Subcontractors, of every Tier, and to the extent the effects thereof cannot be reasonably avoided by use of replacement workers or implementation of a dual gate system of entry to the Site; or (6) unusual shortages in materials that are supported by documented proof that: (a) the Contractor made every effort to obtain such materials from all available sources; (b) such shortage is due to the fact that such materials are not physically available from single or multiple sources or could have been obtained only at exorbitant prices entirely inconsistent with current rates taking into account the quantities involved and the usual industry practices in obtaining such quantities; and (c) such shortages and the difficulties in obtaining alternate sources of materials could not have been known or anticipated as of the Bid Date. Force Majeure Events are not Compensable Delays. Force Majeure Events may be non-compensable delays leading only to non-compensable time extensions. Moreover, any additional costs incurred by either the District and/or Contractor that are the result of a Force Majeure Event shall be borne solely by the Party that incurred such costs, as long as the additional costs are not the direct result of the failure of the other Party to meet an obligation under this Contract.
- p. Other Definitions are contained throughout the Contract Documents.

Article 2. DRAWINGS AND SPECIFICATIONS

- a. **Contract Documents.** Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intention of documents is to include all labor and materials, equipment, and transportation necessary for the proper execution of the work. Materials or work described in words which as applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.
- b. **Interpretations.** Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, he/she shall promptly notify the architect in writing via a Request for Information ("RFI") submitted on a form furnished by the District/Program Management Office and any necessary changes shall be adjusted as provided in contract for changes in work. If such conflict arises, the following order of precedence shall generally apply, provided, however, that the order of precedence shall not be so rigidly interpreted as to affect an absurd or costly result:
1. Special Conditions shall take precedence over Supplementary Conditions and General Conditions.
 2. Technical Specifications implement, in additional detail, the requirements of the General Conditions. In the event of conflict between the Technical Specifications and the General Conditions, the General Conditions shall take precedence.
 3. In the event of a conflict between the Technical Specifications and the drawings, the higher quality, higher quantity and most stringent requirements shall be deemed to apply and shall govern as to materials, workmanship, and installation procedures.
 4. With regard to drawings:
 - (a) Figures govern over scaled dimensions;
 - (b) Larger details govern over general drawings;
 - (c) Addenda/change order drawings govern over Contract drawings;
 - (d) Contract drawings govern over standard drawings.
 5. Work not particularly shown or specified shall be the same as similar parts that are shown or specified.
- c. Misunderstanding of drawings and specifications submitted by Contractor via an RFI shall be clarified by the Architect, whose decisions shall be final.
- d. Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified.

Article 3. COPIES FURNISHED

Contractor will be furnished, free of charge, copies of drawings and specifications as set forth in Special Conditions. Additional copies may be obtained at cost of reproduction.

Article 4. OWNERSHIP OF DRAWINGS

All drawings, specifications, and copies thereof furnished by District are its property. They are not to be used on other work and with exception of signed contract sets, are to be returned to District on request at completion of work.

Article 5. DETAIL DRAWINGS AND INSTRUCTIONS

- a. In case of ambiguity, conflict, or lack of information, raised by Contractor via an RFI pursuant to Article 2 above architect shall furnish with reasonable promptness additional instructions, by means of drawings or otherwise, necessary for proper execution of work. For purposes of this section "reasonable promptness" shall mean as soon as possible in order for Contractor to execute the work. If the item is identified by the Contractor as a critical path item, "reasonable promptness" shall mean no more than five business days. All such drawings and instructions shall be consistent with Contract Documents, true developments thereof, and reasonably inferable therefrom.
- b. Work shall be executed in conformity therewith and Contractor shall do no work without proper drawings and instructions.

Article 6. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- a. Project shall be commenced on or before the date stated in District's notice to the Contractor to proceed and shall be completed by Contractor in the time specified in Section 3 of the Agreement. The District is under no obligation to consider early completion of the Project and the Contract completion date shall not be amended by the District's acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances receive additional compensation from the District for indirect, general, administrative or other forms of overhead costs for the period between the time of earlier completion proposed by the Contractor and the official contract completion date. If the work is not completed in accordance with the foregoing, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Section 4 of the Agreement for each calendar day of delay until work is completed and accepted. Contractor and his/her surety shall be liable for the amount thereof. Any money due or to become due the Contractor may be retained to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, District shall have the right to recover the balance from the Contractor or his/her sureties, who will pay said balance forthwith. Regardless of the time lines in the schedule submitted

by Contractor, no delay claims shall be accepted by District unless the event or occurrence delays the completion of the Project beyond the contractual completion date.

b. Contractor shall abide by District's determination of what constitutes inclement weather based on adverse weather, which is defined as the occurrence of precipitation in excess of one-half inch (0.50") liquid measure or sustained wind in excess of twenty-five (25) miles per hour within a twenty-four (24) hour day that prevents construction activity exposed to weather conditions or access to the site. A Weather Delay Day may be counted if adverse weather prevents work on the Project for fifty percent (50%) or more of the contractor's scheduled work on the critical path for that day. Time extensions shall only be granted when the work that is stopped during inclement weather is on the critical path of the Project schedule. Contractor shall be expected to perform all work he can possibly complete during inclement weather (i.e., interior work).

- c. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor including, but not restricted to: acts of God, or of public enemy, acts of Government, acts of District or anyone employed by it or acts of another Contractor in performance of a contract with District, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes. Contractor shall within five (5) days of beginning of any such delay (unless District grants a further period of time prior to date of final settlement of the Contract) notify District in writing of causes of delay; thereupon District shall ascertain the facts and extent of delay and grant extension of time for completing work when, in its judgment, the findings of fact justify such an extension. The District's findings of fact thereon shall be final and conclusive on all parties. In case of a continuing cause of delay, only one claim is necessary. Time extensions to the Project should be requested by the Contractor as they occur and without delay. Regardless of the time lines in the schedule submitted by Contractor, no delay claims shall be accepted by District unless the event or occurrence delays the completion of the Project beyond the contractual completion date.
- d. **Determining Damages for Delay to Contractor.** No Contract Adjustment or other form of compensation or reimbursement, of any kind, to Contractor or a Subcontractor, of any Tier, shall be permitted for any Loss resulting, directly or indirectly, from or attributable to any of the following: (1) Unexcused Delay or acceleration to overcome Unexcused Delay; (2) Excusable Delay or any acceleration not authorized by District in writing to overcome Excusable Delay; (3) any disruption to Contractor's Work caused by a Force Majeure Event; or (4) concurrency of a Compensable Delay with any different type or class of Unexcused Delay or Excusable Delay, whether such concurrency is a concurrency in cause or in effect. If the work is not completed in accordance with the Contract Time through no fault of the Contractor or its subcontractors, and/or vendors, of any tier, that is the result of (a) a Compensable Change, (b) active negligence of the District, a District Consultant, or a Separate Contractor performing work at the campus, (c) a breach by the District of an obligation under the Contract Documents, or (d) other circumstances involving Delay for which Contractor is given under the Contract Documents a specific and express right to a Contract Adjustment adjusting the Contract Sum Payable, and (e) for which a Contract Adjustment to the Contract Time is neither prohibited by nor waived under the terms of the Contract Documents, it is understood that the Contractor will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that District shall pay to the Contractor as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Section 5 of the Agreement for each calendar day of delay until work is completed and accepted. Regardless of the timelines in the schedule submitted by Contractor, no delay claims shall be accepted by District unless the event or occurrence delays the completion of the Project beyond the contractual completion date. The District shall not be liable for any damages which the Contractor could have avoided by any reasonable means including, but not limited to, the judicious handling of forces, equipment, or plant.
- e. **Removal or Relocation of Main or Trunk line Utility Facilities.** The Contractor shall not be assessed for liquidated damages for delay in completion of the Project, when such delay was caused by the failure of the awarding authority of this Contract or the owner of the utility to provide for removal or relocation of the existing main or trunk line utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the awarding authority and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunk line utility facilities, or to provide for its removal or relocation. In accordance with section 4215 of the Government Code, if the Contractor while performing the Contract discovers any existing main or trunk line utility facilities not identified by the public agency in the Contract plans or specifications, he shall immediately notify the public agency and utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy and for equipment on the project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out at Article 40 hereof.

Article 7. PROGRESS SCHEDULE

- a. Within fourteen (14) days after the date of the Award of the Contract, Contractor shall prepare a baseline progress schedule in digital form and shall submit this schedule for the District's approval. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Project within the time specified for completion. The schedule shall include milestones and shall include the "critical path" of construction. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project; the District's approval of the progress schedule does not relieve the Contractor of any such responsibility. Contractor's failure to incorporate all elements of work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all work required for a completed Project within the specified contract

time period, notwithstanding the District's acceptance of the schedule. This includes District requested tracked items such as data service online, receive owner furnished lights, FF&E install, etc. **The first payment will not be made unless the District has been provided and has accepted the project schedule.**

- b. The schedule shall allow enough time for submittals and inclement weather. Such schedule shall indicate graphically the beginning and completion dates of all phases of construction, and shall indicate the critical path for all critical, sequential time related activities. All required schedules shall indicate "float time" for all "slack" or "gaps" in the non-critical activities. Submitted construction schedules shall have a duration which does not exceed the contract time. Any float time/excess time picked up by the Contractor is owned by the District and may be used by either party for delay at the discretion of the District and before any time extensions are granted pursuant to the Contract. All required schedules shall be periodically updated to reflect changes in the status of the job, including weather delays. **At a minimum, the Contractor shall be required to provide and keep updated a monthly schedule in order to prevent delay claims.**

Article 8. CONTRACT SECURITY

Unless otherwise specified in Special Conditions, Contractor shall furnish a surety bond in an amount equal to 100 percent of the Contract Price as security for faithful performance of this Contract and shall furnish a separate bond as security for payment of persons performing labor and furnishing materials in connection with this Contract. The Payment Bond must be in the amount of 100 percent of the total amount payable. Both the Payment and the Performance Bonds must be executed by an admitted Surety approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish. Aforesaid bonds shall be in form set forth in these contract documents. Upon request of Contractor, District will consider and accept multiple sureties on such bonds.

Article 9. ASSIGNMENT

Contractor shall not assign this Contract or any part thereof without prior written consent of District. Any assignment of money due or to become due under this Contract shall be subject to a prior lien for services rendered or material supplied for performance of work called for under said Contract in favor of all persons, firms, or corporations rendering such services or supplying such materials to the extent that claims are filed pursuant to the Civil Code, the Code of Civil Procedure, and/or the Government Code.

Article 10. PROHIBITED INTERESTS

No official of District and no District representative who is authorized in such capacity and on behalf of 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 any subcontract in connection with construction of the Project, shall be or become directly or indirectly interested financially in this Contract or in any part thereof. No officer, employee, architect, attorney, engineer or inspector of or for District who is authorized in such capacity and on behalf of District to exercise any executive, supervisory or other similar functions in connection with construction of the Project, shall become directly or indirectly interested financially in this Contract or in any part thereof.

Article 11. SEPARATE CONTRACTS

District reserves the right to let other contracts in connection with this work or other work at the same site. Contractor shall afford other contractors' reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly connect and coordinate his/her work with theirs.

If any part of Contractor's work depends for proper execution or results upon work of any other contractor, the Contractor shall inspect and promptly report to architect any defects in such work that renders it unsuitable for such proper execution and results. Contractor's failure to inspect and report shall constitute Contractor's acceptance of other contractor's work as fit and proper for reception of his/her work, except as to defects which may develop in the other contractor's work after execution of contractor's work.

To ensure proper execution of his/her subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the Architect any discrepancy between executed work and contract documents.

Contractor shall ascertain to his/her own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by District in prosecution of Project to the end that Contractor may perform this Contract in the light of such other contracts, if any. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy at site of Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on Project. If simultaneous execution of any contract for Project is likely to cause interference with performance of some other contract or contracts, District shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. District shall not be responsible for any damages suffered or for extra costs incurred by Contractor resulting directly or indirectly from award, performance, or attempted performance of any other contract or contracts on Project, or caused by any decision or omission of District respecting the order of precedence in performance of contracts.

Article 12. SUBCONTRACTING

- a. Contractor agrees to bind every subcontractor by terms of the Contract as far as such terms are applicable to subcontractor's work. If Contractor subcontracts any part of this Contract, Contractor shall be as fully responsible to District for the acts and omissions of his/her subcontractor and of persons either directly or indirectly employed by his/her subcontractor, as he is for acts and omissions of persons directly employed by himself. Nothing contained

in these Contract Documents shall create any contractual relation between any subcontractor and District. The District shall be deemed to be the third-party beneficiary of the contract between the contractor and the subcontractor.

- b. District's consent to or approval of any subcontractor under this Contract shall not in any way relieve Contractor of his/her obligations under this Contract and no such consent or approval shall be deemed to waive any provision of this Contract. The District reserves the right of approval of all subcontractors proposed for use on these Project, and to this end, may require financial, performance and such additional information as is needed to secure this approval. If a Subcontractor is not approved, the Contractor shall promptly submit another of the same trade for approval.
- c. Substitution or addition of subcontractors shall be permitted only as authorized in chapter 4 (commencing at section 4100), part 1, division 2 of the California Public Contract Code.

Article 13. DISTRICT'S RIGHT TO SUSPEND AND STOP WORK

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

If Contractor fails to correct Defective Work as required by the Contract Documents, fails to perform the Work in accordance with the Contract Documents, or violates any Applicable Law, District may immediately order Contractor to stop the Work, or any portion thereof, until the cause for such direction has been eliminated by Contractor. Contractor shall immediately comply with such notice at Contractor's own expense. Nothing stated herein or elsewhere in the Contract Documents shall be interpreted as placing upon District a duty or responsibility to Contractor or any other party to exercise the District's right to stop the Work.

Article 14. ADJUSTMENTS TO CONTRACT PRICE AND CONTRACT TIME

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

Article 15. DISTRICT'S RIGHT TO TERMINATE CONTRACT

A. Termination for Cause

District may, without prejudice to any other right or remedy, serve written notice of intent to terminate upon Contractor and his/her surety stating its intention to terminate this Contract if the Contractor (i) refuses or fails to prosecute the work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or (ii) fails to complete said work within such time, or (iii) if the Contractor should file a bankruptcy petition, or (iv) if he should make a general assignment for the benefit of his/her creditors, or (v) if a receiver should be appointed on account of his/her insolvency, or (vi) if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the work in time specified, or (vii) if he should fail to make prompt payment to subcontractors or for material or labor, or (viii) persistently disregard laws, ordinances or instructions of District, or (ix) otherwise be guilty of a substantial violation of any provision of the contract, or (x) if he or his/her subcontractors should violate any of the provisions of this contract. The notice of intent to terminate shall state generally the reasons for such intention to terminate. Unless within five days (5) days after the service of such notice, such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, this contract shall be deemed to have ceased and terminated. The Contractor then shall not be entitled to receive any further payment until work is finished. Upon the termination of the contract as provided above, District shall immediately serve upon surety and contractor written notice of termination stating that the contract has ceased and terminated. Surety shall have the right to investigate, take over and perform this contract, provided, however, that if surety, within five (5) days after service upon it of said notice of termination, does not give District written notice of its intention to take over and perform this contract and does not commence performance thereof within seven (7) days from the date of service upon it of such notice of termination, District may take over the work and prosecute same to completion by contract or by any other method it may deem advisable for the account and at the expense of Contractor. If Surety does not perform the project work itself, the Surety shall consult with the District regarding its planned choice of a contractor or contractors to complete the project, and upon request by District, Surety shall provide District Evidence of Responsibility of Surety's proposed contractor or contractors. District shall be entitled to reject Surety's choice of contractor or contractors if District determines in its sole discretion that the contractor or contractors are non-responsible. If Surety provides District written notice of its intention to take over and perform this contract, within fourteen (14) days of such written notice of intent to take over and perform, Surety or its chosen contractor or contractors (if such contractor or contractors are approved by District) shall provide District a detailed Progress Schedule as specified in Article 7 above. Contractor and his/her surety shall be liable to District for any excess cost or other damages occasioned the District as a result of Surety or Surety's contractor or contractors takeover and performance. If the District takes over the work as

hereinabove provided, the District may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary therefore.

If the unpaid balance of the Contract Price exceeds the expense of finishing work, including compensation for additional architectural, managerial, and administrative services, such excess shall be paid to Contractor. If such expense shall exceed such unpaid balance, Contractor shall pay the difference to District. Expense incurred by District as herein provided, and damage incurred through Contractor's default, shall be certified by architect.

The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the District.

Notwithstanding the foregoing provisions, this contract may not be terminated or modified where a trustee-in-bankruptcy has assumed the contract pursuant to 11 U.S.C. sections 365 (Federal Bankruptcy Act).

B. Termination for Convenience

Without limitation upon any of District's other rights or remedies under the Contract Documents or Applicable Laws, District shall have the option, at its sole discretion and without the occurrence of any Event of Contractor Default or any other cause, to terminate the Contract or Work, in whole or in part, for its convenience by giving five (5) Days written notice to Contractor.

Upon receipt of notice of termination for convenience pursuant to this Article 15 B, Contractor shall, unless such notice directs otherwise, comply with all of the provisions of this Article 15 B.

Following a termination for convenience pursuant to this Article 15 B, and within sixty (60) Days after receipt of a complete and timely Application for Payment from Contractor, an accounting shall be conducted. In such event, the amount due to Contractor shall be the amount then due, less payments made, less any permitted withholds, except that there shall be added to the calculation of the amount an amount for: (1) the reasonable, actual and direct Allowable Costs incurred and paid by Contractor (and not by Subcontractors) for (a) demobilizing Contractor's facilities from the Site, and (b) Contractor's administering the close out of its participation in the Project for a period of no longer than fifteen (15) Days; plus (2) a markup to Contractor on the Contractor's Allowable Costs incurred of five percent (5%).

Contractor agrees to accept the foregoing compensation as its sole and exclusive compensation in the event of a termination by District for convenience and waives any claim for loss related to District's for convenience, including, but not limited to, loss of anticipated profits, loss of revenue, lost opportunity, or other consequential, direct, indirect, or incidental damages, of any kind.

Contractor shall include provisions in all of its subcontracts, purchase orders and other contracts with the Subcontractors permitting termination for convenience by Contractor on terms that are consistent with, and that afford no greater rights of recovery against Contractor for termination than are afforded to Contractor under this Article 15 B.

C. Termination by Contractor

Subject to the provisions below, Contractor's sole right to terminate the Construction Contract shall be its right to terminate, for cause only, upon the occurrence of either of the following:

.1 the entire Work is stopped for one hundred sixty (160) consecutive Days, through no act or fault of Contractor or any of the Subcontractors, of any Tier, or any employee or agent of any of them, due to issuance of an order of a court or other Governmental Authority or due to a declaration of a national emergency making material unavailable; or

.2 the entire Work is properly suspended by Contractor for a continuous period of ninety (90) Days.

Provided that Contractor is paid undisputed sums due in accordance with the requirements of the Construction Contract, Contractor shall not stop, delay or interrupt continuous performance of the Work by reason of any dispute or disagreement with District, including, without limitation, any disputes or disagreements over payments of money claimed due under the Contract Documents.

D. Warranties and Guarantees Upon Termination

All obligations of Contractor and the Subcontractors under the Contract Documents with respect to warranties and guarantees of the Work will continue in force and shall apply, notwithstanding a termination or other discontinuance of the Work by District or Contractor pursuant to an exercise of rights by either under this Article 15, to any portion of the Work that at the time of such termination or discontinuance has been completed or partially completed by Contractor to the point that it is substantially ready (exclusive of any incidental work that may be needed to connect such portion to other Work to other Work or Existing Improvements or to energize such portion of the Work for operation) for use or occupancy by District.

Article 16. GUARANTEE

Besides guarantees required elsewhere, Contractor shall, and hereby does, guarantee all work for a period of one year after date of acceptance of work by District. Contractor shall repair or replace any or all such work, together with any other work, which may be displaced in so doing, that may prove defective in workmanship and/or materials within a one-year period from date of acceptance

without expense whatsoever to District, ordinary wear and tear, unusual abuse or neglect excepted. District will give notice of observed defects with reasonable promptness. Contractor shall notify District upon completion of repairs.

In the event of failure of Contractor to comply with above-mentioned conditions within one week after being notified in writing, District is hereby authorized to proceed to have defects repaired and made good at the expense of Contractor. Contractor hereby agrees to pay costs and charges therefore immediately on demand.

If, in the opinion of the District, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to the District or to prevent interruption of operations of the District, the District will attempt to give the notice required by this article. If the Contractor cannot be contacted or does not comply with the District's request for correction within a reasonable time as determined by the District, the District may, notwithstanding the provisions of this article, proceed to make such correction or provide such attention. The costs of such correction or attention shall be charged against the Contractor. Such action by the District will not relieve the Contractor of the guarantees provided in this article or elsewhere in this contract.

This article does not in any way limit the guarantee on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. Contractor shall furnish District with all appropriate guarantee or warranty certificates upon completion of the project.

Article 17. NOTICE AND SERVICE THEREOF

Any notice from one party to the other under the contract shall be in writing and shall be dated and signed by party giving such notice or by the duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in one of the following manners:

- a. If notice is given to District, by personal delivery thereof to District's designated representative, or by depositing same in United States mail, enclosed in a sealed envelope addressed to District for attention of said representative or architect, postage prepaid and registered;
- b. If notice is given to Contractor, by personal delivery thereof to said Contractor or to his/her foreman at site of project, or by depositing same in United States mail, enclosed in a sealed envelope addressed to said Contractor at his/her regular place of business or at such other address as may have been established for the conduct of work under this contract, postage prepaid and registered;
- c. If notice is given to surety or other person, by personal delivery to such surety or other person or by depositing same in United States mail, enclosed in a sealed envelope addressed to such surety or person at the address of such surety or person last communicated by him to party giving notice, postage prepaid and registered.
- d. If notice is served by mail, it shall be deemed received and all time periods associated with the giving of notice shall run from the third day after mailing.

Article 18. WORKERS

- a. Contractor shall at all times enforce strict discipline and good order among his/her employees. Contractor shall not employ on work any unfit person or any one not skilled in work assigned to him.
- b. Any person in the employ of the Contractor whom District may deem incompetent or unfit shall be dismissed from work and shall not again be employed on it except with the written consent of District.

Article 19. WAGE RATES, PAYROLL RECORDS AND DEBARMENT

- a. The Contractor is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at www.dir.ca.gov/dlsr/. In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages at the District's Facilities Department. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or allege failure to comply with the Prevailing Wage Laws and/or the District's LCP.
- b. The Contractor and each subcontractor shall forfeit as a penalty to the District not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated

prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

- c. As a further material part of this Contract, Contractor agrees to hold harmless and indemnify the District, its Board and each member of the Board, its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the prevailing wage laws of the State of California. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.
- d. Accurate payroll records shall be kept by the contractor and each subcontractor, 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 journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.
- e. It shall be the responsibility of Contractor to Comply with Labor Code section 1776 as it may be amended by the Legislature from time to time with respect to each payroll record. As of April, 2003, Labor Code section 1776 provides in relevant part,
 - (i) Each contractor and subcontractor shall keep accurate payroll records, 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 journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - 1. The information contained in the payroll record is true and correct.
 - 2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his/her or her employees on the public works project.
 - (ii) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:
 - 1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his/her or her authorized representative on request.
 - 2. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
 - 3. A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor
 - (iii) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.
 - (iv) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 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 awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fee and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.
 - (vi) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(vii) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$ 25) 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, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(viii) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

- f. Debarment. The Contractor, or any subcontractor working under the Contractor may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the California Labor Code. Any contract on a public works project entered into between the Contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid or may have been paid to a debarred subcontractor by the Contractor on the project shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

Article 20. APPRENTICES

Contractor's attention is directed to the provisions of Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code concerning employment of apprentices by the Contractor or any subcontractor under him. The Contractor shall be knowledgeable of and comply with all California Labor Code sections including 1727, 1773.5, 1775, 1777, 1777.5, 1810, 1813, 1860, including all amendments; each of these sections is incorporated by reference into this Contract. The responsibility for compliance with these provisions for all apprentice able occupations rests with the Contractor. Knowing violations of Section 1777.5 will result in forfeiture not to exceed \$100 for each calendar day of non-compliance pursuant to Section 1777.7.

Article 21. HOURS OF WORK

- a. As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the work or upon any part of the work contemplated by this Contract is limited and restricted to eight (8) hours during any one-calendar day and forty (40) hours during any one-calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.
- b. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the work or any part of the work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.
- c. The Contractor shall pay to the District a penalty of twenty-five dollars (\$25) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code.
- d. Any work necessary to be performed after regular working hours, or on Sundays or other Holiday shall be performed without additional expense to District.

Article 22. WORKERS' COMPENSATION INSURANCE

- a. The Contractor shall provide, during the life of this Contract, workers' compensation insurance for all of his/her employees engaged in work under this Contract, on or at the site of the project, and, in case any of his/her work is sublet, the Contractor shall require the subcontractor similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the site of the project, is not protected under the Workers' Compensation Statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor shall file with the District certificates of his/her insurance protecting workers.
- b. Company or companies providing insurance coverage shall be acceptable to the District, and in the following form and coverage.

1. Statutory Workers' Compensation and Employer's Liability Coverage: Contractor shall maintain insurance to afford protection for all claims under California Workers' Compensation Act and other employee benefit acts, and in addition, shall maintain Employer's Liability Insurance for a minimum limit of \$1,000,000. The Workers' Compensation Policy shall include the following endorsements, copies of which shall be provided to District:
 - (a) The Voluntary Compensation Endorsement; and
 - (b) Broad Form All States Endorsement; and
 - (c) The Longshoremen's and Harbor Workers endorsement, where applicable to the work under this Contract; and
 - (d) Waiver of Subrogation Endorsement.

Article 23. COMMERCIAL GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE

- a. Contractor shall procure and maintain during the life of this Contract and for such other period as may be required herein, at its sole expense, such comprehensive general liability insurance or commercial general liability and property damage insurance as shall protect Contractor and District from all claims for bodily (personal) injury, including accidental death, as well as claims for property damage arising from operations under this Contract, and other covered loss, however occasioned, occurring during the policy term. Such policy shall comply with all the requirements of this article and shall be in the form and amounts as set forth in the Special Conditions hereof. The limits set forth in the Special Conditions shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to District, and shall not preclude the District from taking such other actions available to District under other provisions of the Contract Documents or law.
- b. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold District, Kitchell, CEM and Element Consulting harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by District as a result thereof.
- c. Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.
- d. Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to the District, members of District's board of trustees, Kitchell CEM, Element Consulting, and the officers, agents, employees and volunteers of District, the State Allocation Board, if applicable, the architect, and the architect's consultants, individually and collectively, as additional insureds using form CG2010 11-85 or equivalent which must include products and completed operations coverage, broad form property damage coverage, coverage for collapse, explosion and underground, and include independent contractor coverage.
- e. The coverage afforded by the additional insured endorsement described in paragraph (d.) above, shall apply as primary insurance, and any other insurance maintained by District, the members of District's Board of Trustees, or its officers, agents, employees and volunteers, or any self-funded program of District, shall be in excess only and not contributing with such coverage.
- f. Contractor shall notify District in writing of the amount, if any, of self-insured retention provided under the General Liability coverage, with a maximum limit of \$25,000. District may approve higher retention amounts, based upon review of documentation submitted by Contractor. Such review shall take into consideration Contractor's net worth and reserves for payment of claims of liability against Contractor, which must be sufficient to adequately compensate for the lack of other insurance coverage required hereunder.
- g. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in Article 24 hereof, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, District may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement, products and completed operations coverage and broad form property damage described in paragraphs d and e, above. To the extent that the umbrella insurer requires notice of changes to the primary policy, notice will be considered to be given and not prejudice the District's rights to recover under the umbrella policy.
- h. Contractor and District release each other, and their respective authorized representatives, from any Claims (as defined in Article 24 hereof), but only to the extent that the proceeds received from any policy of liability insurance carried by District or Contractor, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of liability insurance provided by Contractor hereunder shall be a standard waiver of rights of subrogation against District by the insurance company issuing said policy or policies.

- i. If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:
 - 1. The policy retroactive date coincides with or precedes Contractor's commencement of work under the Agreement (including subsequent policies purchased as renewals or replacements).
 - 2. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Agreement, including the requirement of adding all additional insureds.
 - 3. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Agreement.
 - 4. The policy allows for reporting of circumstances or incidents that might give rise to future claims.
- j. Contractor's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the contract, and District may, at its option, terminate the Agreement for any such default by Contractor.
- k. The requirements as to the types and limits of insurance coverage set forth herein and in the Special Conditions to be maintained by the Contractor, and any approval of said insurance by the District or its insurance advisor(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.
- l. District shall retain the right at any time to review the coverage, form, and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.
- m. All deviations from the contractual insurance requirements stated herein must be approved in writing by District's risk manager.

Article 24. BUILDER'S RISK/APPLICABLE INSTALLATION/FIRE INSURANCE

- a. It is the Contractor's responsibility to maintain or cause to be maintained builder's risk insurance or applicable installation coverage on all work, material, equipment, appliances, tools, and structures which are a part of the Contract and subject to loss or damage by fire, extended coverage, and vandalism and malicious mischief. District accepts no responsibility until the Contract is formally accepted by the Governing Board for the work. The Contractor is required to file with the District a certificate evidencing builder's risk or applicable installation of not less than the amount identified in the Special Conditions insurance coverage.
- b. Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.
 - 1. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
 - 2. Coverage shall include all materials stored on site and in transit.
 - 3. Coverage shall include Contractor's tools and equipment.
 - 4. Insurance shall include boiler, machinery and material hoist coverage.
- c. Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.

Article 25. PROOF OF CARRIAGE OF INSURANCE

- a. Contractor shall, as soon as practicable following the placement of insurance required hereunder, but in no event later than the effective date of the Agreement, deliver to District certificates of insurance evidencing the same, together with appropriate separate endorsements thereto, evidencing that Contractor has obtained such coverage for the period of the Agreement. Contractor shall deliver certified copies of the actual insurance policies specified herein, within thirty days after commencement of work. Thereafter, copies of renewal policies, or certificates and appropriate separate endorsements thereof, shall be delivered to District within thirty (30) days prior to the expiration of the term of any policy required herein. Contractor shall permit District at all reasonable times to inspect any policies of insurance of Contractor which Contractor has not delivered to District.
- b. Certificates and insurance policies shall include the following clause:

"This policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to District stating date of cancellation, reduction or other adverse change respecting such insurance. The date of cancellation, reduction or adverse change may not be less than thirty (30) days after date of mailing notice."

Any notice required to be sent pursuant to this section shall be to District's address as shown in the Notice to Contractors Calling for Bids.

- c. Certificates of insurance shall state in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, and cancellation and reduction notice. All Certificates of Insurance provided by Contractor shall name District, the architect, and architect's consultants as additional insureds.

- d. After receiving written Notice of Cancellation of Insurance, Contractor shall have ten (10) days to provide other policies of insurance similar to the canceled policies and acceptable insurance. If such replacement coverage is not provided, the District may secure insurance at the Contractor's expense.
- e. Nothing contained in the insurance requirements shall be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from operations under this agreement.

Article 26. INDEMNIFICATION

The Contractor shall defend, indemnify, and hold the District and its Board of Trustees, officers, agents, employees, Kitchell, CEM and volunteers harmless from any and all liabilities, claims, damages, obligations, actions, lawsuits, losses, judgments, fines, penalties, costs or expenses (including reasonable attorneys' fees) arising from or relating to the Contractor's work performed under this Agreement to the full extent permitted under California law for Contractor's negligence. This shall include the Contractor fully defending, indemnifying and holding harmless the District for any negligence of the Contractor arising directly or indirectly from Contractor's performance of this Contract, including, but not limited to, the use of facilities or equipment provided by the District or others. Contractor specifically acknowledges and agrees that Contractor has an independent obligation to defend the District and its employees from any liabilities or potential claims which actually or potentially fall within this indemnification provision even if such claim is or may be groundless, fraudulent, or false.

Article 27. LAWS AND REGULATIONS

- a. Contractor shall give all notices and comply with all laws, ordinances, rules, and regulations bearing on conduct of work as indicated and specified. If Contractor observes that drawings and specifications are at variance therewith, he shall promptly notify architect in writing and any necessary changes shall be adjusted as provided in Contract for changes in work. If Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to architect, he shall bear all costs arising therefrom.
- b. Contractor shall be responsible for familiarity with the Americans with Disabilities Act (ADA) (42 USC 12101 et seq.). Installations of equipment and other devices shall be in compliance with ADA regulations.

Article 28. PERMITS AND LICENSES

Permits and licenses necessary for prosecution of work shall be secured and paid for by Contractor, unless otherwise specified.

Article 29. INSPECTION FEES FOR PERMANENT UTILITIES

All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by District. Contractor shall be responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by District. Contractor may either request reimbursement from District for such fees or obtain the funds from District prior to paying such fees.

Article 30. EASEMENTS

Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by District, unless otherwise specified.

Article 31. SURVEYS

Surveys to determine location of property lines and corners will be supplied by District. Surveys to determine locations of construction, grading, and site work shall be provided by Contractor.

Article 32. EXCISE TAXES

If under federal excise tax law any transaction hereunder constitutes a sale on which a federal excise tax is imposed and the sale is exempt from such excise tax because it is a sale to a state or local government for its exclusive use, the District, upon request, will execute a certificate of exemption which will certify (1) that the District is a political subdivision of the state for the purposes of such exemption and (2) that the sale is for the exclusive use of the District. No excise tax for such materials shall be included in any bid price.

Article 33. PATENTS, ROYALTIES, AND INDEMNITIES

The Contractor shall hold and save the District and its officers, agents, and employees harmless from liability of any nature or kind, including cost and expense, for or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of this Contract, including its use by the District, unless otherwise specifically stipulated in the Contract documents.

Article 34. MATERIALS, PROTECTION OF WORK

- a. Except as otherwise specifically stated in this Contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, lights, power, transportation, superintendency, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- b. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality.
- c. Materials shall be furnished in ample quantities and at such times as to ensure uninterrupted progress of work and shall be stored properly and protected as required.
- d. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials, equipment, tools, and the Work under this Contract.
- e. No materials, supplies, or equipment for work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all work to deliver premises, together with all improvements and appurtenances constructed or placed thereon by him, to District free from any claims, liens, or charges. He further agrees that neither he nor any person, firm, or corporation furnishing any materials or labor for any work covered by this Contract shall have any right to lien upon premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions title to which is commonly retained by utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof. Nothing contained in this article, however, shall defeat or impair right of persons furnishing material or labor under any bond given by Contractor for their protection or any rights under any law permitting such persons to look to funds due Contractor in hands of District, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

Article 35. SUBSTITUTIONS

- a. Whenever in specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of material, process, or article desired and shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article which shall be substantially equal or better in every respect to that so indicated or specified. Any material, process, or article not exactly meeting the specifications in the documents in every respect shall be considered a substitution. If a material, process, or article offered by Contractor is not, in opinion of architect, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified. Burden of proof as to equality of any material, process, or article shall rest with Contractor.
- b. In accordance with Public Contract Code section 3400 "prior to or after the award of the contract", district must provide for "submission of data substantiating a request for a substitution of 'an equal' item." Therefore, no later than thirty-five (35) days after award of the Contract, if the Contractor is requesting substitution of "an equal" item or product or work, the make and grade of the item, product or work which is to be substituted shall be provided to the District representative. The documentation submitted must include any and all illustrations, specifications, and other relevant data including catalogue information which describes the substituted item or product or work and substantiates that it is an "or equal" to the specified item or product or work. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution will reduce or increase the Contract Price. The documentation submitted must also include information regarding the durability and life cycle cost of the substituted item, product or work. Substantiating data shall include a signed affidavit from the Contractor stating that the substituted item or product or work is equivalent to the specified item or product or work in every way except as listed on the affidavit. Whenever possible, the same substitution information is to be included in the sealed bid submittal package. Failure to submit all the needed substantiating data, including the signed affidavit, may result in a determination that the bid is nonresponsive. BIDDERS ARE SPECIFICALLY NOTIFIED THAT THE SUBMISSION OF THIS DOCUMENTATION IN NO WAY OBLIGATES THE DISTRICT OR ITS REPRESENTATIVE TO REVIEW SUCH DOCUMENTATION PRIOR TO CONTRACT AWARD. FURTHERMORE, IF A PROPOSED SUBSTITUTION IS REJECTED, BIDDER SHALL BE RESPONSIBLE TO PROVIDE THE ITEM OR PRODUCT OR WORK AS ORIGINALLY SPECIFIED. DISTRICT HAS THE COMPLETE AND SOLE DISCRETION TO DETERMINE IF AN ITEM OR ARTICLE IS AN EQUAL ITEM.

After award of the Contract should the District determine in its sole discretion that substitution of an item or product is reasonable and necessary or reasonable and appropriate, the Contractor shall submit any substitution requests together with all data required to substantiate that the substituted product or item is an "or equal" to the specified product or item. The make and grade of the item, product or work which is to be substituted shall be provided to the District representative. The documentation submitted must include any and all illustrations, specifications, and other relevant data including catalogue information which describes the substituted item, product or work and substantiates that it is an "or equal" to the specified item, product or work. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution will reduce or increase the Contract Price. The documentation submitted must also include information regarding the durability and life cycle cost of the substituted item, product or work. Substantiating data shall include a signed affidavit from the Contractor stating that the substituted product is equivalent to the specified product or item in every way except as listed on the affidavit. Failure to submit all the needed substantiating data, including the signed affidavit, to the District Representative or Architect in a timely fashion so that the substitution can be adequately reviewed and considered prior to any necessity for its use or application may result in the rejection of the proposed substitution. The District Representative or Architect is not obligated to review multiple substitution submittals for the same product or item due to the Contractor's failure to submit a complete package either at time of submission of bid documents or in a timely manner after award of Contract.

- c. In event Contractor furnishes material, process, or article more expensive than that specified, the difference in cost of such material, process, or article so furnished shall be borne by Contractor.

Article 36. SHOP DRAWINGS

- a. Contractor shall check and verify all field measurements and shall submit with such promptness as to cause no delay in his/her own work or in that of any other contractor, subcontractor, architect, other independent contractor or worker on the Project, three (3) copies of all shop or setting drawings, schedules, and materials list, and all other submittals in accordance with other provisions of the Contract required for the work of various trades. Contractor shall sign all submittals affirming that submittals have been reviewed and approved by Contractor prior to submission to architect. Each signed submittal shall affirm that the submittal meets all the requirements of the Contract Documents except as specifically and clearly noted and listed on the cover sheet of the submittal.
- b. Contractor shall advise District immediately, if architect has not checked and approved with reasonable promptness, such schedules and drawings for conformance with design concept of project and compliance with information given in Contract documents. Contractor shall make any corrections required by architect, file with him three (3) corrected copies, and furnish such other copies as may be needed for construction. Architect's approval of such drawings or schedules also shall not relieve Contractor from responsibility for deviations from drawings or specifications unless he has in writing called architect's attention to such deviations at time of submission and has secured his/her written approval. Architect's approval of such drawings and schedules also shall not relieve Contractor from responsibility for errors in shop drawings or schedules. For purposes of this section "reasonable promptness" shall mean such reasonable promptness as to cause no delay in the work or in the activities of the District, Contractor or separate contractors, while allowing sufficient time in the architect's professional judgment to permit adequate review.

Article 37. SUBMITTALS

- a. Contractor shall furnish for approval, within fourteen (14) days following award of Contract a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in specifications. Such log shall indicate whether samples will be provided as specified and in accordance with other provisions of this Contract.
- b. Contractor will provide samples and submittals, together with catalogs and supporting data required by architect within a reasonable time period so as not to cause delays on the project. All submittals must specifically identify the products and materials that will be used for construction. Any catalog or product data submitted without the items identified will be rejected.
- c. This provision shall not authorize any extension of time for performance of this Contract. Architect will check and approve such samples, only for conformance with design concept of work and for compliance with information given in Contract Documents. Work shall be in accordance with approved samples. Architect's action will be taken within fourteen (14) calendar days after receiving such samples and submittals. If in the architect's professional judgment fourteen days is an insufficient amount of time to permit adequate review, Architect shall, within the initial fourteen (14) day period, notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond.
- d. If the Architect's response results in a change in the project, then such change shall be affected by a written change order.

Article 38. CLOSEOUT SUBMITTALS

The Contractor shall be responsible for the timely delivery of the technical manuals, warranties and guarantees as required in the technical specifications. The final payment will not be made until the District representative has had an opportunity to review and accept the required documents. Contractor shall also provide to District with all trainings in video (including audio) in a digital format.

Article 39. COST BREAKDOWN AND PERIODICAL ESTIMATES

- a. Contractor shall furnish on forms approved by District:
 - 1. Within ten (10) days of award of Contract a detailed estimate giving a complete breakdown of Contract Price; and
 - 2. A periodical itemized estimate of work done for the purpose of making partial payments thereon;
 - 3. Within ten (10) days of request by District, a schedule of estimated monthly payments which shall be due him under the Contract.
- b. Values employed in making up any of these schedules will be used only for determining basis of partial payments and will not be considered as fixing a basis for additions to or deductions from Contract Price.

Article 40. PAYMENTS AND RETENTION

- a. Each month as soon as practicable after receipt of approved periodical estimate for partial payment, but in order to avoid the payment of interest, in any event within thirty (30) days of receipt of such periodical estimate, there shall be paid to Contractor a sum equal to ninety five percent (95%) of the value of work performed up to the last day of the previous month, less the aggregate of previous payments. However, if the Project is deemed Substantially Complete, then there shall be paid to Contractor a sum equal to ninety percent (90%) of the value of work performed up to the last day of the previous month, less the aggregate of previous payments. Upon receipt of a payment request the District shall as soon as practicable determine whether the payment request is proper. If the request is determined not to be a proper payment request suitable for payment, it shall be returned to the Contractor as soon as practicable within seven days after receipt and shall be accompanied by a statement in writing as to the reasons why the payment request is not proper. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and filed before the fifth day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or any bondsman from damages arising from such work or from enforcing each and every provision of this Contract and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning work, or any portion thereof given by the District or Architect shall remain noncompliant.

b. Final Payments; Release of Undisputed Retention; Withholding

1. Payments by District

Subject to the right of withholding as set forth in the Contract Documents, the parties intend this Contract to have two final payments, to wit: a Substantial Completion Payment and a Final Payment.

2. Substantial Completion Payment – Release of Undisputed Retention.

Upon the District confirming that Substantial Completion has been met, the Contractor shall submit an Application for Substantial Completion Payment within ten (10) business days of District confirming achievement of Substantial Completion. Such Application shall be for an amount that is then due and owing to the Contractor, including all undisputed Retention, and less any and all amounts that the District is entitled and/or obligated to withhold under the Contract and Applicable Law. If the District agrees with Contractor's Application for Substantial Completion Payment, District shall process and ensure that payment is made to the Contractor by District not more than sixty (60) Days after Substantial Completion of the Work as defined in Clauses (1), (2), (3) or (4) of California Public Contract Code §7107(c), whichever definition is earlier satisfied. If District disagrees with Contractor's Application for Substantial Completion Payment, District shall prepare an Application for Substantial Completion Payment in an amount that it believes in good faith is then due and owing to the Contractor, including all undisputed Retention, and less any and all amounts that the District is entitled and/or obligated to withhold under the Contract and Applicable Law. District shall then process said Application and ensure that payment is made to the Contractor by District not more than sixty (60) Days after Substantial Completion of the Work as defined in Clauses (1), (2), (3) or (4) of California Public Contract Code §7107(c), whichever definition is earlier satisfied; and

3. Final Payment

Upon the making of the Substantial Completion Payment, the District should then only be withholding amounts that it contends, in good faith, are not then due and owing to the Contractor based upon, 150% of the value of: the items on the Final Completion Punch List; and any and all amounts that the District is otherwise entitled and/or obligated to withhold under the Contract and Applicable Law. When the Contractor has achieved Final Completion, Contractor shall then submit its Application for Final Payment to the District. If District agrees with Contractor's Application for Final Payment, District shall process and ensure that Final Payment is made to the Contractor by District within thirty (30) Days after Final Completion of the Work as defined in the Contract. If Program Management Office disagrees with Contractor's Application for Final Payment, District shall prepare an Application for Final Payment in an amount that it believes in good faith is then due and owing to the Contractor, less any and all amounts that the District is entitled and/or obligated to withhold under the Contract and Applicable

Law. District shall then process said Application and ensure that payment is made to the Contractor by District not more than thirty (30) Days after Final Completion of the Work as defined in the Contract.

4. Applications for Substantial and Final Payments

The parties agree that said Applications will be submitted, evaluated and processed in good faith, as required by Applicable Law and in accordance with this Contract.

5. Review by District

District will review and approve or disapprove of the Applications as provided in the Contract Documents and as required by Applicable Law.

6. Conditions to Final Payment

Without limitation to any other conditions to payment set forth elsewhere in the Contract Documents, the following shall be conditions to a proper submission, and to District's approval, of Contractor's Application for Payment requesting Final Payment:

1. submission of Contractor's certification as required above;
2. submission of consent of Surety, if any, to Final Payment;
3. submission of a certificate evidencing that the insurance required by the Contract Documents is in force;
4. submission of conditional releases and waivers of stop payment notices and bond rights upon final payment in the form required by California Civil Code §3262(d)(3) executed by Contractor;
5. submission of all Close-Out Documents (including, without limitation, complete, accurate As-Built Drawings and Specifications certified by Contractor as required by the Contract Documents;
6. timely submission of adequate and complete certified payroll records as required by the Contract Documents for any time period that Work was performed, which have not been submitted by Contractor in connection with its previous Applications for Payment;
7. proper payment of prevailing wages as defined in California Labor Code §1720, et seq.;
8. submission of any other documents or information required by the Contract Documents as a condition of Final Payment or Final Completion.

7. Disputed Amounts

Pursuant to California Public Contract Code §7107, District may deduct and withhold from the Substantial Completion Payment and the Final Payment an amount of up to one hundred fifty percent (150%) of any disputed amounts, including, without limitation, amounts to protect District against any Loss caused or threatened as a result of Contractor's failing to fully satisfy the conditions of Substantial Completion, Final Completion, Substantial Completion Payment and Final Payment.

8. Waiver by Contractor

Acceptance of Final Payment by Contractor or a Subcontractor shall constitute a waiver of all rights by that payee against District for recovery of any Loss, excepting only those Claims that have been submitted by Contractor in the manner required by the Contract Documents, before or at the time of Contractor's submission of its Application for Payment requesting Final Payment.

c. SUBSTANTIAL COMPLETION

1. Contract Time

Contractor shall achieve Substantial Completion of the Work, or such portion of the Work as may be designated at any time by District for separate delivery, in accordance with the requirements of the Contract Time and other provisions of the Contract Documents.

2. Request for Inspection

When the Contractor believes it has achieved Substantial Completion, Contractor shall notify the Program Management Office that the Work, or portion thereof designated by the District in the Contract Documents or otherwise for separate delivery, is Substantially Complete.

3. Substantial Completion Inspection

When Contractor gives notice to District that it has achieved Substantial Completion of the Work, or a District designated portion thereof, the District, Design Consultant and Contractor shall inspect the Work together. If the District determines that the Work, or District designated portion thereof, is Substantially Complete, the District will proceed as outlined below. If the District determines that the Work, or District designated portion thereof, is not sufficiently complete to warrant an inspection to determine Substantial Completion, District, Inspector of Record, Design Consultant and such others as may be designated by District will inspect the Work, or such District designated portion thereof and proceed as outlined below.

4. Substantial Completion Punch List

At the conclusion of the Substantial Completion Inspection, District shall prepare and give to Contractor (or, District may request that Contractor prepare and provide to District) a Substantial Completion Punch List of items, if any, to be completed or corrected to achieve Substantial Completion. If Contractor disputes any of the items included, it shall so note its objection on the Substantial Completion Punch List. Contractor shall proceed within forty-eight (48) hours after preparation of the Substantial Completion Punch List to commence correction and completion of the items on the Substantial Completion Punch List, including, without limitation, any such disputed items, and all such items of Work shall be completed by Contractor before the Work will be considered as Substantially Complete. Failure by District, Inspector of Record, Design Consultant or Contractor to include an item on the Substantial Completion Punch List does not alter the responsibility of Contractor to perform the Work in accordance with the Contract Documents. Items of Work necessary for Substantial Completion that, for any reason, have been omitted from the Substantial Completion Punch List shall be added to the Substantial Completion Punch List and shall be promptly completed by Contractor upon request by District, Design Consultant or Inspector of Record made at any time prior to Final Payment.

5. Re-Inspection

Contractor shall notify District when the items of Work shown on the Substantial Completion Punch List are completed. District, Inspector of Record, Design Consultant and such others as District deems necessary or appropriate will then make a further inspection to determine whether such Work is Substantially Complete. If such inspection, or any subsequent re-inspection required pursuant hereto, discloses any item, whether or not included on the Substantial Completion Punch List, which must be completed or corrected before Substantial Completion, Contractor shall, as a condition of Substantial Completion, complete or correct such item, which shall then be re-inspected to confirm that such Work is Substantially Complete. Contractor shall reimburse District, or District may at its option withhold from Contractor's payments, amounts incurred by District to the Inspector of Record, Design Consultant, District Consultants or others whose services, for reasons within the control or responsibility of Contractor or the Subcontractors, are necessary for more than two (2) such re-inspections to determine Substantial Completion.

6. Notice of Substantial Completion

When District determines that the Work or such District designated portion thereof, is Substantially Complete, District will prepare a Notice of Substantial Completion on the District's form, which shall state the date of Substantial Completion. If the Notice of Substantial Completion is for the entire Work, then the District will attach to it the Final Completion Punch List prepared as set forth below. Regardless of the date the Notice of Substantial Completion is issued, Substantial Completion shall be deemed to have occurred on the date stated in the Notice of Substantial Completion.

d. PARTIAL OCCUPANCY OR USE

District reserves the right to beneficially occupy all or any portion of the Work at any time before Substantial Completion of the entire Work. Beneficial occupancy means that District has assumed physical occupancy and use of all or such portion of the Work. Commencement of improvements or other work by Separate Contractors in order to ready the Work for use or occupancy by District shall be unconditionally permitted in all cases prior to Substantial Completion and shall not constitute a taking of beneficial occupancy by District. Exercise by District of its right to take beneficial occupancy shall not constitute grounds for a Contract Adjustment. The District's right of beneficial occupancy of all or a portion of the Work prior to Substantial Completion shall be subject to the following conditions:

1. District and such others as District deems necessary will make an inspection of the portion of the Work to be beneficially occupied and prepare a list of items to be completed or corrected in the same manner as required by and subject to the

same conditions as set forth above.

2. Except as otherwise provided herein, beneficial occupancy by District shall not constitute a waiver of rights of the District against Contractor. Notwithstanding anything stated herein or elsewhere in the Contract Documents to the contrary, beneficial occupancy by District shall not constitute a waiver of rights of District relating to Defective Work in the area beneficially occupied or in any other portion of the Work.
3. Before the District takes beneficial occupancy, Contractor shall submit to District an itemized list of each piece of equipment located in or serving the area to be occupied stating the date operation of such piece of equipment commenced, together with operating instructions, manuals and other information required by the Contract Documents. Contractor shall provide, in the areas beneficially occupied, on a continual basis, utility services, elevator service, and heating and cooling systems in operable condition commencing at the time of beneficial occupancy and until Final Completion of the entire Work. District shall be responsible, from and after taking occupancy, for utility consumption, regular operation and regular maintenance of such systems or equipment.
4. District shall pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.
5. District shall pay all utility costs that arise out of its beneficial occupancy.
6. Contractor shall not be responsible for providing security in areas beneficially occupied.
7. District shall use its best efforts to prevent its beneficial occupancy from interfering with the conduct of Contractor's remaining Work.
8. Contractor shall not be required to repair damage caused solely by District's beneficial occupancy.
9. Contractor shall continue to maintain all insurance required by the Contract Documents in full force and effect.

e. FINAL COMPLETION

1. Contract Time

Contractor shall expeditiously and diligently perform the Work after Substantial Completion, including, without limitation, all items of Work on the Final Completion Punch List that accompanies the Notice of Substantial Completion, so as to achieve Final Completion within the requirements of the Contract Time for Final Completion.

2. Final Completion Punch List

Contractor shall prepare and submit to District at the time that Contractor requests inspection for Substantial Completion of the entire Work as set forth above, a draft proposed Final Completion Punch List of items of Work that will be required to be completed or corrected for Final Completion. Items identified in the course of any inspection for Substantial Completion that are required to Finally Complete the Work following Substantial Completion shall be added to the proposed Final Completion Punch List and the revised Final Completion Punch List attached to the Notice of Substantial Completion. The District shall provide an estimated value for each item listed on the Final Completion Punch List. If Contractor disputes any of the items included, it shall so note its objection on the Final Completion Punch List. When Contractor considers the Final Completion Punch List to be complete, it shall promptly sign and deliver the Final Completion Punch List to the District and Design Consultant. Failure by District, Design Consultant, Inspector of Record or Contractor to include an item on the Final Completion Punch List does not alter the responsibility of Contractor to perform the Work in accordance with the Contract Documents. Items of Work necessary for Final Completion that, for any reason, have been omitted from the Final Completion Punch List shall be added to the Final Completion Punch List upon request by District, Inspector of Record or Design Consultant made at any time prior to Final Payment.

3. Performance of Punch List

Contractor shall proceed promptly and in accordance with the Contract Time to correct and complete the items on the Final Completion Punch List, including, without limitation, any disputed items, and all such items of Work shall be completed by Contractor before the Work will be considered as Finally Complete.

4. Request for Final Inspection

Contractor shall notify District and PMO when Contractor believes that the Work is Finally Complete. District, PMO, Inspector of Record, Design Consultant and such others as District deems necessary or appropriate will then make a

further inspection to determine whether such Work is Finally Complete. If such inspection, or any subsequent re-inspection required pursuant hereto, discloses any item, whether or not included on the Final Completion Punch List, which must be completed or corrected before Final Completion, Contractor shall, as a condition of Final Completion, complete or correct such item, which shall then be re-inspected to confirm that such Work is Finally Completed. Contractor shall reimburse District, or District may at its option withhold from Contractor's payments, amounts incurred by District to the Inspector of Record, Design Consultant, District Consultants or others whose services, for reasons within the control or responsibility of Contractor or the Subcontractors, are necessary for more than two (2) inspections to determine Final Completion.

5. Acceptance by District

Acceptance of the Work may only be exercised on behalf of District by the Board of Trustees. Acceptance may be exercised either after Final Completion or may be exercised, without waiving or releasing Contractor from any of its obligations under the Contract Documents, at any time after Substantial Completion and before Final Completion.

6. Notice of Final Completion

When District determines that the Work is Finally Complete, District will prepare a Notice of Final Completion on the District's form, which shall state the date of Final Completion. Regardless of the date the Notice of Final Completion is issued, Final Completion shall be deemed to have occurred on the date stated in the Notice of Final Completion.

7. Notice of Completion

In addition to issuance of the Notice of Substantial Completion and Notice of Final Completion, District shall have the right, exercised in its sole and absolute discretion, to record a Notice of Completion pursuant to California Civil Code §3093.

8. No Waiver by District

No inspections conducted pursuant to this Article 40, nor any approvals or certificates issued by District, Design Consultant or Inspector of Record shall be deemed to be a waiver or limitation on District's right to insist on Final Completion and full performance of all other conditions to Final Payment under the Contract Documents prior to issuance of Final Payment to Contractor.

Article 41. PAYMENTS WITHHELD

- a. In addition to amounts which District may retain under any and all other articles in this Contract including those entitled "Payments," and "Time for Completion and Liquidated Damages," District may withhold a sufficient amount or amounts of any payment or payments otherwise due to Contractor, as in his/her judgment may be necessary to cover:
1. Payments which may be past due and payable for just claims against Contractor or any subcontractors for labor or materials furnished in and about the performance of work on the project under this Contract.
 2. Defective work not remedied.
 3. Failure of Contractor to make proper payments to his/her subcontractor or for material or labor.
 4. Completion of Contract if there exists a reasonable doubt that Contract can be completed for balance then unpaid.
 5. Damage to another Contractor.
 6. Amounts which may be due District for just claims against Contractor.
 7. Failure of Contractor to keep the record ("as-built") drawings up to date.
 8. Failure to provide update on construction schedule as required by Article 7 hereof.
 9. Failure of Contractor or any Subcontractor to properly pay prevailing wages as defined in California Labor Code §§1720 et seq.
- b. District may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, District shall be deemed the agent of Contractor and any payment so made by District shall be considered as a payment made under Contract by District to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments

may be made without prior judicial determination of claim or obligations. District will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

Article 42. CHANGES AND EXTRA WORK

a. CHANGES IN THE WORK

1. General

District is authorized to make Changes in the Work in accordance with the provisions of this Article 42.

2. Contract Adjustments

Contract Adjustments shall only be permitted as follows: (1) the Contract Sum Payable shall only be adjusted by means of a Change Order or Partial Change Order for Compensable Change, Deleted Work or Compensable Delay based upon Allowable Costs and Allowable Markups thereon; and (2) the Contract Time shall be adjusted by means of a Change Order or Partial Change Order for Excusable Delay, Compensable Delay or Deleted Work. All Contract Adjustments to the Contract Sum Payable shall conform, without limitation, to the requirements of this Article 42. All Contract Adjustments to the Contract Time shall conform, without limitation, to the applicable requirements of this Article 42 and to the requirements pertaining to Contract Time.

3. Exclusive Rights

The rights expressly set forth in the Contract Documents for Contract Adjustments constitute Contractor's exclusive rights for additional compensation or extensions of time and are intended to be in lieu of and wholly replace any other such rights and remedies that Contractor has under Applicable Laws for recovery or relief on account of Loss or Delay in connection with performance of the Work, it being the intent of the District and Contractor by so agreeing that if circumstances arise for which the Contract Documents do not provide to Contractor an express right to a Contract Adjustment, then such omission of an express right shall conclusively be deemed to mean that no right to a Contract Adjustment was intended and, consistent with that intent, no right to a Contract Adjustment on account of such circumstances shall by any means, legal or equitable, of interpretation, construction, inference, implication or application be considered, found or adjudged to exist.

4. Written Authorization

Without limitation to any other provisions of the Contract Documents expressly or impliedly requiring performance of Work at Contractor's Own Expense, any Change performed by Contractor pursuant to any direction other than a duly authorized and executed: Change Order; Partial Change Order; or Field Order, shall be paid for by Contractor at Contractor's Own Expense.

5. Prompt Performance

Subject to the procedures set forth in this Article 42 and elsewhere in the Contract Documents, all Changes shall be performed promptly and without Delay.

6. DSA Approval

Changes to the DSA-approved Drawings and Specifications shall be made by revised Drawings and Specifications that have been approved by DSA as required by §4-338, Part I, Title 24 of the California Code of Regulations and incorporated in an Addendum, Change Order or Partial Change Order. All substitutions affecting DSA regulated items (e.g. material, system, or product, etc.) shall be considered as a Construction Change Document or Addenda and shall be submitted to and approved by DSA prior to fabrication and installation (CAC, Section 4-338©, IR A-6). Construction Change Documents (CAC, Section 4-338(c)) must be signed by all of the following:

- (i) A/E of Record;
- (ii) Structural Engineer (when applicable);
- (iii) Delegated professional Engineer (when applicable); and/or
- (iv) DSA.
- (v) All as required by DSA

Any alterations, rehabilitation or reconstruction as stated in CAC, Section 4-317(c), shall be submitted to and approved by DSA before proceeding with the repair work.

b. SIGNATURES AND AUTHORIZATIONS

1. Parties

A Change Order and/or Partial Change Order shall be executed by and between the District and Contractor. There is no reason to reserve rights on any Partial Change Orders as the parties agree that all rights are reserved, subject to proceed immediately into the Claim and then the Mandatory Claim Dispute Resolution Process. Field Orders shall be executed as provided herein below.

2. Form

Change Orders, Partial Change Orders, and Field Orders shall be executed using forms furnished by the District.

3. Written Authorization

Contractor shall not be entitled to Contract Adjustment by Change Order or Partial Change Order except as authorized in a writing by the District. Such approval shall not, however, constitute a condition to the Contractor's obligation to perform the Work, including any Extra Work, that Contractor is directed to perform by a Change Order or Partial Change Order, that is signed in advance by the District's Vice President for Administrative Services, or a Field Order that is signed in advance by the District authorized representative, as required by this Article 42.

4. Written Authorization of Essence

It is of the essence to the Construction Contract between the Contractor and the District that all Contract Adjustments must be authorized in advance, in writing, as required by this article 42. Accordingly, no verbal directions, course of conduct between the parties, or express or implied acceptance of changes or of the work, and no claim that the District has been unjustly enriched (whether or not there has been such enrichment) shall be the basis for a Contract Adjustment if the Contractor has not obtained advance written authorization in the manner required by this article 42.

c. CHANGE ORDERS

1. Purpose

The purpose of a Change Order is to establish the terms of the District's and Contractor's mutual agreement to a Contract Adjustment, additive or deductive, time related, and/or any combinations thereof.

2. Content

A Change Order is a written instrument, prepared by the District, stating:

- (i) a Compensable Change or Deleted Work;
- (ii) a Compensable Delay or Excusable Delay;
- (iii) the amount of the Contract Adjustment, if any, to the Contract Sum Payable; and/or
- (iv) the extent of the Contract Adjustment, if any, to the Contract Time.

d. PARTIAL CHANGE ORDERS

1. Purpose

The purpose of a Partial Change Order is to establish the extent of the parties' mutual agreement, as far as it goes, to a Contract Adjustment, additive or deductive, time related, and/or combinations thereof.

2. Content

A Partial Change Order is a written instrument, prepared by the District, stating:

- (i) a Compensable Change or Deleted Work;
- (ii) a Compensable Delay or Excusable Delay;
- (iii) the amount of the Contract Adjustment, if any, to the Contract Sum Payable; and/or
- (iv) the extent of the Contract Adjustment, if any, to the Contract Time.

3. No Reservation of Rights Required on a Partial Change Order – Rights Automatically Reserved

Where the parties cannot reach a full and complete mutual agreement to all items set forth in a proposed change order and/or a change order request, but their competing positions do reach some agreement, then a Partial Change Order will be prepared by the District, signed by the parties, and promptly submitted for processing for payment so that money can continue to flow through the Contract at least to the extent of the parties' partial agreement. Regarding those portions of a proposed change order and/or change order request that were not agreed to, no reservation of rights need be written on the Partial Change Order as all such rights are deemed reserved provided that the proponent of the remaining disputed portions of the proposed

change order and/or change order request immediately takes such remaining disputed portions thereof into the Claims, and then the Mandatory Claims Dispute Resolution, Process.

4. Waiver of Rights by District and/or Contractor

The automatically reserved rights of the District and/or the Contractor discussed in the foregoing paragraph can however be lost, waived and/or forfeited, if the proponent of any items in a proposed change order or change order request not resolved by the Partial Change Order are not submitted as a Claim, and then placed into the Mandatory Claims Dispute Resolution Process as required by these General Conditions, to be resolved. The intent of this exclusive resolution procedure set forth in these General Conditions is that if this process does not resolve a purported Contract Adjustment, in whole or in part, then both the Contractor and District agree to resolve same as close as possible to the conclusion of the event(s) and /or circumstance(s) giving rise to the Claim. In this way, the information and documentation available to both parties will be as fresh as possible and permit the best-informed resolution to occur. Both parties acknowledge that their failure and/or refusal to follow this exclusive process will irreparably prejudice the other party and as such, should a party to this Contract fail or refuse to abide by and comply with this exclusive process, any Claim, and/or remaining unresolved portion thereof, is and shall be waived and irrevocably forfeited. This exclusive process shall apply equally to the District as it does to the Contractor.

e. FIELD ORDER

1. Purpose

The purpose of a Field Order is to: (1) direct the performance of a Minor Change; (2) direct performance of Work or a Change with respect to which there exists a dispute or question regarding the obligation to proceed with such; (3) proceed with work regarding underground unforeseen conditions and/or other unforeseen conditions to be compensated on a time and material basis; or (4) direct the performance of work where performance of the work needs to proceed in advance of complete substantiation and evaluation of a proposed Contract Adjustment therefor.

2. Authorization

Field Orders must be authorized by a District authorized representative.

3. Disputed and Unresolved Changes

Each Field Order involving a Change with respect to which there is a dispute or lack of complete agreement as to the method of calculation or amount of the Contract Adjustment shall, if Contractor is ordered to do so in a Field Order signed by a District authorized representative, be performed by Contractor without Delay. Both District and Contractor shall thereafter be deemed to have reserved their respective rights and contentions with regard to the Contractor's right, or lack of right, to a Contract Adjustment on account of such Change.

4. Other Notices

Neither issuance nor execution of a Field Order shall be interpreted as relieving Contractor of its obligation to comply with the requirements of these General Conditions for timely submission of notices required by the Contract Documents, including, without limitation, Notice of Change, Change Order Request, Notice of Delay or Request for Extension.

5. Contractor's Own Expense

Without limitation to other provisions of the Contract Documents, costs incurred by Contractor or any Subcontractor for either of the following categories of Changes shall be paid by Contractor at Contractor's Own Expense: (1) any Change or portion of a Change (including, but not limited, to a Compensable Change) performed before Contractor having first obtained a Field Order, Change Order or Partial Change Order prepared and signed in the manner required above; or (2) any Change or portion of a Change (including, without limitation, a Compensable Change) described in a Field Order that is performed before receipt by the Construction Manager of a timely and complete Notice of Change or Notice of Delay under circumstances where, respectively, a Notice of Change or Notice of Delay was required.

f. PROCEDURES – NOTICE OF CHANGE

1. Submission. Contractor shall submit a written Notice of Change to Project/Construction Manager

If any instruction, request, drawing, specification, action, condition, omission, default or other circumstance occurs that constitutes a Compensable Change, Deleted Work, Compensable Delay or other matter that may involve or require a Contract Adjustment (additive or deductive), such notice shall be provided before commencement of performance of the Work affected and no later than five (5) days after the Discovery Date of such circumstance.

2. Form

Notices of Change shall be provided using forms furnished or approved by the District. The content of each Notice of Change in

order to be considered complete shall include:

- i. a general statement of the circumstances giving rise to the Notice of Change (including, without limitation, identification of any related Field Order);
- ii. a Reasonable Order of Magnitude Estimate by Contractor of any related Contract Adjustments (additive and deductive) to the Contract Sum Payable; and,
- iii. if such circumstances involve a right to adjustment of the Contract Time due to Compensable Delay or Excusable Delay that has not been waived below, Contractor shall include, if not previously provided, a complete and timely Notice of Delay. Such Notice of Delay must be clearly communicated to the PMO at the time the issues arise.

3. Waiver by Contractor

Failure by contractor to provide a complete and timely notice of change under circumstances where a notice of change involving a change is required shall constitute a waiver by contractor of the right to a Contract Adjustment on account of such circumstances and a waiver of any right to further recourse or recovery by reason of or related to such change by means of the claims dispute resolution process or by any other legal process otherwise provided for under applicable laws.

4. Deductive Adjustments

Failure by Contractor to submit a timely or proper Notice of Change under circumstances in which a Notice of Change is required shall in no way affect District's right to a deductive Contract Adjustment on account of such circumstances.

g. CHANGE ORDER REQUEST

1. Submission

With respect to any matter that may involve or require a Contract Adjustment (additive or deductive) of the Contract Sum Payable, Contractor shall, within fourteen (14) Days after receipt by Construction Manager of a Notice of Change to submit to Construction Manager a written Change Order Request.

2. Form

Change Order Requests shall be provided using forms furnished by Project / Construction Manager. See Section 01 26 00 for an example of the minimum standard of required documentation for Change Order Requests, inclusive of both General Contractor and/or all tiers of subcontractor proposed costs

3. Content

Each Change Order Request in order to be considered complete shall include:

- (i) a detailed description of the circumstances for the Compensable Change, Deleted Work or Compensable Delay;
- (ii) documentation detailing the origination of the changes (e.g. RFI, ASI, Field Order), plan/drawing markups identifying areas in question, relevant specification sections or submittal data;
- (iii) a complete, itemized cost breakdown (additive and deductive) of the Allowable Costs that form the basis for the Contractor's request for Contract Adjustment of the Contract Sum Payable, including: (a) all of Contractor's and each Subcontractor's costs, quantities, hours, unit prices, rates and Allowable Markups and (b) if the Subcontractor's pricing is in the form of a lump sum price a detailed breakdown of the lump sum price into its component and individual items of Allowable Costs and Allowable Markup; and
 - (i) if such circumstances involve a right to a Contract Adjustment of the Contract Time due to Compensable Delay or Excusable Delay that has not been waived, Contractor shall include, if not previously provided, a complete and timely Request for Extension.
 - (ii) **All Change Order Requests that are submitted without complete backup documentation, as required in Article 42 of these General Conditions, will be immediately returned as incomplete.**

4. Waiver by Contractor

Failure by Contractor to provide a complete and timely change order request under circumstances where a change order request involving a change is required shall constitute a waiver by Contractor of the right to a Contract Adjustment on account of such circumstances and a waiver of any right to further recourse or recovery by reason of or related to such change by means of the claims dispute resolution process or by any other legal process otherwise provided for under applicable laws.

5. Deductive Adjustments

Failure by Contractor to submit a timely or proper Change Order Request under circumstances in which submission of a Change Order Request is required shall in no way affect District's right to a deductive Contract Adjustment on account of such circumstances.

6. Formal Notice of Essence

Contractor recognizes and acknowledges that timely submission of a formal Notice of Change and Change Order Request, whether or not the circumstances of the Change may be known to the District or available to District through other means, is not a mere formality but is of crucial importance to the ability of District to promptly identify, prioritize, evaluate and mitigate the potential effects of Changes. Any form of informal notice, whether verbal or written (including, without limitation, statements in Requests for Information, statements at regular job meetings or entries on monthly reports, daily logs or job meeting minutes), that does not strictly comply with the formal requirements set forth herein shall accordingly be insufficient.

h. PRICING - BASIS OF CALCULATION

1. Changes Not Involving Time

Contract Adjustments to the Contract Sum Payable on account of Compensable Changes or Deleted Work, other than Contract Adjustments to the Contract Sum Payable for Compensable Delay, shall be calculated, by one of the following methods:

(i) Lump Sum

By mutual acceptance of a lump sum proposal from Contractor based solely on Allowable Costs and Allowable Markups that is properly itemized and supported by sufficient substantiating data to permit evaluation.

(ii) Unit Prices

By the unit prices set forth in the Contract or such other unit prices as are subsequently and mutually agreed to in writing between the District and Contractor, with no amount added thereto for Allowable Markups.

(iii) Estimating Guides

For Compensable Changes with respect to which District has elected to make a unilateral and final determination, by the sum of all the following: (1) the reasonable value of materials and equipment documented as having been actually incorporated into the Work, which reasonable value may be less but shall never be more than Contractor's actual Allowable Costs therefor; (2) an estimate of the reasonable costs of labor, installation and other services using the lower of the estimated prices for the locale of the Project (or if prices are not reported for the locale of the Project, the estimated prices that are reported for the region in which the Project is located) as reported in the following recognized estimating guides: (a) R. S. Means Company, Inc. Building Construction Cost Data, Western Region - Latest Edition, P.O. Box 800 Kingston, MA 02364-800; or (b) Lee Saylor, Inc. Current Construction Costs - Latest Edition, 9420 Topanga Canyon Boulevard, Woodland Hills, CA 91311; and (3) the amount that results when the applicable Allowable Markup is applied to the sum of the amounts derived from Clauses (1) and (2) of this Subparagraph.

(iv) Time and Materials

With respect to Compensable Changes, if none of the three methods described immediately above is applicable, then the additive amount increasing the Contract Sum Payable shall be calculated by taking (a) the total of the reasonable expenditures by Contractor and its Subcontractors, documented in the manner required below for Allowable Costs that are actually and directly incurred and paid in the performance of the Compensable Change, not to exceed for any Compensable Change a price that is reasonable, competitive and fair to District given the amount and type of Work involved and the circumstances under which the Compensable Change is performed, and adding thereto the amount which result when the applicable Allowable Markups are applied to such total. A Contract Adjustment that is calculated

in this manner shall be subject to a not-to-exceed or guaranteed maximum price if such not-to-exceed or guaranteed maximum price has been mutually agreed upon between District and Contractor. If Contractor has reason to believe that a lump sum or unit price for a Subcontractor's performance of a portion of Extra Work authorized to be performed on a time and materials basis is available and Contractor has reason to believe such price is lower than the price that would be charged by the Subcontractor pursuant to the foregoing time and materials calculation, then Contractor has an obligation to inform District of that fact (along with the provision to the District of a complete itemized breakdown of same) so as to afford District the opportunity, on a fully informed basis as to the component Allowable Costs and Allowable Markups that comprise such price, to avail itself of such favorable pricing.

(v) Deleted Work

Except as otherwise provided below, in the case of Deleted Work, the credit amount used to reduce the Contract Sum Payable shall be calculated by taking: (a) the greater of either (i) the value assigned to the Deleted Work in the Schedule of Values, exclusive of all estimated markups by Contractor and any Subcontractor for overhead and profit (or, if insufficient detailed information on costs, overhead and profit for the Deleted Work is explicitly assigned in the Schedule of Values, as derived from the cost, bidding and/or estimating information that formed the basis for the establishment of the values set forth in such Schedule of Values); or (ii) a reasonable estimate of the value (based on savings of Allowable Costs only) of the Deleted Work (exclusive of any markups for overhead or profit) as of the Bid/Proposal Closing Deadline plus (b) a credit for any indirect (i.e., corporate, home office and general administrative) overhead and profit by Contractor and its Subcontractors, of every Tier, on the Deleted Work sufficient to ensure that the amount retained by Contractor or any Subcontractor for the Deleted Work does not exceed the amount of Allowable Markup that is permitted to be retained by each, respectively, pursuant to the calculations of applicable credits that result from the application of the Allowable Markups that are set forth below. The foregoing credit to District shall be in addition to any other credit that may be due to District for Contract Adjustments shortening the Contract Time due to Deleted Work.

2. Changes Involving Time

Contract Adjustments that are based on an extension of the Contract Time for Compensable Delay or a shortening of the Contract Time due to Deleted Work shall be calculated exclusively in the manner stated herein below, with no Allowable Markup thereon for Contractor or any Subcontractor, of any Tier. A complete and detailed Time Impact Analysis must be submitted along with a previously approved CPM schedule. This must be accompanied by a comprehensive narrative explaining the critical path activities that were impacted by the changes, the duration of the impact(s), the cause(s) of the impact, the potentially responsible person(s) and the associated project documentation (RFIs, ASIs, etc.). Contract Adjustments that are based on an acceleration in performance of the Work that is ordered by District in writing to overcome a Compensable Delay for which the Contractor is entitled to an extension of the Contract Time that has been properly requested and is not granted by District due to a District decision to accelerate rather than extend the Contract Time shall be calculated exclusively in the manner stated below.

3. Time and Materials Documentation

Without limitation to any other provisions of the Contract Documents, Contractor's right to reimbursement of Allowable Costs incurred by Contractor or its Subcontractors in the performance of a Compensable Change for which the Contract Adjustment is calculated pursuant to the time and materials method set forth above, shall be conditioned on Contractor's compliance with the following conditions with respect to documentation of the Extra Work that is involved in the performance of the Compensable Change:

(i) Labor

At the close of each Day on which such Extra Work is performed, Contractor shall submit to Program Management Office and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by District, that sets forth with respect to each and all of the actual hours spent in performance of the Extra Work on the Day that the Extra Work was performed the following: the names of the workers, their classifications, hours worked and hourly rates. Such forms shall include a written certification by Contractor's project manager or superintendent at the time of submission that the information contained therein is complete and accurate.

(ii) Materials, Equipment

At the close of each Day on which such Extra Work is performed, Contractor shall submit to Program Management Office and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by District, that sets forth with respect to each and all of the materials and equipment used or consumed in the performance of the Extra Work on the Day that the Extra Work was performed, the following: a list of the materials and equipment, prices or rates charged, in the case of equipment a description of the type of equipment, identification number, and hours of

operation (including loading and transportation), and copies of delivery tickets, invoices or other documentation confirmatory of the foregoing.

(iii) Other Services or Expenditures

At the close of each Day on which such Extra Work is performed, Contractor shall submit to Program Management Office and, if requested, to the Inspector of Record, an Extra Work report, on forms provided by District, that sets forth a list of other expenditures constituting Allowable Costs incurred in performance of the Extra Work on the Day that the Extra Work was performed, along with documentation verifying the amounts thereof in such detail as District may require.

(iv) Subsequent Documentation

Documentation not available on any Day that a portion of the Extra Work is performed shall be submitted as soon as they are available but not later than twenty-one (21) Days after the earlier of the Day of delivery or incorporation of the particular item of Extra Work at the Site.

(v) Subcontractor Costs

Extra Work performed by Subcontractors shall be performed on a time and materials basis and documented in the same manner as required of Contractor and shall not, unless approved in writing by Construction Manager, be based on a lump sum or unit price; provided, however, that if Contractor has reason to believe that a lump sum or unit price for a Subcontractor's performance of all or a portion of Extra Work authorized by District to be performed by Contractor on a time and materials basis is available and Contractor has reason to believe such price is lower than the price that would be charged by the Subcontractor on a time and materials basis, then Contractor has an obligation to inform Construction Manager of that fact (along with provision to District of a complete itemized breakdown) so as to afford District the opportunity to avail itself of such favorable pricing.

(vi) Authentication

In addition to the foregoing, District may require that Contractor comply with other reasonable requirements pertaining to observation and verification of time and materials work and authentication of time and material tickets and invoices by persons designated by District for such purpose.

4. Waiver by Contractor

The failure of Contractor to submit authentication of costs in the manner required hereby shall, if District elects in its reasonable discretion to treat it as such, constitute a waiver by Contractor of any right to a Contract Adjustment to the Contract Sum Payable for the Allowable Costs incurred for performance of that portion of the Extra Work for which Contractor has failed to provide such authentication.

i. ALLOWABLE COSTS

The term "Allowable Costs" (1) means the costs that are listed below and (2) excludes costs that do not constitute Allowable Costs as stated herein below:

1. Labor

Straight-time wages and, if specifically authorized by District in writing, for employees employed at the Site, including wages for employees of Subcontractors performing engineering or fabrication detailing at locations other than at the Site. The use of a labor classification which would increase the Allowable Costs for Extra Work will not be permitted unless Contractor establishes the necessity for the use of such labor classification. Overtime wages and salaries shall only constitute an Allowable Cost to the extent permitted by the Contract Documents and only as specifically authorized by District in writing setting forth the amount of overtime anticipated, which amount shall be deemed the maximum amount of overtime reimbursable as an Allowable Cost. As part of the Allowable Costs permitted by this Subparagraph, Contractor shall be entitled to be reimbursed wages paid to a "time and materials clerk" employed by Contractor to track and document Compensable Changes that are authorized or permitted to be performed on a time and materials basis, provided that the time expended by such employee is verified by contemporaneously maintained time sheets maintained by such clerk showing the actual time spent tracking and documenting the performance of Compensable Changes separately from other tasks or functions performed by such clerk. Labor rates for all trades shall be submitted to the PMO at the beginning of the project and shall include calculations for fully-burdened rates based on the verified prevailing wages per DIR (<https://www.dir.ca.gov/OPRL/2019-1/PWD/index.htm>) at the time of the bid/proposal is submitted, and using the attached Labor Rate Worksheet (Appendix 1 to these General Conditions).

2. Benefits

To the extent based on wages reimbursable above, net actual employer costs of payroll taxes (FICA, Medicare, SUTA, FUTA), insurance (as adjusted for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, or the like), health and welfare, pension, vacation, apprenticeship funds and benefits required by the Project Labor Agreement (if applicable), Labor Compliance Program (if applicable) or lawful collective bargaining agreements.

3. Materials

Costs of materials used or consumed in the Work at a price that is competitive to the price charged for similar materials delivered within the general vicinity of the Site by other subcontractors, suppliers, manufacturers and distributors. The cost for any such item that is not new shall mean "fair market value" based on the estimated price a reasonable purchaser would pay to purchase the used material at the time it was used or consumed for the Work, which fair market value must be declared by Contractor and approved by District prior to such use or consumption. Provide detailed supplier/vendor invoices for all materials included in Change Order Requests.

4. Taxes

Sales taxes on the costs of the materials described in above, and a prorated portion of applicable City gross receipts taxes payable by Contractor (not Subcontractors) that is allocable to the value of the Extra Work or Deleted Work involved.

5. Equipment Rental

Rental charges for necessary machinery and equipment, exclusive of hand tools, whether rented from Contractor or others. No charge shall be allowed or credit required for items which have a replacement value of One Hundred Dollars (\$100) or less. The allowable rental rates shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, loading, transportation, repairs and maintenance of any kind, depreciation, storage, insurance and all incidentals. If equipment used for Extra Work is used intermittently and, when not in use, could be returned to its rental source at less expense to District than holding it at the Site, it shall be returned, unless Contractor elects to keep it at the Site at no expense to District. Under no circumstances shall the aggregate rentals chargeable for any item of equipment exceed the following percentages of the fair market value of the item at the time of its first use for the Work, which fair market value must be declared by Contractor and approved by PMO prior to the first use of such item in or for the Work: (1) if the item is owned by the Contractor or any company affiliated with Contractor, the aggregate rentals shall not exceed 75% of such fair market value; and (2) if the item is not owned by the Contractor or any company affiliated with Contractor, the aggregate rentals shall not exceed 100% of such fair market value. All equipment shall be acceptable to District, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and manufacturer's approved modifications shall be used to classify equipment, and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer. The cost of major repairs or overhaul of rented equipment or machinery shall be deemed a cost of business of the lessor of such equipment or machinery and shall not be reimbursable as an Allowable Cost.

6. Subcontractors

Payments made by Contractor to Subcontractors; provided, however, that: (1) such payment are not otherwise precluded from reimbursement by the terms of the Contract Documents; (2) such payments are for Work performed in accordance with the requirements of the Contract Documents; (3) such payments are for amounts properly due and owing by Contractor under the terms of the governing contract between Contractor and such Subcontractor; and (4) in the case of payments for extra work performed by a Subcontractor pursuant to a change order executed between Contractor and a Subcontractor the change order was executed under circumstances in which the Subcontractor was entitled under the terms of its contract with Contractor to receive the amount of additional compensation agreed to in the change order.

7. Royalties, Permits

Costs of royalties and permits.

8. Bonds

Costs of bonds required to be furnished by Contractor (not Subcontractors) under the terms of the Contract Documents; provided, however, that such additional costs chargeable for Extra Work or credited for Deleted Work shall not exceed two percent (2%) of the costs described above.

j. COSTS NOT ALLOWED

Allowable Costs shall not include any of the costs associated with any of the following (whether incurred by Contractor or a Subcontractor):

1. superintendent(s);
2. assistant superintendent(s);
3. project engineer(s);
4. project manager(s);
5. scheduler(s);
6. estimator(s);
7. drafting or detailing (except as otherwise permitted above);
8. vehicles not dedicated solely to the performance of the Work;
9. small tools with a replacement value not exceeding One Hundred Dollars (\$100);
10. office expenses, including staff, materials and supplies;
11. on-Site and off-Site trailer and storage rental and expenses;
12. Site fencing not added solely due to the performance of Extra Work;
13. utilities, including gas, electric, sewer, water, telephone, telefax and copier equipment;
14. computer and data-processing personnel, equipment and software;
15. federal, state or local business, income and franchise taxes;
16. insurance (including, without limitation, general liability, automobile and worker's compensation) unless related to i. 2. above;
17. without limitation to Contractor's rights, costs, of any kind, incurred by Contractor or a Subcontractor, of any Tier, that arise from or relate to Delay or acceleration to overcome the effects of Delay; and
18. costs and expenses of any kind or item not specifically and expressly included in the Allowable Costs paragraph above.

k. ALLOWABLE MARKUPS

Allowable Markups consist of the percentages set forth above that, except as otherwise stated in the Contract Documents, are the maximum percentages (for Compensable Changes) and the minimum percentages (for Deleted Work) to be used for purposes of computing Contract Adjustments by means of the pricing methods set forth above. Subject to the exclusions and limitations set forth below, or elsewhere in the Contract Documents, Allowable Markups include and are limited to the following:

1. Self-performed Work

(i) Compensable Change

Compensable Change. With respect to all or that portion of a Compensable Change involving Self-Performed Work, the Allowable Markup to Contractor shall be not more than fifteen ten percent (15%) for labor, and fifteen percent (15%) for materials and equipment, which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the Allowable Costs incurred by Contractor in performance of such Self-Performed Work, including, without limitation,

Allowable Costs for materials or equipment purchased by Contractor from a first-Tier Subcontractor that is not an Installation Subcontractor.

(ii) Deleted Work

With respect to or that portion of Deleted Work involving Self- Performed Work, the District shall, in addition to the credit for Allowable Costs calculated above, be entitled to a credit of eight percent (8%) of such Allowable Costs.

2. Installation Subcontractors (First-Tier)

(i) Compensable Change

With respect to all or that portion of a Compensable Change that is performed by a first-Tier Installation Subcontractor, the Allowable Markups to the first-Tier Installation Subcontractor and the Contractor shall be as follows:

- (a)** The Allowable Markup to the first-Tier Installation Subcontractor shall be not more than ten percent (10%) for labor, and fifteen percent (15%) for materials and equipment, which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the Allowable Costs that are incurred by such first-Tier Installation Subcontractor in the performance of such Compensable Change.
- (b)** The Allowable Markup to Contractor shall be five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the sum of (i) the Allowable Costs incurred by such first-Tier Installation Subcontractor and (ii) the amount which results when the Allowable Markup thereon pursuant to preceding Clause (a) of this Subparagraph is multiplied times such Allowable Costs.

(ii) Deleted Work

With respect to all or that portion of Deleted Work that was to have been performed by a first-Tier Installation Subcontractor, District shall, in addition to the credit for savings in Allowable Costs provided for above, be entitled to the following:

- (a)** A markup credit shall be due from the first-Tier Installation Subcontractor of not less than eight percent (8%) of the amount of the Allowable Costs savings to the first-Tier Installation Subcontractor as calculated above.
- (b)** An additional credit shall be due from Contractor of not less than five percent (5%) of the amount of the total credit due from the first-Tier Installation Subcontractor as calculated above.

3. Installation Subcontractors (Second-Tier)

(i) Compensable Change

With respect to all or that portion of a Compensable Change that is performed by a second-Tier Installation Subcontractor, the Allowable Markups to such second-Tier Installation Subcontractor, to the first-Tier Installation Subcontractor that is above and in the same vertical contractual line of Tiers with such second-Tier Installation Subcontractor and to the Contractor, shall be as follows:

- (a)** The Allowable Markup to the second-Tier Installation Subcontractor shall be not more than ten percent (10%) for labor, and fifteen percent (15%) for materials and equipment, which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the Allowable Costs incurred by such second-Tier Installation Subcontractor in the performance of such Compensable Change.
- (b)** The Allowable Markup to the first-Tier Installation Subcontractor that is above and in the same vertical contractual line of Tiers with such second-Tier Installation Subcontractor shall be not more than five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be

multiplied times the sum of (i) the Allowable Costs that are incurred by such second-Tier Installation Subcontractor in the performance of such Compensable Change and (ii) the amount which results when the Allowable Markups thereon are multiplied times such Allowable Costs.

- (c) The Allowable Markup to Contractor shall be five percent (5%), which percentage shall for purposes of calculating the Contract Adjustment be multiplied times the sum of (i) the Allowable Costs incurred by the second-Tier Installation Subcontractors in the performance of such Compensable Change and (ii) the amounts which result when the Allowable Markups thereon pursuant to Clauses (a) and (b) of this are multiplied times such Allowable Costs.

(ii) Deleted Work

With respect to all or that portion of Deleted Work that was to have been performed by a second-Tier Installation Subcontractor, the District shall, in addition to the credit for savings in Allowable Costs provided for above, be entitled to the following:

- (a) A markup credit shall be due from the second-Tier Installation Subcontractor of eight percent (8%) of the amount of the Allowable Costs savings to the second-Tier Installation Subcontractor as calculated above.
- (b) A markup credit shall be due from the first-Tier Installation Subcontractor of five percent (5%) of the amount of the total credit due from the second-Tier Installation Subcontractor as calculated above.
- (c) A markup credit shall be due from the Contractor of five percent (5%) of the amount to total credits due from the first and second-Tier Installation Subcontractors as calculated above.

4. Other Subcontractors and Maximum Aggregate Markup

(i) Compensable Changes

With respect to any other Subcontractor, of any Tier, performing all or a portion of a Compensable Change who is not an Installation Subcontractor or who is an Installation Subcontractor below the second-Tier, the following shall apply:

- (a) No markup shall be allowed to such other Subcontractor.
- (b) The Subcontractor that is positioned in the Tier immediately above such other Subcontractor shall be entitled to an Allowable Markup of not more than five percent (5%) upon the Allowable Costs incurred by such other Subcontractor in the performance thereof.
- (c) Except as permitted above, no other Allowable Markup by any Subcontractor of any Tier above such other Subcontractor shall be permitted.
- (d) Contractor shall be entitled to an Allowable Markup of five percent (5%) of the sum of (i) the Allowable Costs incurred by such other Subcontractor in the performance thereof and (ii) the amount which results when the Allowable Markup permitted by Clause (b) of this Subparagraph is multiplied times such Allowable Costs.
- (e) The maximum aggregate or cumulative markup, for any and all compensable changes performed by Contractor and/or any tier Subcontractor, shall not exceed twenty percent (20%) for labor and twenty-five percent (25%) for materials and equipment, inclusive of the final allowable markup of five percent (5%) to Contractor for oversight and management of all Subcontractor tiers.

(ii) Deleted Work

Notwithstanding anything stated above, to the contrary, with respect to all or a portion of Deleted Work to be performed by any other Subcontractor, of any Tier, who is not an Installation Subcontractor or who is Installation Subcontractor below the second-Tier, there shall be included in the calculation of the Contract Adjustment the following credits to District:

- (a) The District shall be entitled to a credit for the full amount of the price (including all direct and indirect overhead and profit) agreed to or proposed by such Subcontractor for such Deleted Work to be performed by such Subcontractor.

- (b) The District shall be entitled to a credit for any and all markups to such Subcontractor's price that are added by Contractor or by any Subcontractor who is positioned in a Tier that is above and in the same vertical contractual line of Tiers with such Subcontractor.

I. REVIEW OF MARKUPS

It is Contractor's responsibility to review information submitted by Subcontractors to ensure that all markups comply with the requirements of the Contract Documents. Payment by the District of markups that exceed Allowable Markups shall not be considered as a waiver by District of the right to require repayment by Contractor of any markup charged that is in excess of Allowable Markups and such excess amounts shall be promptly paid by Contractor to District.

m. EXCLUSIONS AND LIMITATIONS

Allowable Markups are not permitted: (1) on agreed unit prices; (2) on District Furnished Materials; (3) on liquidated damages payable to Contractor for Compensable Delay; (4) to a Subcontractor who contracts to perform a Compensable Change that is in fact wholly performed by another Subcontractor (for purposes of this Paragraph, "wholly performed" means that all of the Compensable Change, other than supervision or minor labor or materials, are furnished by such other Subcontractor); or (5) on any Cost of Work or other compensation or cost with respect to which the Contract Documents state that there shall be "no Allowable Markup", "no markup for overhead and profit" or words of similar meaning.

n. NET CALCULATIONS

If any single Change or collection of Changes in the same or related portions of the Work, or in multiple portions of Work covered by a single bulletin or instruction by District, Construction Manager or a District Consultant, involve both Compensable Change and Deleted Work, and if the added Allowable Costs resulting from the Compensable Change exceed the reduction calculated in accordance with the requirements above, (excluding any Allowable Markup to the Contractor) then the calculation of Allowable Markups to Contractor shall be based on and limited to the resulting net increase in such Allowable Costs.

o. UNIT PRICES

Unless otherwise stated in the Contract Documents, unit prices stated in the Contract Documents or subsequently agreed upon by District and Contractor shall be deemed to include and encompass all costs of performance, overhead and profit, including, without limitation, all Allowable Costs and Allowable Markups. If the unit price stated in the Contract Documents is based on an estimated quantity established by District in the Construction Contract and the actual quantity of such unit-priced item varies by more than 25% above or below the estimated quantity, an equitable adjustment in the Contract Sum Payable, shall be made upon demand of either District or Contractor. Such equitable adjustment shall be based solely upon any increase or decrease in Allowable Costs (without any Allowable Markups), due solely to the variation above 125% or below 75% of the estimated quantity.

p. DISCOUNTS

For purposes of determining Allowable Costs of a Compensable Change, all trade discounts, rebates, refunds, and returns from the sale of surplus materials and equipment shall accrue and be credited to District, and Contractor shall take all necessary steps to ensure that such discounts, rebates, refunds and returns are secured.

q. PROMPT PRICING

It is fundamental to the District's objective of controlling costs that performance of Compensable Changes on a time and materials basis of compensation and without a not-to-exceed price be curtailed. Contractor recognizes that prompt pricing by Contractor is critical to this objective. Accordingly, in addition to and without limitation on any of the District's other rights or remedies, including, without limitation, its right to enforce a waiver, it is agreed that if Contractor fails to timely submit a complete Change Order Request with respect to any circumstance, event or occurrence constituting a Compensable Change: (1) any Delay to the performance of the Work associated with the performance, delayed performance or nonperformance of such Compensable Change shall be conclusively deemed to be an Unexcused Delay; and (2) the District shall have the option, exercised in its sole discretion, to unilaterally fix and determine the amount of the Contract Adjustment to the Contract Sum Payable for such Compensable Change based on the "estimating guide" method set forth above, which determination shall be conclusively final and binding upon Contractor.

r. FINAL PAYMENT

No Claim by Contractor for adjustment to the Contract Sum Payable shall be allowed if asserted after Final Payment.

s. Full Resolution

Except as otherwise stated below, the signing of a Change Order by Contractor and the District shall be conclusively deemed to be a full resolution, settlement and accord and satisfaction with respect to any and all Loss and Delay, whether known or unknown at the time of execution of the Change Order, related to the subject matter of the Change Order including, without limitation, all rights to recovery of costs, expenses or damages for delay, disruption, hindrance, interference, extended or extraordinary (direct and indirect) overhead, multiplicity of changes, loss of productivity, labor, wage or material cost

escalations, inefficiency, legal expenses, consultant costs, interest, lost profits or revenue, bond and insurance costs, changes in taxes and other similar and related Losses. The foregoing provisions of this Article shall, whether or not they are expressly stated or referenced on the face of a Change Order, be deemed to be part of the terms of the Change Order and shall be deemed to supersede and govern over any other provision contained in any proposal, estimate or other documents attached to or referenced in such Change Order that conflicts with the provisions of this Article.

t. NO "TOTAL COST" CALCULATIONS

Contractor represents and warrants that it has the ability to generate and maintain complete and accurate cost accounting records that, if required, will reflect the actual costs of the Work incurred or avoided for multiple items of Compensable Change and, on an event-by-event basis, the effect of multiple and concurrently occurring or caused Compensable Delays on the progress of the Work. Accordingly, Contractor agrees that all Change Order Requests and Claims shall be itemized in a manner that, with reasonable mathematical certainty and without reliance upon probabilities or inferences, segregates on a discrete, event-by-event basis the direct, actual Allowable Costs associated with each individual Compensable Change or Compensable Delay. Unless otherwise agreed to by District in writing in the exercise of its sole discretion, Change Order Requests and Claims shall not be based, in whole or in part, upon any methodology (such as "total cost" or "modified total cost" methodologies) that purports to establish Contractor's entitlement to additional compensation inferentially based, solely or principally, on the difference between Contractor's total costs for the Work or a portion of the Work and its original estimate of costs for performance of the Work.

u. MULTIPLE CHANGES

The District reserves the absolute right to make whatever Changes, including, without limitation, Compensable Changes or Deleted Work, that it determines, in its sole discretion, are necessary or otherwise desirable. Under no circumstances shall the individual or cumulative number, value or scope of such Changes, or their individual and cumulative impact on the Work, become a basis for Contractor to assert any claim for breach of contract, abandonment, rescission, termination, cardinal change or reformation of the Construction Contract, nor shall such circumstances be the basis for Contractor, or any of the Subcontractors, of any Tier, to assert a right of recovery of any Loss if such right is not permitted by, or is in excess of that allowed under, the Contract Documents.

v. CONTINUOUS PERFORMANCE

No dispute or disagreement with respect to any Changes or Delay, including, without limitation, disputes over Contractor's right to or the terms of a Contract Adjustment, shall relieve or excuse Contractor from the obligation to proceed with and maintain continuous, expeditious and uninterrupted performance of the Work, including performance of any disputed Changes.

Article 43. DEDUCTIONS FOR UNCORRECTED WORK

If District deems it inexpedient to correct work injured or not done in accordance with Contract, an equitable deduction from Contract Price shall be made therefore.

Article 44. PAYMENTS BY CONTRACTOR

Contractor shall pay:

- a. For all transportation and utility services not later than the 20th day of the calendar month following that in which such services are rendered,
- b. For all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at site of project and balance of cost thereof not later than the 30th day following completion of that part of work in or on which such materials, tools, and equipment are incorporated or used, and
- c. To each of his/her subcontractors, not later than the 5th day following each payment to Contractor, the respective amounts allowed Contractor on account of work performed by respective subcontractor to the extent of such subcontractor's interest therein.

Article 45. CONTRACTOR'S SUPERVISION

- a. Unless personally present on the premises where work is being done, Contractor shall keep on the work, during its progress, a competent full-time job (project) superintendent satisfactory to District. The job superintendent shall not be changed except with the written consent of District unless the job superintendent proves to be unsatisfactory to Contractor and ceases to be in his/her employ. The job superintendent shall represent Contractor in his/her absence and all directions given to him shall be as binding as if given to Contractor. Other directions shall be so confirmed on written request in each case.
- b. Contractor shall give efficient supervision to work, using his/her best skill and attention to control safety and job coordination. He shall carefully study and compare all drawings, specifications, and other instructions and shall at once report to architect any error,

inconsistency or omission which he may discover. The Contractor shall not be liable to District for any damage resulting from errors or deficiencies in the Contract Documents or other instructions by the Architect.

Article 46. INSPECTOR'S FIELD OFFICE

- a. Contractor shall provide for the use of inspector a separate trailer or temporary private office of not less than hundred square feet of floor area to be located as directed by inspector and to be maintained until removal is authorized by District. The Office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock design windows. Door shall have a key-type lock or padlock hasp. The inspector's field office shall have heating and air-conditioning and use of an on-site copier and scanner at Contractor's expense.
- b. A table satisfactory for the study of plans and two chairs shall be provided by Contractor. Contractor shall provide and pay for adequate electric lights, local telephone service, and adequate heat and air conditioning for the field office until authorized removal.
- c. The provisions of this section are intended to be complementary to any requirements provided elsewhere in these Contract Documents, however in the event of conflicts between this section and other provisions of these Contract Documents, this section shall prevail.

Article 47. DOCUMENTS ON WORK

- a. Contractor shall keep one copy of all Contract Documents, including Addenda, Change Orders, Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24 of the California Code of Regulations, and the prevailing wage rates applicable at the time of the Contract, which are a part of Contract Documents, on job at all times. Said documents shall be kept in good order and shall be available to District representative, architect and his/her representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21 and 24 as they relate to this project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, section 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this project, particularly Titles 17, 19, 21 and 24.)
- b. Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of District.

Article 48. RECORD ("AS BUILT") DRAWINGS

- a. Contractor shall maintain a clean, undamaged set of Contract drawings and shop drawings. In addition to maintaining one complete set of record drawings (herein referred to as "as-builts"), Contractor shall require each trade to do its own as-builts. The trade as-builts shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the District's representative or architect. Contractor shall mark the set to show the actual installation where the installation varies from the work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and accurately where shop drawings are used, and shall record a cross-reference at the corresponding location on the Contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of the work.
- b. Contractor shall note related change order numbers where applicable. Contractor shall organize record drawings sheets into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set.
- c. At the end of the project, the Contractor shall provide the District representative with a complete set of as-built drawings. The complete set shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the District's representative or architect. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire, alarm, gas, and plumbing.

Article 49. UTILITY USAGE

- a. All temporary utilities, including but not limited to electricity, water, gas, and telephone used on work shall be furnished and paid for by Contractor. Contractor shall furnish and install necessary temporary distribution systems, including meters, if necessary, from distribution points to points on site where utility is necessary to carry on the work. Upon completion of work, Contractor shall remove all temporary distribution systems.
- b. Contractor shall provide necessary and adequate utilities and pay all costs for water, electricity, gas, oil, and sewer charges required for completion of the project.
- c. All permanent meters installed shall be listed in the Contractor's name until completion occurs, as defined in Article 6 hereof, at which time further pro-rating will be determined if necessary. When District begins using the project, charges over and above power actually used for construction will be the responsibility of the District.
- d. If Contract is for construction in existing facilities, Contractor may, with written permission of District, use District's existing utilities by making prearranged payments to District for utilities used by Contractor for construction.

Article 50. SANITARY FACILITIES

The Contractor shall provide a sanitary temporary toilet building as directed by the inspector for the use of all workers. The building shall be maintained in a sanitary condition at all times and shall be left at the site until the inspector directs removal. Use of toilet facilities in the work under construction shall not be permitted except by approval of the inspector.

Article 51. TRENCHES

If the Contract Price exceeds \$25,000, the Contractor shall submit to the District or a registered civil or structural engineer employed by the District, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches five feet or more in depth. If such plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer. No excavation of such trench or trenches shall be commenced until said plan has been accepted by District or the person to whom authority to accept has been delegated by District.

Article 52. PROTECTION OF WORK AND PROPERTY

- a. The Contractor shall be responsible for all damages to persons or property that occur as a result of his/her fault or negligence in connection with the prosecution of this Contract. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and Contract Documents. Contractor shall take all necessary precautions for the safety of employees on the project and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of his/her organization on the work, whose duty shall be prevention of accidents. The name and position of the person so designated shall be reported to District by Contractor.
- b. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from Architect or District, is hereby permitted to act, at his/her discretion, to prevent such threatened loss or injury, and he shall so act, without appeal, if so authorized or instructed by Architect or District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- c. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.
- d. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereto, and repair any damage thereto caused by construction operations. Contractor shall:
 1. Enclose working area with a substantial barricade, arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities, and perform work which may interfere with school routine before or after school hours. (This subsection applies to new construction on existing sites.)
 2. Provide substantial barricades around any shrubs or trees indicated to be preserved.
 3. Deliver materials to the building area over a route designated by architect.
 4. When directed by District, take preventive measures to eliminate objectionable dust.
 5. Confine Contractor's apparatus, the storage of materials, and the operations of his/her workers to limits indicated by law, ordinances, permits, or directions of architect. Contractor shall not unreasonably encumber premises with his/her materials. Contractor shall enforce all instructions of District and architect regarding signs, advertising, fires, danger signals, barricades, and smoking and require that all persons employed on work comply with all regulations while on construction site.
 6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer or land surveyor, licensed in the State of California, at no cost to the District.

Article 53. LAYOUT AND FIELD ENGINEERING

All field engineering required for laying out this work and establishing grades for earthwork operations shall be furnished by the Contractor at his/her expense. Such work shall be done by a qualified civil engineer or land surveyor licensed in California and approved by the Architect. Any required "as-built" drawings of site development shall be prepared by a qualified civil engineer or land surveyor licensed in California and approved by the architect.

Article 54. REMOVAL OF HAZARDOUS MATERIALS

- a. Since removal and/or abatement of asbestos, PCBs and other toxic wastes and hazardous materials is a specialized field of work with specialized insurance requirements, unless otherwise specified in the Contract Documents, District shall contract directly for such specialized services, if required, and shall not require the Contractor to subcontract for such services.

- b. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the District, inspector, and architect in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the District and Contractor if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the District and Contractor, or by arbitration under Article 71 hereof.

Article 55. CUTTING AND PATCHING

- a. Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as Architect may direct.
- b. All cost caused by defective or ill-timed work shall be borne by party responsible therefore.
- c. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with consent or at the direction of Architect.

Article 56. CLEANING UP

Contractor at all times shall keep premises free from debris such as waste, rubbish, and excess materials and equipment caused by this work. Contractor shall not leave debris under, in, or about the premises. Upon completion of work, Contractor shall clean the interior and exterior of the building or improvement including fixtures, equipment, walls, floors, ceilings, roofs, window sills and ledges, horizontal projections, and any areas where debris has collected so surfaces are free from foreign material or discoloration. Contractor shall clean and polish all glass, plumbing fixtures, and finish hardware and similar finish surfaces and equipment and Contractor shall also remove temporary fencing, barricades, planking and construction toilet and similar temporary facilities from site.

Article 57. CORRECTION OF WORK BEFORE FINAL PAYMENT

- a. Contractor shall promptly remove from the premises all work condemned by District as failing to conform to the Contract, whether incorporated or not. Contractor shall promptly replace and re-execute his/her own work to comply with Contract Documents without additional expense to District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.
- b. If Contractor does not remove such condemned work within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

Article 58. ACCESS TO WORK

District and its representatives shall at all times have access to work wherever it is in preparation or progress. Contractor shall provide safe and proper facilities for such access so that District's representatives may perform their functions under Contract.

Article 59. OCCUPANCY

District reserves the right to occupy buildings at any time before completion, and such occupancy shall not constitute final acceptance of any part of work covered by this Contract.

Article 60. DISTRICT'S INSPECTOR

- a. If applicable, an inspector will be employed by District in accordance with requirements of Title 24 of the California Code of Regulations and will be assigned to the work. His/her duties are specifically defined in Part 1, Title 24, Section 4-342 of the California Code of Regulations.
- b. All work shall be under the observation of said inspector. He shall have free access to any or all parts of work at any time. Contractor shall furnish inspector reasonable facilities for obtaining such information as may be necessary to keep him fully informed respecting progress and manner of work and character of materials. Inspection of work shall not relieve Contractor from any obligation to fulfill this Contract. In addition to the District's rights outlined in Article 13, inspector or architect shall have authority to stop work whenever the provisions of the Contract Documents are not being complied with and Contractor shall instruct his/her employees accordingly.

Article 61. TESTS AND INSPECTIONS

- a. If Contract, District's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, Contractor shall give notice in accordance with such authority of its readiness for observation or inspection **at least two (2) working**

days before being tested or covered up. If inspection is by a public authority other than District, Contractor shall inform District of date fixed for such inspection. Required certificates of inspection shall be secured by Contractor. Observations by District shall be promptly made and where practicable at source of supply. If any work should be covered up without approval or consent of District, it must, if required by District, be uncovered for examination and satisfactorily reconstructed at Contractor's expense in compliance with the Contract. Costs for testing and inspection shall be paid by District. Costs of tests of any materials found not to be in compliance with the Contract shall be paid by the Contractor.

- b. Project Inspector and testing lab will be employed by the District and approved by the A/E of Record, Structural Engineer (when applicable), and DSA.
- c. Where such inspection and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency, or District's representative, and not by Contractor.
- d. In advance of manufacture of materials to be supplied by Contractor under the Contract, which by the terms of the Contract must be tested, Contractor shall notify District in advance so that District may arrange for testing of same at the source of supply. Any materials shipped by Contractor from the source of supply prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from District's representative that such testing and inspection will not be required, shall not be incorporated into the work without the prior approval of District and subsequent testing and inspection.
- e. Re-examination of questioned work may be ordered by District. If so ordered, work must be uncovered by Contractor. If such work is found to be in accordance with the Contract Documents, District shall pay the costs of re-examination and replacement. If such work be found not to be in accordance with the Contract Documents, Contractor shall pay such costs.

Article 62. SOILS INVESTIGATION REPORT

Except as provided in Article 68, when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this Contract. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the Contract, unless otherwise specifically provided. Contractor is required to make a visual examination of site and must make whatever tests he deems appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose of design only. Subsurface investigation information is made available by District solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by District or Architect that information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the Contract Documents for performance of the Work, such reference shall be to establish minimum requirements only. Further, no representation is made by District or Architect that information provided is solely adequate for purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation information, such as in protecting soil-bearing values, rock profiles, presence and scope of boulders and cobbles, soil stability and the presence, level and extent of underground water. Contractor shall determine means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Agreement to be materially different from those reported and which are not customarily encountered in the geographic area of the Work shall be governed by provisions of the General Conditions of the Contract for unforeseen conditions.

Article 63. ARCHITECT'S STATUS

- a. In general, and where appropriate and applicable, the architect shall be the District's representative during the construction period and shall observe the progress and quality of the work on behalf of the District. He shall have the authority to act on behalf of District only to the extent expressly provided in the Contract Documents. After consultation with the Inspector and after using his/her best efforts to consult with the District, the architect shall have authority to stop work whenever such stoppage may be necessary in his/her reasonable opinion to insure the proper execution of the Contract.
- b. Contractor further acknowledges that the architect shall be, in the first instance, the judge of the performance of this Contract.

Article 64. ARCHITECT'S DECISIONS

Contractor shall promptly notify District in writing if the architect fails within a reasonable time, make decisions on all claims of the District or Contractor and on all other matters relating to the execution and progress of the work.

Article 65. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

Article 66. LABOR/EMPLOYMENT SAFETY

The Contractor shall maintain emergency first aid treatment for his/her employees which complies with the Federal Occupational Safety and Health Act of 1970 (29 USC, section 651 et seq.).

Article 67. NOTICE OF TAXABLE POSSESSORY INTEREST

The terms of this document may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this document, the private party may be subjected to the payment of personal property taxes levied on such interest.

Article 68. ASSIGNMENT OF ANTITRUST ACTIONS

Contractor or Subcontractor offers and agrees to assign to District all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 USC, section 15) or under the Cartwright Act (chapter 2 (commencing with section 16700) of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Contract or any subcontract. This assignment shall be made and become effective at the time District tenders final payment to the Contractor, without further acknowledgment by the parties.

Article 69. SUBSTITUTION OF SECURITY

Upon the Contractor's request, the District will make payment of funds withheld from progress payments to ensure performance under the Contract pursuant to the requirements of Public Contract Code section 22300 if the Contractor deposits in escrow with the District or with a bank acceptable to the District, securities eligible for investment under Government Code section 16430, bank or savings and loan certificates of deposit, or other security mutually agreed to by the Contractor and the District, subject to the following conditions:

1. The Contractor shall bear the expense of the District and the escrow agent, either the District or the bank, in connection with the escrow deposit made.
2. Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to the Contractor pursuant to this section.
3. The Contractor shall enter into an escrow agreement satisfactory to the District, which agreement shall include provisions governing inter alia:
 - (a) The amount of securities to be deposited,
 - (b) The providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited,
 - (c) Conversion to cash to provide funds to meet defaults by the Contractor, including, but not limited to, termination of the Contractor's control over the work, stop notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the Contract,
 - (d) Decrease in value of securities on deposit,
 - (e) The termination of the escrow upon completion of the Contract.
4. The Contractor shall obtain the written consent of the surety to such agreement.
5. As an alternative to Contractor depositing into escrow securities of a value equivalent to the amounts of retention to be paid to the Contractor, upon Contractor's request, District will make payment of retentions earned directly to the escrow agent at the expense of Contractor pursuant to and in accordance with Public Contract Code section 22300.

Article 70. EXCAVATIONS DEEPER THAN FOUR FEET

If this Contract involves digging trenches or other excavations that extend deeper than four feet below the surface, then all of the following shall apply:

- a. The Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
 1. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 2. Subsurface or latent physical conditions at the site differing from those indicated.
 3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
- b. Upon receiving any such notice, the District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work District shall issue a change order under the procedures described in this Contract.
- c. In the event that a dispute arises between the District and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by this Contract, but shall proceed with

all work to be performed under the Contract. A contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties. (Public Contract Code section 7104).

Article 71. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

- a. The Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. It shall be Contractor's responsibility to evaluate the cost of compliance with the SWPPP in bidding on this Contract. Contractor shall comply with all requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance with specified requirements in the Contract amount.
- b. Contractor shall be responsible for implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by Permit. Contractor shall provide copies of all reports and monitoring information to District.
- c. Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.
- d. Failure to comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless District, its Board Members, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which District, its Board Members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the project, except for liability resulting from the negligence or willful misconduct of District, its Board Members, officers, agents, employees or authorized volunteers. District may seek damages from Contractor for delay in completing the Contract in accordance with Article 6 hereof, caused by Contractor's failure to comply with Permit.

ARTICLE 72. CLAIMS DISPUTE RESOLUTION PROCESS – MANDATORY

a. ADOPTION AND IMPLEMENTATION

The mandatory dispute resolution provisions set forth hereat are adopted and implemented by the District Pursuant to the authority afforded it under, without limitation Government Code sections 930.2, 930.4, 930.6, and Applicable Law.

b. CONDITION PRECEDENT TO ARBITRATION – CLAIMS SUBJECT TO THE PROCESS

The District and Contractor agree that this mandatory dispute resolution process, in its entirety, must be followed as a condition precedent to arbitration as set forth herein below. This mandatory dispute resolution process establishes the exclusive procedures for Claims between the Contractor and the District regarding the Contract Documents, except as may be expressly exempted elsewhere in the Contract Documents. A Claim means a written demand or assertion by Contractor or District seeking, as a matter of right: an interpretation of Contract; payment of money; increase and/or decrease in time; and/or recovery of damages. A Claim does not include the following: (1) tort claims for personal injury, death and/or property damage; (2) matters covered by insurance; (3) stop payment notice claims; (4) the right of District to specific performance or injunctive relief to compel performance; (5) the right of District to suspend, revoke, or limit the Contractor's pre-qualification status or rating or to debar Contractor from bidding or contracting with District; (6) right of District under Applicable Laws regarding withholds; (7) right of District under Applicable Laws due to a violation by Contractor of its statutory obligations under Public Contract Code §4100 et seq., to terminate the Construction Contract and/or recover penalties; or (8) any other actions taken by the District pursuant to mandatory and/or discretionary statutory obligations with which the Contractor takes issue.

c. WAIVER OF JURY AND COURT TRIAL

Claims shall be resolved by the Parties in accordance with these provisions in lieu of any and all rights under the law that either Party may have to have its rights adjudged by a trial court or jury. Contractor and District each voluntarily waives its right to a jury and court trial with respect to any Claim that is subject to binding arbitration in accordance with these provisions. Contractor shall include a provision in its contracts with its Subcontractors: (1) waiving a jury and court trial by any Subcontractor who provided any portion of the Work; and (2) binding its Subcontractors to participate in this mandatory Claims Dispute Resolution Process.

d. IRREPARABLE HARM; WAIVER; FORFEITURE

It is also the intent of this mandatory and exclusive Claims Dispute Resolution Process to resolve a Claim as close as possible to the conclusion of the event(s) and /or circumstance(s) giving rise to the Claim. In this way, individual's memories, and the information and documentation available to both Parties, will be as fresh as possible and permit the best informed resolution to occur. Both Parties acknowledge that their failure and/or refusal to follow this mandatory and exclusive process will irreparably prejudice the other Party and as such, should a Party to this Agreement fail or refuse to comply with this process, any Claim they may have shall be waived and forfeited. This process applies equally to the District as it does to the Contractor.

e. TIME LIMIT FOR SUBMITTING A CLAIM

The time period for each party to submit a Claim is ten (10) days from when: a party realizes, or when a reasonable person should have realized, that it has a Claim; when the Contractor fails or refuses to perform work/services required by the Contract Documents after receiving a Field Order; when the Construction Manager completely denies a request for the payment of compensation; when the Contractor believes it is due additional money and/or time on a change order request; when the District believes it is due money/credit and/or time on a change order proposal; or when a Party contends that the other Party has defaulted and/or breached the Contract Documents. If a Party fails to submit a Claim within the required ten (10) day period, that Party waives, relinquishes, and forfeits all rights and remedies to such a Claim. The requirement to submit a Claim does not impair or preclude either Party's expressed rights or remedies set forth elsewhere in the Contract Documents.

e. NOTICE OF A CLAIM

A Claim is commenced by filing a Notice of Claim as set forth below. The Notice of Claim is separate from other Notice requirements stated elsewhere in the Contract Documents. The Notice of a Claim shall be submitted as follows:

1. To the District:

Original Claim is sent to: Kitchell CEM
 Attention: David Dunn, Program Director
 MiraCosta College District
 1 Barnard Drive
 Oceanside, CA 92056

With a Copy to: John P. Dacey, Esq.
 Cauvel & Dacey, P.C.
 2323 Blanchard Drive
 Glendale, California 91208

2. To the Contractor: [insert name]

[address]
[Attention: [name of person]]

f. REQUIRED INFORMATION AND DOCUMENTATION

A Claim submitted shall contain a detailed narrative of the Claim together with detailed estimates and/or calculations regarding costs and/or time, and all supporting information and documentation to prove the basis and entitlement to the relief sought by the Party submitting the Claim. Any information and/or documentation not submitted by the time of the Initial Mandatory Meeting and Negotiations is held shall not be permitted to be used in any subsequent step of this mandatory and exclusive dispute resolution process, including at Arbitration, as both parties acknowledge that one Party withholding such information and/or documentation will cause the other Party irreparable prejudice.

g. CONTENTS OF THE CLAIMS.

A Claim by Contractor and/or District must include the following: (1) a statement that it is a Claim and a request for a decision on the Claim; (2) a detailed description of the act, error, omission, unforeseen condition, event or other circumstance giving rise to the Claim; (3) supporting documentation as follows: (a) if the Claim involves a Contract Adjustment due to Compensable Change or Deleted Work, documentation demonstrating that a complete Notice of Change and Change Order Request were timely and properly submitted as required; (b) if the Claim involves an adjustment to the Contract Time, documentation demonstrating that a complete Notice of Delay and Request for Extension were timely and properly submitted as required; and (c) if the Claim does not involve a Contract Adjustment on the basis of Compensable Change or Deleted Work, documentation demonstrating that the Notice of Claim was timely and properly submitted; (4) a detailed justification for any remedy or relief sought by the Claim, including, without limitation, all of the following: (a) a detailed cost breakdown in the form required for submittal of Change Order Requests, which complies with the prohibition on "total cost" calculations; and (b) actual job cost records demonstrating that the costs have been incurred; and (c) a written certification, signed by a responsible managing officer or principal of Contractor's organization who has the authority to sign contracts on behalf of Contractor and who has personally investigated the matters alleged in the Claim, in the following form:

"I hereby certify under penalty of perjury that I am a managing officer or principal of (Contractor's name) and that I have reviewed the Claim presented herewith on Contractor's behalf and/or on behalf of _____(Subcontractor's(s') name(s)) and that the following statements are, to the best of my knowledge after diligent inquiry into the circumstances of such Claim, true and correct:

- (i) the facts alleged in or that form the basis for the Claim are true and accurate;
- (ii) I do not know of any facts or circumstances, not alleged in the Claim, that by reason of

their not being alleged render any fact or statement alleged in the Claim materially misleading;

(iii) I have, with respect to any request for money or damages alleged in or that forms the basis for the Claim, reviewed the job cost records (including those maintained by Contractor and by any Subcontractor, of any Tier, that is asserting all or any portion of the Claim) and confirmed with reasonable certainty that the losses or damages alleged to have been suffered by Contractor and/or such Subcontractor were in fact suffered in the amounts and for the reasons alleged in the Claim;

(iv) I have, with respect to any request for extension of time or claim of delay, disruption, hindrance or interference alleged in or that forms the basis for the Claim, reviewed the job schedules (including those maintained by Contractor and by any Subcontractor, of any Tier, that is asserting all or any portion of the Claim) and confirmed that the delays or disruption alleged to have been suffered by Contractor and/or such Subcontractor were in fact experienced for the durations, in the manner, and with the consequent effects on the time and/or sequence of performance of the Work, as alleged in the Claim; and,

(v) Contractor has not received payment from District for, nor has Contractor previously released District from, any portion of the Claim.

Signature: _____

Name: _____

Title: _____

Company: _____

Date: _____

H. STEPS TO RESOLVING A CLAIM

The Parties shall use each of the following steps, in the order in which they appear below, to resolve each Claim. The resolution of any and all Claims is ultimately not binding on the District unless approved by the District's Board of Trustees and not binding on the Consultant until approved by its Authorized Representative.

1. Initial Mandatory Meeting and Negotiations

Within twenty-one (21) calendar days of a Party submitting a Notice of Claim and Required Documentation and Information, the other Party shall, in writing, submit a Written Response to the Notice of Claim. The Written Response to the Notice of Claim shall contain:

- (a) a detailed narrative responding to each point made in the Claim. The point by point response shall contain a statement as to whether the responding Party agrees or not with each point made by the Party submitting the Claim. If the responding Party does not agree with a point, then for each point of disagreement, the responding Party shall provide a detailed explanation as to why it disagrees supported by any detailed estimates and/or calculations regarding costs and/or time, and all supporting information and documentation to prove the basis of the responding Party's disagreement. To the extent the responding Party has a counter-claim, the responding Party shall also set forth a detailed explanation of the counter claim together with any detailed estimates and/or calculations regarding costs and/or time, and all supporting information and documentation to prove the counter claim. In situations where no counter claim is made, the Party submitting a Claim shall then have fourteen (14) calendar days to submit a Reply. The Reply must follow the same format and respond point by point, together with all supporting documentation and information supporting the points made in the responding Party's Written Response to the Claim. Within seven (7) days following receipt of the Reply, the District shall issue a Notice of Initial Mandatory Meeting and Negotiations that will take place between the President of the Contractor and the District's Vice President for Administrative Services ("Vice President"). The Initial Mandatory Meeting and Negotiations shall take place within fourteen (14) days of the issuance of the Notice of Initial Mandatory Meeting and Negotiations and will not last more than two (2) six (6) hour sessions, unless the both the President of the Contractor and the Vice President agree in writing that more time is needed. Any information and/or documentation not submitted by the time the Initial Mandatory Meeting and Negotiations is held shall not be permitted to be used in any subsequent step of this mandatory and exclusive dispute

resolution process, including at Arbitration, as both parties acknowledge that one Party withholding such information and/or documentation will cause the other Party irreparable prejudice.

- (b) if the Written Response to the Notice of a Claim contains also contains a counter-claim by the Responding Party, and only if the counter-claim would entitle the Responding Party to recover an amount of money beyond that which is sought by the Notice of Claim, then the Party filing a Notice of Claim shall not have fourteen (14) days to submit a Reply, but rather have twenty-one (21) days to submit a Reply. The Reply shall then address the points raised in the Written Response to its Notice of Claim and separately address the counter-claim points asserted by the Responding Party following the same narrative and supporting documentation and information requirements set forth above. The Responding Party shall then have fourteen (14) days to submit a Sur Reply addressing only the counter-claim points addressed by the Party filing the Notice of Claim. If these time frames apply, then within seven (7) days following receipt of the Sur Reply, the District shall issue a Notice of Initial Mandatory Meeting and Negotiations that will take place between the President of the Contractor and the Vice President. The Initial Mandatory Meeting and Negotiations shall take place within fourteen (14) days of the issuance of the Notice of Initial Mandatory Meeting and Negotiations and will not last more than two (2) six (6) hour sessions, unless the both the President of the Contractor and the Vice President agree in writing that more time is needed. Any information and/or documentation not submitted by the time the Initial Mandatory Meeting and Negotiations is held shall not be permitted to be used in any subsequent step of this mandatory and exclusive dispute resolution process, including at Arbitration, as both Parties acknowledge that one Party withholding such information and/or documentation will cause the other Party irreparable prejudice.

2. Resolution, Partial Resolution, or No Resolution

a. No Resolution

If the President of the Contractor and the Vice President reach no resolution, then within five (5) business days of the Initial Mandatory Meeting and Negotiations concluding, the Vice President shall issue a written notice to the Contractor's President, announcing the fact the no resolution was reached. Within five (5) business days of the receipt of the Vice President's notice of no resolution, the President of the Contractor, or the Vice President, depending on which Party submitted the Claim, must then file a Written Request for a Final Mandatory Meeting and Negotiations with either the District's President and/or his/her designee, at the address set forth above or the President of the Contractor. If this occurs, the Parties shall proceed to a Final Mandatory Meeting and Negotiations. Should the Party filing the Claim fail to file a Written Request for a Final Mandatory Meeting and Negotiations, the Party waives and forfeits all aspects of the Claim.

b. Partial Resolution

If the President of the Contractor and the Vice President reach only a partial resolution, and the Party submitting the Claim and/or counter-claim wishes to continue pressing the unresolved portions of the Claim or counter-claim, then within five (5) business days of the Initial Mandatory Meeting and Negotiations concluding, the Vice President shall issue a written notice to the Contractor's President, announcing the fact the a partial agreement has been reached, the details thereof, and a statement of all remaining unresolved items. All documents and information previously submitted shall be sent with the notice of partial resolution and statement of remaining unresolved items to District's legal counsel at the above address. Within five (5) business days of the receipt of the Vice President's notice of partial resolution and remaining items, either the President of the Contractor, or the Vice President, depending on which Party submitted the Claim, must then file a Written Request for a Final Mandatory Meeting and Negotiations with the District's Vice President at the address set forth above or the President of the Contractor. If this occurs, the Parties shall proceed to a Final Mandatory Meeting and Negotiations. Should the Party filing the Claim fail to file a Written Request for a Final Mandatory Meeting and Negotiations, the Party waives and forfeits all aspects of the Claim.

c. Full Resolution

If the President of the Contractor and the Vice President reach a complete resolution, then within five (5) business days of the Initial Mandatory Meeting and Negotiations concluding, the Vice President shall issue a written notice to the Contractor's President, announcing the fact that a complete resolution was reached. Within fourteen (14) business days of the receipt of the Vice President's notice of a full resolution, the District's President will issue a final determination announcing acceptance or rejection of the full resolution of the Claim and/or counter-claim. If the District's President issues a final determination announcing complete acceptance of the full resolution of the Claim and/or counter-claim, the matter shall place the matter on the Board of Trustees agenda at the earliest available Board meeting with a recommendation for acceptance or ratification depending whether the approval of the resolution is within or beyond Staff's delegated authority. If the Board approves or ratifies the resolution reached, a change order, amendment, or compromise will be issued to the Agreement. If the District's President does not approve the resolution in its entirety, then the District's President will issue a Statement of Compromise setting forth the extent of approval and/or disagreement which the District's President is willing to support. If the President of the

Contractor accepts the District's President's Statement of Compromise within five (5) business days of receipt of same, the District Staff shall place the matter on the Board of Trustees agenda at the earliest available Board meeting with a recommendation for acceptance or ratification depending whether the approval of the resolution is within or beyond Staff's delegated authority. If the Board approves or ratifies the proposed resolution reached, a change order, amendment, or compromise will be issued to the Agreement. If the President of the Contractor does not accept the District's President's Statement of Compromise, the President of the Contractor shall, within five (5) business days of receipt of same, issue a notice to the District's Vice President of its rejection of the Statement of Compromise. If this occurs, the Parties shall proceed to a Final Mandatory Meeting and Negotiations. Should the Party filing the Claim fail to file a written request for a Final Mandatory Meeting and Negotiations, the Party waives and forfeits all aspects of the Claim.

3. Final Mandatory Meeting and Negotiations

If after reaching no resolution, partial resolution, a complete resolution that is not accepted by the District's President, or after reaching a complete resolution that is rejected in whole or in part by the District's President, and if a Party has timely demanded a Final Mandatory Meeting and Negotiations, then the Parties shall proceed as follows.

- a.** Within seven (7) business days of any Party timely and properly requesting a Final Mandatory Meeting and Negotiations, the District shall issue a Notice of a Final Mandatory Meeting and Negotiations. The Final Mandatory Meeting and Negotiations will take place between the President, (or, if the company has no President, the Chief Executive Officer or highest ranking official) of the Contractor and the District's President or his/her designee. The Final Mandatory Meeting and Negotiations shall take place within fourteen (14) days of the issuance of the Notice of Final Mandatory Meeting and Negotiations and will not last more than one (1) six (6) hour session, unless the both the President of the Contractor and the District's President agree in writing that more time is needed. Any information and/or documentation not submitted by the time the Initial Mandatory Meeting and Negotiations is held shall not be permitted to be used in any subsequent step of this mandatory and exclusive dispute resolution process, including at Arbitration, as both Parties acknowledge that one Party withholding such information and/or documentation will cause the other Party irreparable prejudice.
- b.** Within fourteen (14) business days of the of the conclusion of the Final Mandatory Meeting and Negotiations, the District's President or designee will issue a final determination announcing a Statement of Final Compromise of the Claim and/or counter claim. If the District's President issues a final determination announcing complete acceptance and full resolution of the Claim and/or counter-claim as agreed between the Parties, District Staff shall place the matter on the Board of Trustees agenda at the earliest available Board meeting with a recommendation for acceptance or ratification depending whether the approval of the resolution is within or beyond Staff's delegated authority. If the District's President does not approve of a complete resolution of the Claim and/or counter-claim, then the District's President's Statement of Final Compromise of the Claim will set forth the extent of approval that the District's President is willing to support. If the President of the Contractor accepts the District's President's Statement of Final Compromise of the Claim within five (5) business days of receipt of same, District Staff shall place the matter on the Board of Trustees agenda at the earliest available Board meeting with a recommendation for acceptance or ratification depending whether the approval of the resolution is within or beyond Staff's delegated authority. If the Board approves or ratifies the proposed resolution reached, a change order, amendment, or compromise will be issued to the Agreement. If the President of the Contractor does not accept the District's President's Statement of Final Compromise of the Claim, the President of the Contractor shall, within five (5) business days of receipt of same, reject it. If this occurs, the Parties shall proceed to Mediation as set forth below. Should the Party filing the Claim fail to file a demand for Mediation, the Party waives and forfeits all aspects of the Claim.

4. Initial and Final Mandatory Meetings and Negotiations – Attendees

The District and the Contractor can unilaterally determine who, in addition to the required Party's representatives, shall attend either or both of these proceedings. However, attorneys are not permitted to attend unless an attorney is also the President of the Contractor or if both Parties agree in writing that attorneys may attend.

5. Waiver and Forfeiture of Claim and Counter-Claim

Should the Party filing the Claim or a counter-claim in response to a Claim fail to file a Demand for Mediation as provided below, the Party waives and forfeits all aspects of the Claim and/or counter-claim.

6. Mediation

If the above proceedings do not completely resolve a Claim or counter-claim, and if the Party submitting a Claim or counter-claim wishes to pursue a Claim or counter-claim, then the Party submitting a Claim or counter-claim must send a written

Demand for Mediation to the other Party at the addresses above and as required below, otherwise the Claim and/or counter-claim is waived and forfeited. The Demand for Mediation must be made on the other Party within seven (7) business days of the Final Mandatory Meeting and Negotiations concluding.

a. Demand for Mediation

If a Party has timely and properly issued a Demand for Mediation, then the Parties shall proceed as follows.

b. Terms and Conditions of Mediation

Within five (5) business days of either the District's President rejecting a proposed resolution as announced by the District's Vice President, or the President of the Contractor rejecting the District's President Statement of Final Compromise of the Claim, either Party wishing to pursue a Claim or counter-claim further shall issue a written Demand for Mediation to the other Party at the address set forth above. The Mediation must take place within forty-five days of the issuance of the Demand for Mediation. Only those documents and information previously exchanged by the Parties at the time of the Initial Mandatory Meeting and Negotiations, or as subsequently permitted by mutual agreement of the Parties may be presented at Mediation, in addition to whatever legal arguments and legal authority are applicable thereto. The costs of the Mediation shall be shared equally by the Parties. A single Mediator will preside and must have substantial experience mediating, arbitrating and/or litigating, public works contracts. The Party demanding Mediation must set forth in its Demand for Mediation the names of six (6) such Mediators. The other Party shall within five (5) days of receipt of the written Demand for Mediation either select one, or provide the names of six (6) other such Mediators. If the other Party fails to select one of the six Mediators, or fails to provide the names of six other such Mediators within the five days, then the Party demanding Mediation shall immediately identify the Mediator to be used from the six Mediators originally identified. The Mediation shall not involve more than eight (8) hours, unless both Parties agree in writing otherwise.

c. Failure to Invoke Mediation

If the proponent of the Claim fails to invoke the Mediation required by this Article within the time required, then the Claim, or remaining portion thereof, is forever waived and forfeited.

d. Mediation – No Resolution, Partial Resolution, or Full Resolution

If Mediation fails to resolve the Claim, the proponent of the Claim is then required to take action as set forth below or the remainder of the Claim is forever waived and forfeited. If Mediation resolves the Claim, in whole or in part, a change order, amendment, and/or compromise will be prepared. If within District Staff's delegated authority, Staff will sign the documentation and have the documentation processed. If the resolution exceeds the delegated authority of Staff, the matter will be placed on the Board of Trustees' earliest agenda for consideration and action. If the Board agrees to resolve the Claim as presented, the Board will approve same and the documentation will be processed. If however the Board agrees to resolve only part of the Claim presented, a change order, amendment, and/or compromise will be prepared and the documentation processed. If only part of the Claim presented to the Board is approved, the proponent of the Claim is then required to take action as set forth below or the remainder of the Claim is forever waived and forfeited. If the Board does not agree at all, the proponent of the Claim is then required to take action as set forth below or the remainder of the Claim is forever waived and forfeited.

7. The Mandatory Dispute Resolution Process is a Condition Precedent to Arbitration.

The Mandatory Dispute Resolution Process set forth herein must be complied with before Arbitration can be started.

a. Within fourteen (14) business days of the Mediation concluding, and if the Mediation fails to resolve the Claim, and if a Party wishes not to forfeit a Claim, or part thereof, a Party must file a Demand for Arbitration. The process set forth above is a condition precedent to the filing of any Demand for Arbitration between District and the Contractor.

b. A Demand for Arbitration is made by a Party issuing a written request for same to either: the American Arbitration Association; JAMS Dispute Resolution; or ADR; with a copy to the other Party and the District's Vice President. The Rules of the Arbitration service chosen shall govern the initiation of such Arbitration provided same are not in conflict with or contrary to the terms and conditions for Arbitration set forth in this Agreement. To the extent such Rules, in any respect, are contrary to or in conflict with the terms and conditions for Arbitration set forth in this Agreement, the latter shall govern. All supporting documents, information and data in support of the Claim shall accompany the written Demand for Arbitration with copies of all supporting documents, data and information simultaneously sent to the other party. In addition to any witness testimony, only the information, data and documents submitted at the Initial Mandatory Meeting and Negotiations may be used at the Arbitration, unless the Parties mutually agree in writing otherwise.

There is no discovery permitted unless: both Parties agree in writing; or, a Party can demonstrate good cause to the Arbitrator for some specific limited discovery. The hearing locale for any Arbitration shall be in San Diego County, California, unless otherwise agreed to by the Parties in writing. If both Parties agree in writing, they may elect to use an independent Arbitrator or an Arbitrator from another alternative dispute resolution provider.

- c. The Arbitration shall be held before a single Arbitrator who has arbitrated more than 5 public works disputes and must be mutually agreed to by both Parties. If the Parties cannot agree on an Arbitrator, then the Arbitration provider shall select an Arbitrator who has the qualifications listed herein. The Arbitration must be held and concluded within sixty (60) days of the written Demand for Arbitration, unless the Contractor and District agree otherwise in writing.
- d. The Arbitrator has no power to fashion a remedy that is "related to the Contract." Rather, each of the Arbitrator's decisions and award(s), interim and/or final, shall be in writing, shall set forth statements of fact and conclusions of law explaining how and why each item of the decision/award was reached, shall be supported by substantial evidence, shall be supported by applicable law, and shall otherwise comply with the requirements of Code of Civil Procedure Section 1296.
- e. The fees of the Arbitrator and the administrative costs of the Arbitration shall be shared equally between the Parties, and the Arbitrator has no power whatsoever to alter that sharing arrangement.
- f. Provided the Arbitrator has issued an award in compliance with the requirements of this Article, the Final Award is binding and all appellate rights are waived. Any judicial review of such an award is limited to the circumstances described herein for the Arbitrator's non-compliance with these requirements. A Court shall, subject to Code of Civil Procedure section 1286.4, and/or other Applicable Laws, vacate any award, in whole or in part, which the Court determines, after review, is not supported by substantial evidence or the Award, and/or is based on an error of law.
- g. The Arbitrator's Final Award shall be reflected in an additive or deductive change order, amendment, and/or compromise.

8. Contractor Agreement to Cooperate

Contractor agrees to participate in any and all other dispute resolution processes, claims, mediations, negotiations, administrative and/or civil actions in which the District is a party regarding a Project which Contractor is involved in. To the extent the District is a participant therein because of the alleged conduct of the Contractor, Contractor shall participate therein at no further compensation from the District. To the extent the District is a participant therein, but not because of the alleged conduct of the Contractor, then Contractor will be entitled to receive compensation at the agreed to hourly rates for its personnel to the extent of their involvement therein. By its contractual arrangements, Contractor shall require all of its subcontractors to have the same obligations imposed on Contractor by this Paragraph and have those subcontractors impose the identical obligations on all of their subcontractors, or whatever tier, and vendors, by virtue of their contractual arrangements.

9. Continuous Performance

Contractor shall maintain continuous, expeditious and uninterrupted performance of the Work throughout the duration of the Claims Dispute Resolution Process.

10. WAIVERS OF RIGHTS BY CONTRACTOR AND/OR DISTRICT

District and Contractor acknowledge that it is in the interests of both parties that changes, delays and claims be identified, quantified, evaluated and finally resolved promptly and contemporaneously with the circumstances from which they arise, and that there be certainty with respect to the finality of any resolution of related disputes. In further recognition of the fact that it would be extremely difficult or impossible to quantify, demonstrate or prove the harm to District and/or Contractor if any of the foregoing are not achieved due to a failure by Contractor and/or District to comply with the requirements of the Contract Documents concerning timely notice or submissions of notices and claims relating to changes, delay and Contract Adjustments, District and Contractor agree that failure by Contractor and/or District to conform to such requirements of the Contract Documents shall in and of itself constitute sufficient cause and grounds, without the necessity of District and/or Contractor demonstrating any actual harm or prejudice, for imposing upon Contractor and/or District a full and unconditional waiver, relinquishment, and forfeiture by Contractor and/or District of its right to a Contract Adjustment and of its rights and recourse for recovery of any related loss and/or damages by any legal process otherwise provided for under applicable laws.

11. Mutual Waiver of Consequential Damages

Contractor and District waive all rights and claims against each other for consequential damages arising out of or relating to the performance or nonperformance of any obligation under the Contract Documents. This mutual waiver includes damages incurred by either the District or the Contractor for loss of use, loss of profit or income, interest (except as due on Progress and/or Final Payment), loss of management or services, loss of productivity, loss of financing or funding, loss of business

reputation, loss of bonding and all such consequential damages due to termination or suspension by the Contractor or District. Notwithstanding the foregoing, nothing contained herein shall be deemed to be a waiver of or limitation on: (1) the District's or Contractor's rights for recovery of liquidated damages permitted to District or Contractor under the terms of the Contract; (2) the District's rights to recovery of losses (including, without limitation, any direct, indirect or consequential Loss) that involve or arise out of personal injury, death or damage to physical or tangible property of the District or of any other person or entity to whom the District is or may be liable; (3) District's or Contractor's rights of recovery for loss due to willful misconduct or gross negligence; (4) District's or Contractor's rights of recovery under any policy of insurance; or (5) District's express or implied rights of indemnification.

Article 73. GOVERNING LAW AND VENUE

This Contract shall be governed in accordance with the laws of the State of California and venue shall be in San Diego County.

Article 74. FINGERPRINTING

District Determination of Fingerprinting Requirement Application is set forth in the Special Conditions.

1. Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility Involving More than Limited Contact with Students

If the District determines based on the totality of the circumstances concerning the Project that the Contractor and Contractor's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have contact other than limited contact with pupils, by execution of the Agreement/Contract, the Contractor acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Contractor and/or Contractor's employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code section 45125.2 the Contractor shall, at Contractor's own expense, (a) install a physical barrier to limit contact with students by Contractor and/or Contractor's employees, or (b) provide for the continuous supervision and monitoring of the Contractor and/or Contractor's employees by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, or (c) provide for the surveillance of the Contractor and Contractor's employees by a District employee.

2. Contracts for Construction, Reconstruction Rehabilitation or Repair of a School Facility Involving Only Limited Contact with Students

If the District determines based on the totality of the circumstances concerning the Project that the Contractor and Contractor's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have only limited contact with pupils, by execution of the Agreement/Contract, the Contractor acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation or repair of a school facility involving only limited contact with students. Accordingly, the parties agree that the following conditions apply to any work performed by the Contractor and/or Contractor's employees on a school site: (1) Contractor and/or Contractor's employees shall check in with the school office each day immediately upon arriving at the school site; (2) Contractor and/or Contractor's employees shall inform school office staff of their proposed activities and location at the school site; (3) Once at such location Contractor and/or Contractor's employees shall not change locations without contacting the school office; (4) Contractor and Contractor's employees shall not use student restroom facilities; and (5) If Contractor and/or Contractor's employees find themselves alone with a student, Contractor and Contractor's employees shall immediately contact the school office and request that a member of the school staff be assigned to the work location.

Article 75. COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOILS

If the project requires the use of imported soils, the Contractor shall be responsible to use and shall certify that the imported material it uses is free of any hazardous and/or toxic substance or material of any nature or type as defined in accordance with California Law and the California Health and Safety Code. The District reserves the right to reject any imported material that has come from agricultural or commercial land uses. Contractor must notify the District of the source of material and comply with the San Diego Regional Water Quality Control Board Resolution 95-63 and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).

Article 76. NO ASBESTOS

1. The Contractor will be required to execute and submit a Certificate Regarding Non-Asbestos Containing Materials.
2. Should asbestos containing materials be installed by the Contractor in violation of this certification, or if removal of asbestos containing materials is part of the Project, decontaminations and removals will be performed in accordance with the requirements of all applicable laws and will meet the following criteria:

- (a) Decontamination and removal of work found to contain asbestos or work installed with asbestos containing equipment shall be done only under the supervision of a qualified consultant, knowledgeable in the field of asbestos abatement and accredited by the Environmental Protection Agency (EPA).
 - (b) The asbestos removal contractor shall be an EPA accredited contractor qualified in the removal of asbestos and shall be chosen and approved by the asbestos consultant who shall have sole discretion and final determination in this matter.
 - (c) The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.
 - (d) The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.
3. If removal of asbestos containing materials is part of the project, the cost of all asbestos removal, including, but not necessarily limited to the cost of the asbestos removal contractor, the cost of the asbestos consultant, analytical and laboratory fees, time delays and additional costs that may be incurred by the District shall be borne entirely by the Contractor.
 4. Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her/their risk and at his/her/their discretion with full knowledge of the currently accepted standards, hazards, risks and liabilities associated with asbestos work and asbestos containing products. By execution of the Agreement, the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Governing Board, employees, agents, representatives, including its architect and assigns, for all asbestos liability which may be associated with this work. The Contractor further agrees to instruct his/her/their employees with respect to the above-mentioned standards, hazards, risk and liabilities.

Article 77. DISABLED VETERANS PARTICIPATION GOALS AND RECORD RETENTION

1. In accordance with Education Code section 17076.11, this District has a participation goal for disabled veteran business enterprises ("DVBE") of at least 3 percent per year of the overall dollar amount of funds allocated to the District by the State Allocation Board pursuant to the Leroy F. Greene School Facilities Act of 1998 for construction or modernization and expended each year by the District. Prior to, and as a condition precedent for final payment under any contract for such project, the Contractor shall provide appropriate documentation to the District identifying the amount paid to disabled veteran business enterprises in conjunction with the Contract, so that the District can assess its success at meeting this goal.
2. The Contractor agrees that, for all contracts subject to DVBE participation goals, the State and the District have the right to review, obtain and copy all records pertaining to performance of the Contract in accordance with DVBE requirements. The Contractor agrees to provide the State or the District with any relevant information requested and shall permit the State and/or the District access to its premises upon reasonable notice for purposes of interviewing employees and inspecting records. The Contractor agrees to maintain such records for a period of three years after final payment under the Contract.

Article 78. NOTIFICATION OF THIRD-PARTY CLAIMS

The District shall provide the Contractor with timely notification of the receipt by the District of any third-party claim relating to this Contract, and the District may charge back to the Contractor the cost of any such notification.

END OF GENERAL CONDITIONS



SUPPLEMENTARY CONDITIONS

Attachment "U.1.1" Special Conditions

Project No. 04102: SAN B900 Student Center Renovation Project No. 04103: SAN B400 Science Labs Renovation

This Attachment U.1.1 and the requirements herein apply to both Project No. 04102: SAN B900 Student Center Renovation and Project No. 04103: SAN B400 Science Labs Renovation separately and independently.

1. **DOCUMENTS FURNISHED:** The number of copies of drawings and specifications to be furnished to Contractor free of charge, per Article 3 of the General Conditions is ONE (1).
2. **INSURANCE REQUIREMENTS:** Contractor agrees that Contractor has a separate and independent obligation to procure insurance for the District. This requirement is in addition to and separate from Contractor's Agreement to defend, indemnify and hold harmless the District. Contractor shall require its Subcontractors to take out and maintain similar public liability, property damage and workers' compensation insurance in like amounts, as required by these Supplementary Conditions, or insure the activities of its Subcontractors in Contractor's own policy.

As part of this Agreement, Contractor agrees to procure the following insurance:

- a. **Commercial General Liability:** Contractor shall obtain a commercial general liability (broad form) insurance policy which provides insurance on an occurrence basis for personal injury, death or property damage which may arise from any and all work performed by Contractor for the District, including on District facilities and grounds, with policy limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for personal injury, bodily injury and property damage including products and completed operations;
- b. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage under Business Automobile Liability Coverage Form Number CA 00 01, (any auto);
- c. **Builders Risk:** As outlined in Article 24 of the General Conditions;
- d. **Additional Insured:** The District and its Board of Trustees, officers, employees, agents and volunteers, Kitchell CEM, Element Consulting, Project Architect/Engineer and Project Inspector shall be named as an additional insured under the policy of insurance by Contractor, and Contractor agrees that it has a separate and independent obligation to verify the District is named as an additional insured whenever Contractor performs work for the District;
- e. **Certificate of, and Endorsement to, required Insurance Policies:** Contractor shall obtain a Certificate of insurance and an Endorsement to the policies of insurance required for this Project setting forth the respective policy limits of each insurance policy on which the District and its Board of Trustees, officers, employees, agents and volunteers, as well as the PMO, Construction Manager and Project Architect and Project Inspector are to be named as an additional insureds and provide the Certificate and Endorsements to the District before starting any services following the award of the contracts for the Projects. (The failure to provide the Certificates and/or Endorsements containing this information to the District shall not constitute a waiver of the requirement of the Contractor to obtain the specific insurance called for on the Project). The insurance policies shall also contain provisions which provide that Contractor's insurance policies are primary coverage and shall be applied both before the District held insurance policy, and that the insurer shall not request or call upon the District for any contribution in the settlement of any claim arising from the Contractor's work for the District or use of District facilities or premises; and

f. Waiver of Subrogation: Contractor agrees that in the event of loss due to any perils for which it has agreed to provide Commercial General and Automobile Liability insurance, Contractor shall look solely to its insurance carrier(s) for recovery and grants a waiver of any right to subrogation which any such insurer of Contractor may acquire against the District by virtue of payments of any loss under this insurance.

3. **WORKERS' COMPENSATION.** The Contractor and all of their officers, employees, agents, volunteers, and subcontractors agree to: (1) procure and maintain in full force and effect Workers' Compensation and Employer's Liability insurance in compliance with Workers' Compensation Laws of the State of California and at the statutory limits covering its employees and agents while these persons are participating in the scope of work hereunder: (2) The insurer for the Contractor shall agree to waive all rights of subrogation against District, its Board of Trustees, officials, employees, agents and volunteers, as well as the PMO, Construction Manager and Architect of Record, for losses under the terms of the insurance policy which arise from work performed by the Contractor.
4. **NOTICE TO PROCEED:** The District shall provide a Notice to Proceed to the Contractor by e-mail, and then followed up by mailing the original Notice to the Contractor.
5. **EXECUTED COPIES:** The number of executed copies of the Agreement, the Performance Bond, and the Payment Bond for Public Works Project required is ONE (1) of each.
6. **FINGERPRINTING:** Pursuant to the provisions of the General Conditions:

District Determination of Fingerprinting Requirement Application is as follows:

The District has considered the totality of the circumstances concerning the Project and has determined that the Contractor and Contractor's employees,

- a. are subject to the requirements of Education Code section 45125.2 and the General Conditions requirements regarding fingerprinting are required.
- b. X are not subject to the requirements of Education Code section 45125.2 and the General Conditions requirements regarding fingerprinting are not required.

7. LIQUIDATED DAMAGES:

- a. LIQUIDATED DAMAGES For District: The Contractor shall pay the District \$1,500.00/day as liquidated damages for each calendar day of unexcused delay that the work remains unfinished beyond the Substantial Completion Date that is caused by the Contractor and/or those for whom the Contractor is legally responsible for to the District. The District may deduct such liquidated damages from any payments due or to become due to Contractor. This provision shall not limit any right or remedy of the District in the event of any other default of the Contractor other than failing to complete the work within the Completion Time.
- b. LIQUIDATED DAMAGES For Contractor: The District shall pay the Contractor \$750.00/day as liquidated damages for each calendar day of Compensable Delay that the work remains unfinished beyond the Completion Date that is caused by the District and/or those for whom the District is legally responsible for to the Contractor.
- c. LIQUIDATED DAMAGES – Off-Setting Compensable Delays and Net Calculation Determination: Should the District, and/or those for whom the District is legally responsible for to the Contractor, and the Contractor, and/or those for whom the Contractor is legally responsible for to the District, both cause Unexcused Compensable delays over the life of the Project, then the number of Compensable delay days caused by each party will be offset and the party that has less Compensable delay days will be entitled to the net amount of Compensable delay days multiplied by the applicable per diem amount stated in either 2.A. or 2.B. above. By way of example,; if the District causes 20 Compensable delay days and the Contractor causes 15 Compensable delay days, over the life of the Project, the Contractor in this example would be entitled to a net 5 Compensable delay days multiplied by the per diem amount stated in 2.B. above.

8. **TIME OF PERFORMANCE:** The work shall commence on the date stated in the District's notice to Contractor to proceed and shall be completed within the stated days listed in such Notice. District and Contractor each hereby

stipulate that the state performance period is accepted as reasonable and that no other performance period shall be acceptable unless accepted in writing. Work under this Contract shall be scheduled and coordinated in compliance with the following:

- a. The anticipated date of the Board Approval of the Contract is April 15, 2021.
- b. The anticipated date of the Notice to Proceed (NTP) is April 26, 2021. See Special Conditions Section 9 - Schedule for further information.
- c. Contractor shall complete all work and obtain all jurisdictional authorities' approval necessary to permit staff occupancy of all buildings for fixturing and outfitting no later than One Hundred Seventy Nine (179) **calendar** days from issuance of NTP. See Special Conditions Section 9 – Schedule for further information.
- d. Five (5) non-compensable adverse weather days are included in this contract.
- e. Standard Work Hours: Regular construction work hours and construction site access are Monday through Friday 7:00 am – 4:00 pm. Contractor may work outside of these hours, but it will require approval of the owner and construction manager.

9. SCHEDULE:

A. Below listed interim project milestones apply to the overall project schedule.

Project Interim Milestones	Description	Schedule
NO. 01	NO later than TEN (10) calendar days after issuance of NTP, submit comprehensive construction site logistics plan including but not limited to fencing, equipment layout, dumpster location, construction facilities, designated parking and proper signage, etc., as outlined in Contract Documents.	10 calendar days after NTP
NO. 02	NO later FIVE (5) calendar days after issuance of NTP, Contractor shall walk the site with the Construction Manager and Campus Representative to document in writing, photograph and videotape ALL existing conditions, existing improvements, existing structures and facilities within the limit of the Contractor's Scope of Work.	5 calendar days after NTP
NO. 03	NO later than FIVE (5) calendar days after issuance of NTP, Contractor shall submit the project specific Illness Injury Preventing Plan (IIPP).	5 calendar days after NTP
NO. 04	NO later than TWENTY-ONE (21) calendar days after the issuance of NTP, Contractor shall submit all submittals for long lead items such as but not limited to mechanical equipment, electrical equipment, etc.	21 calendar days after NTP
NO. 05	NO later than FORTY-FIVE (45) calendar days after the issuance of NTP, Contractor shall submit all submittal items.	45 calendar days after NTP
NO. 06	Prior to grading activity, but NO later than SIXTY (60) calendar days after issuance of NTP, Contractor to deploy third party underground utility locator in order to identify all U/G utilities, including but not limited to: high/medium	60 calendar days after NTP

	voltage power, low voltage, domestic water, sewer, stormwater, gas, telecommunication, HVAC piping, irrigation, and others within the limit of Contractor's scope of work if applicable.	
NO. 07	NO later than FOURTY-FIVE (45) calendar days after issuance of NTP, Contractor shall have all mobilization activities completed. Contractor mobilization includes but isn't limited to site fencing complete, temporary offices as determined by the Contractor and project temporary signage complete as required.	45 calendar days after NTP
NO. 08	Substantial Completion of the project shall be completed No later than One Hundred seventy-nine (179) calendar days after the issuance of the NTP.	179 calendar days after NTP
NO. 09	Final Completion of the project shall be completed NO later than Two Hundred Eleven (209) calendar days after the issuance of the NTP. Final Completion is established in accordance with Contract Documents.	209 calendar days after NTP

B. Note: During construction when applicable, the owner's furniture, fixtures and equipment (FF&E) and Audio Visual / Information Technology (AV/IT) vendors may start delivery and installation of systems. Contractor will be required to coordinate and allow access for these items and any additional Owner vendors that are identified.

C. Phased Work Requirements / Constraints:

None.

10. REGARDING CONTRACTOR LOGISTICS AND SITE CONSTRAINTS:

- A. Contractor's Staging / Laydown Area:** Contractor's staging and laydown area will be limited to within the project site limits as shown on Exhibit 1, Construction Fence Plan. Prior to construction, Contractor shall submit a comprehensive construction site logistics/phasing plan to the Construction Manager including but not limited to temporary fencing, equipment layout, dumpster location, construction facilities, designated contractor parking, proper temporary signage, pedestrian access, etc.
- B. Parking:** Contractor parking shall be limited to within the noted project site limits as shown on the Exhibit 1, Construction Fence Plan, and referenced in Item 9.A. of these Special Conditions. Contractor will be provided temporary parking as required. Contractor's employees, suppliers and subcontractors shall abide by these same parking requirements.
- C. Site Access:** Contractor shall coordinate site access and conduct construction with minimal impact to campus operations. Contractor shall provide appropriate notifications to City officials regarding delivery and haul routes as required. All college vehicle access, pedestrian walks, traffic lanes, FIRE LANES, parking isles, parking stalls, and truck delivery routes to remain OPEN at all times. A combination of fencing, signage, trench plates, and asphalt concrete paving can be utilized to maintain vehicle and pedestrian access. Unscheduled campus activities may periodically interfere with scheduled heavy demolition or hauling. As part of operating on an ACTIVE CAMPUS, Contractor is expected to adjust the schedule of such activities to accommodate the campus. Walking flagmen are required to ESCORT ALL construction traffic through the college walkways, parking lots, and streets until vehicles are safely off campus. All major construction deliveries shall be prior to 8:00 am and after 1:00 pm. Any deliveries that fall within this timeframe will require the approval of the owner and construction manager. Continuous construction operations such as dirt haul-off, concrete pours, etc. will be allowed to take place during standard work hours but will require coordination and approval of the owner and Construction Manager.

- D. Delivery Time: All major construction deliveries shall be prior to 8:00 am and after 1:00 pm. Any deliveries that fall within this timeframe will require the approval of the owner and construction manager. Continuous construction operations such as dirt haul-off, concrete pours, etc. will be allowed to take place during standard work hours, but will require coordination and approval of the owner and Construction Manager.
- E. Access to Areas within Project Site Limits: The Contractor shall always maintain and grant access to any and all District personal, the Construction Manager, Project Architect, Project Inspector and any other associated District personnel and/or consultants during construction.

11. TEMP FACILITIES – SIGNAGE / FENCING / TOILETS / POWER:

- A. Contractor shall provide provision for temporary signage, and barricades as required for construction. Provide provision for traffic control, traffic re-routing and walkway/pathway/sidewalk alternate paths of travel and/or re-routing as necessary and required by conditions and progress of work.
- B. Temporary Fence Plan: Fence plan parameters are shown on Exhibit 1, Construction Fence Plan, Contractor to provide 6' chain link temporary fencing and green wind screen on all temporary fencing ("Temporary Fencing"). Both driven fence post and t-stands may be required as determined by Contractor, District and Construction Manager. No additional cost will be associated with final determination of either driven fence post or t-stands. Submit fence plan showing the layout of the Temporary Fencing to the Construction Manager for approval prior to installing Temporary Fencing. Adjustments to Temporary Fencing throughout the duration of the project due to constraints, phasing, college operations, etc. will be required by Contractor at no additional cost to the owner. Contractor will be responsible to ensure Temporary Fencing is maintained per the Contract requirements during the duration of the Project and if any rework and/or reinstallation is required to ensure Temporary Fencing meets Contract requirements, Contractor will be required to do so at no additional cost to the District. Contractor will be required to completely remove Temporary Fencing at completion of Project.
- C. Contractor to provide and pay for the following: Temporary Fencing, temp toilets, dumpsters, hand washing stations, phone, trailer, job site water, drinking water, data and security for the duration of the Project. Contractor may use District's water and power services, upon District's written approval of Contractor's tie in plan.

12. REGARDING "PROTECT IN-PLACE" OR "REMOVE AND REPLACE" ITEMS:

- A. Contractor is to take extra precautions around existing equipment and/or items that are noted as "Protect In-Place" or "Remove and Replace". Contractor is to ensure that all components of the noted existing equipment and/or item are protected including but not limited to infrastructure, wiring, etc. If it is determined that any interruption and/or damage is caused by the Contractor to the associated equipment, items and/or associated systems (fire alarm, security, etc.) it will be the responsibility of the Contractor to make all necessary repairs which shall include but not be limited to purchase of new components, material and/or wiring, installation of components, material and/or wiring and any associated programming and coordination with designated manufacturers at no additional cost to the District.

13. REGARDING SITE RESTORATION:

- A. Contractor shall make all efforts necessary to retain/preserve/maintain existing improvements within Project site limits. If any existing improvements are deemed damaged Contractor will be required to RESTORE/REPLACE to its original condition at no additional cost to the District. Any and all damages to the existing improvements and/or any and all interruption to the Campus shall be fixed immediately.

14. UTILITY INTERRUPTIONS / SHUT DOWNS:

- A. All existing utilities (water, sewer, gas, mechanical, electrical, low voltage / information technology, telecommunications, fire alarm system, security, etc.) to active campus facilities and/or infrastructure shall not be interrupted during campus operations. All required utility (water, sewer, gas, mechanical, electrical, telecommunications, fire alarm system, security, etc.) shutdowns will require one (1) week minimum prior written notice to the District or District representative and require coordination with existing campus

operations. If any and/or all utility shutdowns are required to be performed off-hours or over the weekend Contractor will be required to do so at no additional cost to the owner. Furthermore, if any and/or all utility shutdowns require temporary provisions to maintain service Contractor will be required to do so at no additional cost to the District.

15. SURVEY VERIFICATION

- A. It is the Contractor's responsibility to verify all survey control points, horizontal alignments and vertical alignments of all existing and proposed improvements prior to construction. Contractor shall notify the Construction Manager of any conflicts between the proposed design and existing improvements prior to the start of work. The Construction Manager will review the conflicts with the Project Architect and make recommendations for resolution in a timely manner. Contractor shall submit a survey plan to the Construction Manager and Project Architect for review.

16. EROSION CONTROL / BMPs / DUST CONTROL:

- A. Furnish, install, monitor, document and maintain throughout the duration of the project, all Erosion Control Plan and BMP measures as required in the contract documents and state/local mandates or requirements. Measures include, but are not limited to stabilize construction entrances, silt fences, gravel bag barriers, catch basin, sediment barriers, fiber rolls, all details, and as required.
- B. Contractor shall be responsible to provide and maintain adequate dust control and street cleaning all areas of Work and public pathways, haul routes and campus streets and walkways throughout the duration of their scopes of work. These measures must be done to the satisfaction of the District and Project Manager.

17. SAFETY:

- A. Contractor to provide a company IIPP, a site specific IIPP which will include the local hospital phone #, map, and any site specific JHA (job hazard analysis). Job hazard analysis, IIPP, site specific safety plan must be submitted to Construction Manager prior to commencement of work.
- B. Contractor to hold weekly safety meetings. A copy of the safety meeting with signatures will be provided weekly to the Construction Manager.
- C. Contractor shall furnish, erect and properly maintain at all times, as directed by District, Construction Manager, or Project Architect or required by conditions and progress of work, all necessary safety devices as required by OSHA, city requirements and local jurisdictions, including but not limited to: safeguards, construction canopies, signs, audible devices for protection of the blind, ADA ramps, safety rails, belts and nets, barriers, lights, and watchmen for protection of workers and the public, and shall post danger signs warning against hazards created by such features in the course of construction at the Business Building construction site and throughout the Campus where any construction activities occur.
- D. Safety requirement for own work, in compliance with most recent OSHA regulations and District safety requirement. Hardhats, boots, eye protection, long pants and shirts, and 100% tie off (when recommended or required by OSHA) are required for all personnel at all times during construction of the Project. Failure to comply with any Safety Regulations will be grounds for removal of personnel from the jobsite.
- E. Flammable products must be continually stored per OSHA regulations.
- F. Daily cleanup of Contractor's debris, packing materials, boxes, daily trash: remove from site each day. Provide removal of debris from jobsite, including fees as necessary. Jobsite to be kept in a "broom-swept" condition at all times.
- G. Contractor to report to Construction Manager and District immediately should an employee of the Contractor, Contractor's subcontractor(s), Contractor's vendor(s), and/or Contractor's supplier(s), etc. test positive for COVID-19 during the duration of Contractor's Work on the Project.

18. GENERAL WORK REQUIRED:

- A. Any and all other permit and/or service fees, assessments, or bonding required in conjunction with the work of this Contractor shall be the responsibility of the Contractor. All notifications with various agencies required in the performance of the work shall remain the responsibility of the Contractor.
- B. Compliance with regulatory agency, organization, and governing body requirements having jurisdiction over Contractors scope of work.
- C. Compliance with Title 24, Parts 1-6 and 9 (Title 24 Parts 1-5 must be kept on site during construction).
- D. There may be other District contractors involved in the Project or working on the Campus. It is the responsibility of this Contractor to be aware of all such other operations with the coordination of the Construction Manager, and to be aware of all others working in order to coordinate work accordingly.
- E. Attendance at jobsite coordination, scheduling, safety and any other meetings associated with Project. Weekly construction meeting will be held no fewer than once a week for the duration of the Project.
- F. Contractor shall furnish to the Construction Manager at the end of each day, completed daily reports, and safety meeting reports. Reports shall include: name of each worker performing work each day, classification for each worker employed on the Project (including any sub-tier subcontractors' workers), a description of work performed, and any equipment used for each day. Contractor forms to be provided by Construction Manager. Current daily reports are a condition for accepting monthly pay applications for review by the Construction Manager.
- G. Prior to the start of construction, Contractor shall make note of any existing damage and notify the Construction Manager prior to start of work. Contractor shall also schedule a day with the Construction Manager to walk project site, adjacent off-site, and building. Contractor to video tape existing conditions and forward a copy of the video tape to the Construction Manager for the District's records prior to start of construction. Any damage not noted and brought to the attention of the Construction Manager, shall be required at the expense of the Contractor.
- H. Upon failure by Contractor to provide sufficient cleanup, and after 24-hour notice, Construction Manager will perform the cleanup and assess all costs against the Contractor's contract. If lack of cleanup results in an immediate safety concern to public safety the Construction Manager and District shall have the right to correct any situation immediately and assess all cost to the Contractor's contract.
- I. Contractor has the sole responsibility for storage and security of own materials and/or equipment located on and off the jobsite property.
- J. Contractor is responsible for additional testing costs as required should initial tests fail as a result of improper installation or Contractor failure to properly follow Contract specifications / Project requirements.
- K. Contractor shall provide all weight and disposal tickets as necessary to comply with Contract Documents.

19. PAYMENTS:

A. Cost Breakdown:

- 1. Required Information: On forms approved by the Project Manager, the Contractor shall furnish the following:
- 2. Within ten (10) calendar days of the award of the Contract, a detailed breakdown of the Contract Price (hereinafter "Schedule of Values"). The Schedule of Values to conform to the following format:
 - a. **Site:** (if applicable) – No single line item shall exceed 10% of the total contract value.
 - i. Specification Section
 - ii. Material
 - iii. Labor
 - b. **Building:** (if applicable) No single line item shall exceed 10% of the total contract value.
 - i. Specification Section (by floor)
 - ii. Material
 - iii. Labor
- 3. Submittals: 5% of the total contract value

4. Punch list & Closeout: 5% of the total contract value

B. Procedure for Submitting Applications for Payment:

1. On or before the 20th of each calendar month, during the progress of the portion of the Work for which payment is being requested, the Contractor will forward a draft billing to the Project Architect, IOR, and Construction Manager for approval indicating the percentages representative of the work installed with all backup and supporting documents. Such back up and support shall include, but not be limited to: all documents that support all labor, materials, products, equipment, apparatus, and the like; a list of all subcontractors, sub-subcontractors, and suppliers that have furnished labor, materials, products, equipment, apparatus, and the like, to the Project during the period of time reflected in the Application for payment; all required construction schedules and updates thereto, any required schedules of values and updates thereto; and as otherwise set forth below.
2. Upon receipt of the Contractor's draft billing (Application for Payment), the Construction Manager shall affix comments and/or initials and return draft billing to the Contractor for review within seven (7) business days. Material invoices, evidence of equipment purchases and rentals, along with other support and details of cost, may be required to be submitted to the District and/or Construction Manager from time to time when requested. Draft billings not returned to the Contractor by Construction Manager will be assumed "correct as noted." The Contractor will then forward a formal billing (Application for Payment) to the Project Manager. The formal billing (Application for Payment), with applicable releases and other required documentation attached, and containing wet signatures, shall be returned to the Construction Manager. The Application for Payment will then be collectively forwarded to the District for processing. Failure to return the billing or applicable attachments within the time frames specified by the Construction Manager will result in a delay to the processing and payment of all and/or a portion of such Applications.
3. Contractor is required to submit to any and/or all of the following documentation with any Application for Payment:
 - i. Electronic copies of Certified Payroll(s) for the Project and confirmation that the required labor compliance / Certified Payroll has been uploaded onto the State's DIR website;
 - ii. Unconditional and Conditional waivers and releases for said Contractor as well as all subcontractor/ suppliers for which payment was requested under the previous application for payment;
 - iii. Material invoices evidence of equipment purchases, rentals and other support and details of costs (if applicable);
 - iv. Monthly Project schedule update; and
 - v. Confirmation / proof that the project as-builts have been updated thru the end of application for payment month.

20. CLOSEOUT REQUIREMENTS:

- A. **Draft Submittal:** Contractor shall submit during product submittal review a draft close-out submittal package for format and content approval.
- B. **Record Drawings:** The intent of this procedure is to obtain an exact "as built" record of the Work upon completion of the Project. The following information shall be carefully and correctly drawn on the prints and all items shall be accurately located and dimensioned from finished surfaces of building walls on all record drawings. Any Work not installed as originally indicated on drawings. The exact location and elevations of all covered utilities, including valves, cleanouts, etc. Contractor is liable and responsible for inaccuracies in as built drawings, even though they become evident at some future date. Upon completion of the Work and as a condition precedent to approval of final payment, Contractor shall obtain the Construction Manager, Project Architect and Inspector of Record's approval of the corrected prints and employ a competent draftsman to transfer the "as built" information to the most current set of reproducible bond paper drawings. When completed, Contractor shall deliver corrected reproducible drawings to the Construction Manager.
- C. **Maintenance Manuals:** At least thirty (30) days prior to final inspection, digital copies of operations and maintenance manuals, repair parts lists, service instructions for all electrical and mechanical equipment, and equipment warranties shall be submitted. Each manual shall also contain a list of subcontractors, with their

addresses and the names of persons to contact in cases of emergency, names of manufactures, their addresses, ratings, and capacities of equipment and machinery.

21. DISTRICT CONTROLLED CONSTRUCTION CONTINGENCY:

- A. The District Controlled Construction Contingency as set forth in the Bid Form, if any, is to be used as compensation for items as set forth in this section. The amounts listed in the Bid Form are to be included in the base bid and shall be listed separately in the Schedule of Values and Application for Payment.
- B. Contractor shall use the District Controlled Construction Contingency only as authorized for District purposes and only as approved by a District representative.
- C. At Substantial Completion of the Work or at any time designated by the Construction Manager/District, the total unused remaining amount of the District Controlled Construction Contingency shall be credited back to the District thru a deductive Change Order to the Contractor's Contract.

Contractor shall submit a request for District Controlled Construction Contingency disbursement as part of Contractor's subject Change Order Request and must include all substantiating and/or required data along with the request. Construction Manager will review request and, if Construction Manager approves request, prepare the District Controlled Construction Contingency disbursement authorization to be included as back up to the resulting Change Order. The request shall have the required amount listed as a District Controlled Construction Contingency disbursement without Contractor or subcontractor overhead and markup.

22. ITEMS THAT ARE EXCEPTIONS TO PUBLIC CONTRACT CODE SECTION 3400:

- A. If any or all of the items that are Board Approved Sole Source Exceptions are called for in the plans and specifications of the Project, these items must be included in the Project pursuant to the Board Approvals of the same pursuant to Public Contract Code Section 3400. It is up to the Bidder to review the plans and specifications to determine whether any of the items that are exceptions to Public Contract Code Section 3400 are part of this Project."

Additional information regarding the Board Approved Sole Source Exceptions can be found at the following website:

<https://www.miracosta.edu/administrative/purchasing/procurement-and-contracting/measure-mm-bids.html>

- 23. **Prolog Converge:** The Contractor shall utilize the PMO's Prolog Converge system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to, (i) requests for information; and (ii) submittals. The Contractor also shall require all major subcontractors and subconsultants to utilize the PMO's Prolog Converge system for the Project.



SUPPLEMENTARY CONDITIONS

Attachment "U.1.2-1" Alternates

Project No. 04102: SAN B900 Student Center Renovation

ALT 1. - AA-2 EXTERIOR LIGHT FIXTURES

ADD EXTERIOR LIGHT FIXTURES AS SHOWN ON SHEETS D6.01, D10.01, A10.01, ED201 AND E2.01

ALT 2. - AA-3. DINING HALL LIGHT FIXTURES

ADD DINING HALL LIGHT FIXTURES AS SHOWN ON SHEETS D10.01, ED201 AND E201.

ALT 3. - AA-4. SOLATUBES

ADD SOLATUBE SKYLIGHTS AS SHOWN ON SHEETS A3.01 AND A10.01



SUPPLEMENTARY CONDITIONS

Attachment "U.1.2-2" Alternates

Project No. 04103: SAN B400 Science Labs Renovation

ARCHITECTURAL ALT 1 - REMOVAL OF ALL SKYLIGHTS

ALT1 A2.10 FLOOR PLAN
ALT1 A2.30 ROOF PLAN
ALT1 A5.01 BUILDING SECTIONS

ARCHITECTURAL ALT 2 - REMOVAL OF GLASS AT FULL HEIGHT STORAGE CABINETS (ALL LABS)

ALT2 A2.10 FLOOR PLAN
ALT2 A5.01 BUILDING SECTIONS
ALT2 A7.01 INTERIOR ELEVATIONS

ARCHITECTURAL ALT 3 - ENHANCED COURTYARD HARDSCAPE

ALT3 A1.02 PROPOSED SITE PLAN
ALT3 L1.01 LANDSCAPE CONSTRUCTION PLAN



SUPPLEMENTARY CONDITIONS

Attachment "U.1.3"

Waste Reduction and Recycling

Project No. 04102: SAN B900 Student Center Renovation
Project No. 04103: SAN B400 Science Labs Renovation

BID MM-20-020

GENERAL INFORMATION

PURPOSE

The purpose is to promote waste reduction (source reduction) and recycling practices to the maximum extent reasonably possible for construction and demolition projects.

1. State law requires jurisdictions to achieve a 50% diversion goal. The District is a significant generator of waste during construction and demolition projects and should participate in reducing and recycling waste.
2. The Contractor's completion of required documentation and submittal of disposal and diversion reporting form will allow the District to track and calculate the diversion rate.

REFERENCES

1. The California Integrated Waste Management Act of 1989 (AB 939).
2. California Code of Regulations Title 14, Section 18700 et seq.
3. Definitions:
 - a. "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. "Recycling" does not include transformation, as defined in California Public Resources Code Section 40201.
 - b. "Source reduction" means any action which causes a net reduction in the generation of solid waste. "Source reduction" includes, but is not limited to, reducing the use of nonrecyclable materials, replacing disposable materials and products with reusable materials and products, reducing packaging, reducing the amount of yard wastes generated, establishing garbage rate structures with incentives to reduce the amount of wastes that generators produce, and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials. "Source reduction" does not include steps taken after the material becomes solid waste or actions which would impact air or water resources in lieu of land, including, but not limited to, transformation.
 - c. "Transformation Facility" means a facility whose principal function is to convert, combust, or otherwise process solid waste by incineration, pyrolysis, destructive distillation, or gasification, or to chemically or biologically process solid wastes, for the purpose of volume reduction, synthetic fuel production, or energy recovery. Transformation Facility does not include a composting facility.

RELATED DOCUMENTS

Waste Disposal and Diversion Reporting Form (attached)

SUBMITTALS

Submit the Waste Disposal and Diversion Reporting Form at the completion of the construction and/or demolition project.

1. Contractor shall provide weigh tickets and/or other documentation to support the reported tonnages and destinations.
2. Contractor must maintain records for a minimum of three (3) years.

PROGRAM IMPLEMENTATION

1. When reasonably feasible, Contractor shall implement “source reduction” (waste reduction/prevention) and recycling practices that divert waste from landfill disposal. Practices such as deconstruction, on-site crushing and reuse of concrete/asphalt as base material, salvage of fixtures, and recovering recyclable materials should be implemented.
2. Contractor shall make arrangements with the waste hauler for providing source separated bins so that the Contractor can keep recyclable materials separated to a level that a recycling facility can accept them.
3. Contractor shall take materials to a Transformation Facility whenever feasible and cost effective. Each transformation will only accept limited waste streams. The Contractor is responsible to determining if its specific waste stream is accepted by each facility.
4. As part of the Project close-out process, complete and submit the Waste Disposal and Diversion Reporting Form along with the supporting documentation.

WASTE DISPOSAL AND DIVERSION REPORTING FORM

_____ MiraCosta College Community College District _____ Date: _____

Property Address: _____

Facility Contact and Telephone: _____ Tom Macias, Director of Facilities (760) 795-6691 _____

Contractor Name: _____

Contractor Contact: _____ Contractor Telephone: _____

Description of Project: _____

Approximate Dollar Value of Construction/Demolition: _____

Approximate Square Footage of Project: _____

Demolition Schedule: _____

Construction Schedule: _____

Name of Hauler(s): _____ Telephone: _____

Please check waste reduction activities that are practiced at this project site:

_____ Use of Prefabricated Components _____ Reduced Packaging

_____ Reuse of Materials Onsite _____ Other (describe) _____

_____ Accurate Material Estimates _____

Conversion Factors for Selected Loose Materials

Concrete	2370 lbs/cu yd	1.18 tons/cu yd	0.84 cu yds/ton
Asphalt	1940 lbs/cu yd	0.97 tons/cu yd	1.03 cu yds/ton
Brick	2430 lbs/cu yd	1.21 tons/cu yd	0.82 cu yds/ton
Dirt	2660 lbs/cu yd	1.33 tons/cu yd	0.75 cu yds/ton
Wood	400 lbs/cu yd	0.20 tons/cu yd	5.00 cu yds/ton
Gypsum wallboard	500 lbs/cu yd	0.25 tons/cu yd	4.00 cu yds/ton
Cardboard	100 lbs/cu yd	0.05 tons/cu yd	20.0 cu yds/ton

WASTE MATERIAL DISPOSITION SUMMARIES

Fill out the tables below. The unit of measurement is “tons.” Use the conversion factors provided below. If a different conversion number is used, please provide. If tonnage information is not available, estimates can be provided in “cubic yards.”

Part I. DEMOLITION MATERIALS (tons)					
Material Type	Disposed in Class III Landfill	Taken to Inert Fills	Other Disposal (describe)	Reduced, Recycled or Salvaged	How Diverted? (e.g., reused as aggregate, etc.)
Concrete					
Asphalt					
Dirt					
Wood					
Metals					
Mixed Waste					
Other (describe)					
Total Tons	A =	B =	C =	D =	

Demolition Materials Diversion Rate: $D/(A+B+C+D) =$ _____

Additional Notes/Comments:

Part II. CONSTRUCTION MATERIALS (tons)

Material Type	Disposed in Landfill	Taken to Inert Fills	Other Disposal (describe)	Reduced, Recycled or Salvaged	How Diverted? (e.g., reused as aggregate, etc.)
Concrete					
Asphalt					
Dirt					
Wood					
Metals					
Mixed Waste					
Other (describe)					
Total Tons	A =	B =	C =	D =	

Construction Materials Diversion Rate: $D/(A+B+C+D) =$ _____

Additional Notes/Comments:

Disposal Facilities

Name of disposal facilities (e.g., landfill or inert facility name) materials are taken to:

Facility Name _____
Total Tons

Facility Name _____
Total Tons

Facility Name _____
Total Tons

.....
Recycling Facilities

Name of the recycling facilities or recycler (materials given or sold to):

Recycler/Recycling Facility Name _____
Total Tons

Recycler/Recycling Facility Name _____
Total Tons

Recycler/Recycling Facility Name _____
Total Tons

.....
Transformation Facilities

Name of the transformation facility:

Transformation Facility Name _____
Total Tons

.....
To the best of my knowledge, the above estimates are an accurate representation of the disposition of the construction and demolition materials generated on-site at the construction job. I understand that the MiraCosta College District may audit disposal and recycling documentation related to this survey.

Print Name Signature

TECHNICAL SPECIFICATIONS

Attachment “V.1”

Project No. 04102: SAN B900 Student Center Renovation
Project No. 04103: SAN B400 Science Labs Renovation

BID MM-20-020

Technical Specification for each of the above referenced separate and distinct projects and contracts can be found at the following link:

<https://www.miracosta.edu/administrative/purchasing/procurement-and-contracting/measure-mm-bids.html>

DIVISION OF STATE ARCHITECT APPROVED PLANS

Attachment "W.1"

Project No. 04102: SAN B900 Student Center Renovation
Project No. 04103: SAN B400 Science Labs Renovation

BID MM-20-020

The DSA Approved Plans for the above referenced separate and distinct projects/contracts can be found and downloaded at the following link:

<https://www.miracosta.edu/administrative/purchasing/procurement-and-contracting/measure-mm-bids.html>

Section V. REFERENCE DOCUMENTS AND INFORMATION

ATTACHMENT "X"

Project No. 04102: SAN B900 Student Center Renovation Project No. 04103: SAN B400 Science Labs Renovation

DISCLAIMER

The following reports, documents, and other information are provided as "Information Available" for the Projects and for reference only. The reports, documents, and other information are not, and shall not become, part of the Contract Documents for the Projects. The District makes no representation or warranty as to the accuracy and/or completeness of the information contained in the reports, documents, and other information, and hereby specifically disclaims the accuracy and/or completeness of such reports, documents, and other information. The District has no independent information, independent knowledge, and no expertise, as to what the contents of the reports, documents, and other information mean, and/or how same may or may not affect construction of the anticipated Projects. The District makes the disclosure of the existence of the reports, documents, and other information, and all of their contents to ensure that the reports, documents, and other information, and their contents are made known and available to the Contractor. The Contractor is solely responsible for determining any impact on the Projects and the Contractor's pricing and costs regarding the Projects. This Disclaimer shall be read as if it is set forth on the face page of all the documents set forth below.

- EXHIBIT 1 - Construction Site Plan
- EXHIBIT 2 - San Existing Utility Composite Survey
- EXHIBIT 3 - San Campus Map
- EXHIBIT 4 - Oceanside Campus Map
- EXHIBIT 5 - SAN B400 and B900 Original Construction Plans
- EXHIBIT 6 - SAN B400 Renovation Plans 2000
- EXHIBIT 7 - SAN B900 Renovation Plans 2007

The above referenced Exhibits can be found and downloaded by following the link below:

<https://www.miracosta.edu/administrative/purchasing/procurement-and-contracting/measure-mm-bids.html>