

SITE LEASE

This site lease (“**Site Lease**”) dated as of [Month] [Day], 20_____ (“**Effective Date**”), is made and entered into by and between **the Rancho Santiago Community College District**, as lessor (“**District**”), and [Contractor], as lessee (“**Contractor**”) (together, the “**Parties**”).

WHEREAS, the District currently owns a parcel or parcels of land located at:

Site(s)	Address
Santa Ana College	1530 W. 17 th Street, Santa Ana CA 92706-3398

and as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (“**Site(s)**”); and

WHEREAS, the District desires to provide for the **Science Center** (“**Project(s)**”); and

WHEREAS, the District determines that a portion of the Site(s) are adequate to accommodate the Project, as more particularly described in **Exhibit B** (“**Project Site(s)**”) attached hereto and incorporated herein by this reference; and

WHEREAS, District desires to have the construction of the Project completed and to lease it back, as more particularly described in the facilities lease between the Parties dated as of the Effective Date whereby the Contractor agrees to lease the Project Site(s) back to the District and perform the work of the Project (“**Facilities Lease**”), which Facilities Lease is incorporated herein by this reference; and

WHEREAS, the Board of Trustees of the District (“**Board**”) has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site(s) to Contractor and by immediately entering into the Facilities Lease under which District will lease back the Project from Contractor; and

WHEREAS, the District further determines that it has entered into this Site Lease and the Facilities Lease pursuant to Education Code section 81335 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students; and

WHEREAS, the District is authorized under Education Code section 81335 to lease the Project Site(s) to Contractor and to have Contractor develop and cause the construction of the Project thereon and lease the Project Site(s) back to the District by means of the Facilities Lease, and the Board has duly authorized the execution and delivery of this Site Lease in order to effectuate the foregoing, based upon a finding that it is in the best interest of the District to do so; and

WHEREAS, Contractor as lessee is authorized and competent to lease the Project Site(s) from District and to develop and cause the construction of the Project on the Project Site(s), and has duly authorized the execution and delivery of this Site Lease; and

WHEREAS, the Parties have performed all acts, conditions and things required by law to exist, to have happened, and to have been performed prior to and in connection with the execution and entering into this Site Lease, and those conditions precedent do exist, have happened, and have been performed in regular and due time, form, and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Site Lease;

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained

herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto do hereby agree as follows:

1. **Definitions.** Unless the context clearly otherwise requires, all words and phrases defined in the Facilities Lease shall have the same meaning in this Site Lease.
2. **Exhibits.** The following Exhibits are attached to and by reference incorporated and made a part of this Site Lease.
 - 2.1. **Exhibit A:** Descriptions of the Site(s)
 - 2.2. **Exhibit B:** Descriptions of the Project Site(s) and Descriptions of the Project(s)
3. **Lease of the Project Site(s).** The District hereby leases to the Contractor, and the Contractor hereby leases from the District, the Project Site(s), subject only to Permitted Encumbrances, in accordance with the provisions of this Site Lease, to have and to hold for the term of this Site Lease. This Site Lease shall only take effect if the Facilities Lease is executed by the District and Contractor within three (3) days of execution of this Site Lease.
 - 3.1. **Work in Phases.** If the Work of the Project is to be performed in phases, then the only areas bound by the terms of this Facilities Lease are:
 - 3.1.1. As indicated to be within specific phases of the Project and
 - 3.1.2. For which portions of the Lease Payments are still owing,
4. **Leaseback of the Project Site(s).** The Parties agree that the Project Site(s) will be leased back to the District pursuant to the Facilities Lease for the term thereof.
5. **Term.** The term of this Site Lease shall commence as of the Effective Date and shall terminate on the last day of the Term of the Facilities Lease, provided the District has paid to the Contractor, or its assignee, all payments which may be due under the Facilities Lease, and provided this Site Lease has not been terminated pursuant to the termination provisions of the Facilities Lease.
6. **Payment.** In consideration for the lease of the Project Site(s) by the District to the Contractor and for other good and valuable consideration, the Contractor shall pay One Dollar (\$1.00) per year to the District upon execution of this Site Lease.
7. **Termination**
 - 7.1. **Termination Due to Default by Contractor.** If Contractor defaults pursuant to the provision(s) of this Site Lease or the Facilities Lease and the District terminates this Site Lease or the Facilities Lease pursuant to the provisions of this Site Lease or the provisions of the Facilities Lease allowing termination, then the Contractor shall be deemed to be in default of this Site Lease and the Facilities Lease and this Site Lease shall also terminate at the same time as the Facilities Lease.
 - 7.1.1. Default of Contractor includes, without limitation:
 - 7.1.1.1. Contractor refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion (Substantial Completion or Final Completion) within the time specified or any extension thereof, or
 - 7.1.1.2. Contractor fails to complete the Work within the time specified or any extension thereof, or

- 7.1.1.3. Contractor persistently fails or refused to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or
- 7.1.1.4. Contractor files a petition for relief as a debtor, or a petition is filed against the Contractor without its consent, and the petition not dismissed within sixty (60) days; or
- 7.1.1.5. Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
- 7.1.1.6. Contractor persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work (Substantial Completion or Final Completion) in the time specified; or
- 7.1.1.7. Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or
- 7.1.1.8. Contractor persistently disregards laws, or ordinances, or instructions of District; or
- 7.1.1.9. Contractor fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or
- 7.1.1.10. Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.
- 7.1.2. Upon termination, District may immediately serve written notice of tender upon Surety whereby Surety shall have the right to takeover and perform this Contract only if Surety:
- 7.1.2.1. Within three (3) days after service upon Surety of the notice of tender, Surety gives District written notice of Surety's intention to takeover and perform this Contract; and
- 7.1.2.2. Commences performance of the Contract within seven (7) days from date of serving of its notice to District.
- 7.1.3. If Surety fails to notify District or begin performance as indicated herein, District may takeover the Work and execute the Work to Final Completion by any method it may deem advisable at the expense of Contractor and/or its Surety. Contractor and/or its Surety shall be liable to District for any excess cost or other damages the District incurs thereby. Time is of the essence in the Contract. If the District takes over the Work as herein provided, District may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to Contractor as may be on the Site of the Work, in bonded storage, or previously paid for.
- 7.1.4. **Conversion to Termination for Convenience.** In the event the Contract is terminated under this "Termination Due to Default by Contractor" section and it is finally determined by an arbitrator, court, jury or other tribunal having jurisdiction, for any reason, that the Contractor was not in default under the provisions hereof or that the District's exercise of its rights this section was defective, deficient, ineffective, invalid or improper for any reason, the termination shall be deemed a termination for convenience of the District under the "Termination of Contractor for Convenience" section in **Exhibit D** to this Facilities Lease and thereupon, the rights and obligations of the District and the Contractor shall be determined in accordance with the "Termination of Contractor for Convenience" section therein.
- 7.2. Termination Due to Default by District.** If District defaults pursuant to the provision(s) of the Facilities Lease, the Contractor, or its assignee, will have the right, for the remaining term of this Site Lease, to:

- 7.2.1. Take possession of the Project Site(s);
 - 7.2.2. If it deems it appropriate, cause appraisal of the Project Site(s) and a study of the then reasonable uses thereof; and
 - 7.2.3. Relet the Project Site(s).
8. **Title to Site(s).** During the term of this Site Lease, the District shall hold fee title to the Site(s), including the Project Site(s), and nothing in this Site Lease or the Facilities Lease shall change, in any way, the District's ownership interest in the Site(s).
 9. **Improvements.** Title to all improvements made on the Project Site(s) during the term hereof shall be held, vest and transfer pursuant to the terms of the Facilities Lease.
 10. **No Merger.** The leaseback of the Project Site(s) by the Contractor to the District pursuant to the Facilities Lease shall not effect or result in a merger of the estates of the District in the Project Site(s), and the Contractor shall continue to have a leasehold estate in the Project Site(s) pursuant to this Site Lease throughout the term hereof.
 11. **Right of Entry.** The District reserves the right for any of its duly authorized representatives to enter upon the Project Site(s) at any reasonable time to inspect the same, provided the District follows all safety precautions required by the Contractor.
 12. **Quiet Enjoyment.** Subject to any rights the District may have under the Facilities Lease (in the absence of an Event of Default) to possession and enjoyment of the Project Site(s), the District hereby covenants and agrees that it will not take any action to prevent the Contractor from having quiet and peaceable possession and enjoyment of the Project Site(s) during the term hereof and will, at the request of the Contractor, to the extent that it may lawfully do so, join in any legal action in which the Contractor asserts its right to such possession and enjoyment.
 13. **Waste.** The Contractor agrees that at all times that it is in possession of the Project Site(s), it will not commit, suffer or permit any waste on the Project Site(s), and that it will not willfully or knowingly use or permit the use of the Project Site(s) for any illegal purpose or act.
 14. **Further Assurances and Corrective Instruments.** The Parties shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project Site(s) hereby leased or intended so to be or for carrying out the expressed intention of this Site Lease and the Facilities Lease.
 15. **Representations of the District.** The District represents, covenants and warrants to the Contractor as follows:
 - 15.1. **Due Organization and Existence.** The District is a community college district, duly organized and existing under the Constitution and laws of the State of California.
 - 15.2. **Authorization.** The District has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.
 - 15.3. **No Violations.** To the best of the District's actual knowledge, neither the execution and delivery of this Site Lease nor the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with

or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site(s), except Permitted Encumbrances.

15.4. CEQA Compliance. The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* (“CEQA”) in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence.

15.5. No Litigation. To the best of the District’s actual knowledge, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Site Lease.

15.6. Condemnation Proceedings.

15.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Site Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Site Lease and the Facilities Lease.

15.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent they may lawfully do so, the Parties agree that the financial interest of Contractor shall be as indicated in the Facilities Lease.

15.7. Use and Zoning. To the best of the District’s actual knowledge, the Project Site(s) is properly zoned for its intended purpose and the use or activities contemplated by this Site Lease will not conflict with local, state or federal law.

15.8. Taxes. To the best of the District’s actual knowledge, all taxes and assessments are paid current and such taxes and assessments will continue to be paid to the extent that the District is not exempt.

15.9. Hazardous Materials. District is not currently aware of any contamination to the Project Site(s) by Hazardous Materials, except for Hazardous Materials of which District has already informed Contractor. If District becomes aware of any act or circumstance which would change or render this representation incorrect, in whole or in part, District will give immediate written notice of such changed fact or circumstance to Contractor.

16. Representations of the Contractor. The Contractor represents, covenants and warrants to the District as follows:

16.1. Due Organization and Existence. The Contractor is a California corporation licensed to provide such services in the state of California, duly organized and existing under the laws of the State of California, has power to enter into this Site Lease and the Facilities Lease; is possessed of full power to lease, leaseback, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

16.2. Authorization. The Contractor has the full power and authority to enter into, to execute and to deliver this Site Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Site Lease.

16.3. No Violations. Neither the execution and delivery of this Site Lease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Contractor is now a party or by which the Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Contractor, or upon the Project Site(s), except for Permitted Encumbrances.

16.4. No Bankruptcy. Contractor is not now nor has it ever been in bankruptcy or receivership.

16.5. No Litigation. There is no pending or, to the knowledge of Contractor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Contractor to perform its obligations under this Site Lease or the Facilities Lease.

17. Insurance and Indemnity. The Contractor and the District shall comply with the insurance requirements and the indemnity requirements as indicated in the Facilities Lease.

18. Assignment and Subleasing. This Site Lease may be assigned and/or the Project Site(s) subleased, as a whole or in part, by the Contractor only upon the prior written consent of the District to such assignment or sublease, which shall not be unreasonably withheld.

19. Restrictions on District. The District agrees that it will not mortgage, sell, encumber, assign, transfer or convey the Project Site(s) or any portion thereof during the term of this Site Lease in any way that would interfere with or diminish Contractor's interests indicated in this Site Lease.

20. Liens and Further Encumbrances. Contractor agrees to keep the Project Site(s) and every part thereof free and clear of any and all encumbrances and/or liens, including without limitation, pledges, charges, encumbrances, claims, mechanic liens and/or other liens for or arising out of or in connection with work or labor done, services performed, or materials or appliances used or furnished for or in connection with the Project Site(s) or the Project. Pursuant to the Facilities Lease, Contractor further agrees to pay promptly and fully and discharge any and all claims on which any encumbrance and/or lien may or could be based, and to save and hold District free and harmless from any and all such liens, mortgages, and claims of liens and suits or other proceedings pertaining thereto. This subsection does not apply to Permitted Encumbrances.

21. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the parties indicated below.

21.1. If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.

21.2. If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

If to District:

Rancho Santiago Community College District
2323 N. Broadway, Suite 112
Santa Ana, CA 92706
ATTN: Carri M. Matsumoto

If to Contractor:

_____, Inc.
_____ Avenue
_____, CA _____
ATTN: _____

With a copy to:

Orbach Huff Suarez & Henderson
1901 Avenue of the Stars, Ste. 575

Los Angeles, CA 90067
Attention: Philip J. Henderson, Esq.

The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

22. **Binding Effect.** This Site Lease shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.
23. **No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Site Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive future compliance with any term hereof or any other breach hereunder.
24. **Severability.** In the event any provision of this Site Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Site Lease or the Facilities Lease.
25. **Amendments, Changes and Modifications.** Except as to the termination rights of both Parties as indicated in the Facilities Lease, this Site Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.
26. **Obligations Absolute.** The Contractor agrees that the obligations of the Contractor are absolute and unconditional and not subject to any charges or setoffs against the District whatsoever.
27. **Execution in Counterparts.** This Site Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
28. **Contractor and District Representatives.** Whenever under the provisions of this Site Lease approval by the Contractor or the District is required, or the Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for the Contractor by the Contractor Representative and for the District by the District Representative, and any party hereto shall be authorized to rely upon any such approval or request.
29. **Applicable Law.** This Site Lease shall be governed by and construed in accordance with the laws of the State of California, and venue shall be in the County within which the Site(s) is located.
30. **Attorney's Fees.** If either party brings an action or proceeding involving the Site(s) or to enforce the terms of this Site Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys' fees.
31. **Captions.** The captions or headings in this Site Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Site Lease.
32. **Prior Agreements.** This Site Lease and the corresponding Facilities Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Site Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.
33. **Further Assurances.** Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Site Lease.
34. **Recitals Incorporated.** The Recitals set forth at the beginning of this Site Lease are hereby incorporated into its terms and provisions by this reference.

- 35. **Time of the Essence.** Time is of the essence with respect to each of the terms, covenants, and conditions of this Site Lease.
- 36. **Force Majeure.** A party shall be excused from the performance of any obligation imposed in this Site Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such nonperformance will not be a default hereunder or a grounds for termination of this Site Lease.
- 37. **Interpretation.** None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Site Lease or the Facilities Lease for purposes of construing the provisions of each. The language in all parts of this Site Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have caused this Site Lease to be executed by their respective officers who are duly authorized, as of the Effective Date.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20_____

Dated: _____, 20_____

Rancho Santiago Community College District

[Contractor Name]

By: _____

By: _____

Print Name: Peter J. Hardash

Print Name: _____

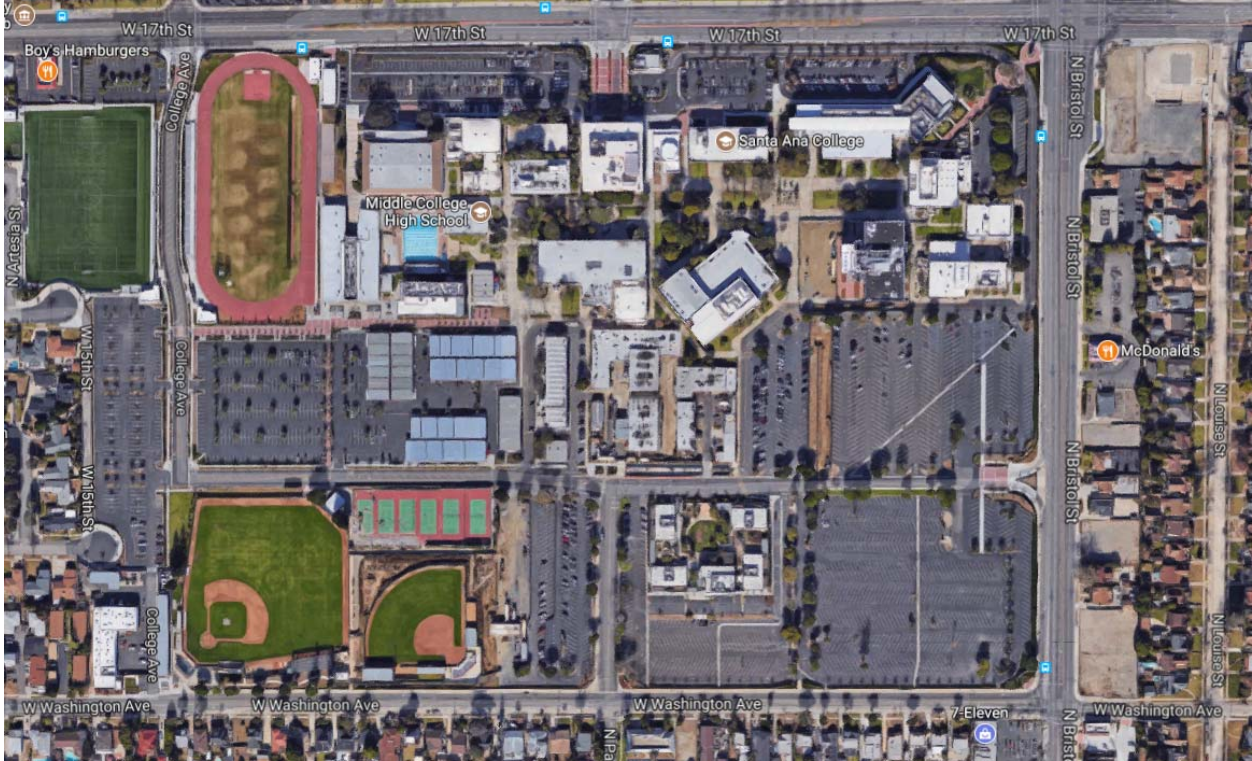
Print Title: Vice Chancellor Business Operations and
Fiscal Services

Print Title: _____

**EXHIBIT A
TO SITE LEASE**

DESCRIPTION OF SANTA ANA COLLEGE SITE(S)

Santa Ana College, located at 1530 W. 17th Street, Santa Ana, CA 92706-3398



**EXHIBIT B
TO SITE LEASE**

**DESCRIPTION OF PROJECT SITE(S)
AND
DESCRIPTIONS OF THE PROJECTS AT SANTA ANA COLLEGE SITE(S)**

PROJECT SITE(S) DESCRIPTION:

Below is a site diagram for the portions of the Santa Ana College Site(s) that are subject to the Site Lease and the Facilities Lease and upon which Contractor will construct the Project(s).

[Insert site diagram(s)]

PROJECT(S) DESCRIPTION:

The Science Center Project is a new three-story building, approximately 67,000 square feet. It will house modern laboratories, classrooms, lecture classrooms and Division/Faculty offices, including:

- Division Office
- Faculty Offices
- (2) Standard Classrooms
- (1) Large Classroom
- (1) Divisible Classroom
- (1) Computer Lab
- (1) Engineering Lab & Support Space
- (6) Biology Labs & Support Spaces
- (2) Geology Labs & Support Space
- (5) Chemistry Labs & Support Spaces
- (1) Physics Lab & Support Space
- (1) Science Learning Center
- Student Collaboration Areas

The Project consists of two (2) phases. Phase 1 is demolition of existing buildings and construction of new masonry wall including all required electrical upgrades to furnish power at the new wall. Phase 2 is the all remaining project scope not included in Phase 1.

FACILITIES LEASE

This facilities lease (“**Facilities Lease**”), dated as of [Month] [Day], 20_____ (“**Effective Date**”), is made and entered into by and between [Contractor Name] (“**Contractor**”), as sublessor, and **Rancho Santiago Community College District**, as sublessee (“**District**”) (together, the “**Parties**”).

RECITALS

WHEREAS, the District currently owns a parcel or parcels of land located at:

Site(s)	Address
Santa Ana College	1530 W. 17 th Street, Santa Ana CA 92706-3398

and as more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (“**Site(s)**”); and

WHEREAS, the District desires to provide for the **Science Center** (“**Project(s)**”); and

WHEREAS, the District has determined that a portion of the Site(s) are adequate to accommodate the Project, as more particularly described in **Exhibit B** (“**Project Site(s)**”) attached hereto and incorporated herein by reference; and

WHEREAS, District has retained the following architects (individually and collectively referred to as “**Architect**”) to prepare plans and specifications (“**Plans and Specifications**”) and as the architects/engineers of record for the Project as follows:

- A. **HGA** to prepare Plans and Specifications for the Science Center at Santa Ana College Site(s);

WHEREAS, District and Contractor have executed a site lease at the same time as this Facilities Lease whereby the District is leasing the Project Site(s) to the Contractor (“**Site Lease**”); and

WHEREAS, Contractor represents that it has the expertise and experience to perform the services set forth in this Facilities Lease; and

WHEREAS, the District is authorized under Section 81335 of the Education Code of the State of California to lease the Project Site(s) to Contractor and to have Contractor develop and construct the Project on the Project Site(s) and to lease back to the District the Project Site(s) and the Project, and has duly authorized the execution and delivery of this Facilities Lease; and

WHEREAS, Contractor is authorized to lease the Project Site(s) as lessee and to develop the Project and to have the Project constructed on the Project Site(s) and to lease the Project and the Project Site(s) back to the District, and has duly authorized the execution and delivery of this Facilities Lease; and

WHEREAS, the Board of Trustees of the District (the “**Board**”) has determined that it is in the best interests of the District and for the common benefit of the citizens residing in the District to construct the Project by leasing the Project Site(s) to Contractor and by simultaneously entering into this Facilities Lease under which the District will lease back the Project Site(s) and the Project from Contractor and if necessary, make Lease Payments as indicated in **Exhibit C** attached hereto and incorporated herein by reference); and

WHEREAS, the Parties have performed all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facilities Lease and all those conditions precedent do exist, have happened and have been performed in regular and due

time, form and manner as required by law, and the Parties hereto are now duly authorized to execute and enter into this Facilities Lease; and

WHEREAS, the District further acknowledges and agrees that it has entered into the Site Lease and the Facilities Lease pursuant to Education Code Section 81335 as the best available and most expeditious means for the District to satisfy its substantial need for the facilities to be provided by the Project and to accommodate and educate District students and to utilize its facilities proceeds expeditiously.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained, the Parties hereto do hereby agree as follows:

1. Definitions. In addition to the terms and entities defined above or subsequent provisions defined herein, and unless the context otherwise requires, the terms defined in this section shall, for all purposes of this Facilities Lease, have the meanings herein specified.

1.1. “Construction Manager” or “CM” means the individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by the District. If there is a Construction Manager, they may assist in various aspects of the Project including, but not limited to monitoring the progress of the construction, reviewing and monitoring the schedule, progress of work, monitoring pay requests, facilitating communications, advising the District and its Board of Trustees on various aspects of the construction and Project related processes. If no Construction Manager is used on the Project that is the subject of this Contract, then all references to Construction Manager herein shall be read to refer to District.

1.2. “Contractor” or “Lessor” means [Contractor Name], a Corporation, organized and existing under the laws of the State of California, and its successors and assigns.

1.3. “Contractor’s Representative” means the Managing Member of Contractor, or any person authorized to act on behalf of Contractor under or with respect to this Facilities Lease.

1.4. “Contract Documents” are defined in **Exhibit D** to this Facilities Lease.

1.5. “District” or “Lessee” means the Rancho Santiago Community College District, a community college district duly organized and existing under the laws of the State of California.

1.6. “District Representative” means the Vice Chancellor of the District, or his/her designee authorized to act on behalf of the District under or with respect to this Facilities Lease and to represent the District during the Construction for the Project. This District Representative may be an employee of the District, and may also include Construction Managers who shall have the authority as set forth above. In some cases, the District and its Board may be assisted by a Construction Manager. When a Construction Manager is assisting the District, the Contractor, Architect, and Inspector shall have a primary contact with the District’s Construction Manager who will advise the District.

1.7. “Permitted Encumbrances” means, as of any particular time:

1.7.1. Liens for general and valorem taxes and assessments, if any, not then delinquent, or which the District may permit to remain unpaid;

1.7.2. The Project Site Lease;

1.7.3. This Facilities Lease,

1.7.4. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the date of this Facilities Lease.

- 1.7.5. Easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the date of recordation of this Facilities Lease and to which Contractor and the District consent in writing which will not impair or impede the operation of the Project Site(s); and

2. Exhibits. The following Exhibits are attached to and by reference incorporated and made a part of this Facilities Lease:

2.1. Exhibit A: Descriptions of the Site(s): The descriptions of the real property constituting the Site(s).

2.2. Exhibit B: Descriptions of The Project Site(s) and Descriptions of the Projects: The description of the Project Site(s) and the Project.

2.3. Exhibit C: Guaranteed Project Cost and Other Project Cost, Funding, and Payment Provisions for Each of the Leased Project Site(s): A detailed description of the Guaranteed Project Cost and the provisions related to the payment of that amount to the Contractor.

2.4. Exhibit D: General Construction Provisions: The provisions generally describing the Project's construction.

2.5. Exhibit E: Memorandum of Commencement Date for the Facilities Lease for Each of the Leased Project Site(s): The Memorandum which will memorialize the commencement and expiration dates of the Term.

2.6. Exhibit F: Construction Schedules for each of the Project Site(s): Contractor shall utilize District approved software for scheduling software and shall employ the Critical Path Method (CPM) in the development and maintenance of the Construction Schedule. The Construction Schedule shall be organized by Activity Codes representing the Contractor's intended sequencing of the Work, and with time scaled network diagrams of activities. Contractor shall comply with the requirements of the Contract Documents as to the scope, completeness and timing of providing its preliminary Construction Schedule and all subsequent Construction Schedules.

2.7. Exhibit G: Schedule(s) of Values for Each of the Project Site(s). Contractor shall comply with the requirements of the Contract Documents as to the scope, completeness and timing of providing its preliminary Schedule of Values and all subsequent Schedule(s) of Values.

2.8. Exhibit H: [RESERVED]

2.9. Exhibit I: Forms, Certificates and Bonds to Lease-Leaseback Documents

2.10. Exhibit J: Plans, Specifications, and Other Related Documents

2.11. Exhibit K: Owner Controlled Insurance Program ("OCIP")

2.12. Exhibit L: Community and Student Workforce Project Agreement ("CSWPA")

3. Lease of Project and Project Site(s).

3.1. Contractor hereby leases the Project and the Project Site(s) to the District, and the District hereby leases said Project and Project Site(s) from Contractor upon the terms and conditions set forth in this Facilities Lease.

3.2. The leasing by Contractor to the District of the Project Site(s) shall not affect or result in a merger of the District's leasehold estate pursuant to this Facilities Lease and its fee estate as lessor under the Site Lease.

Contractor shall continue to have and hold a leasehold estate in the Project Site(s) pursuant to the Site Lease throughout the term thereof and the term of this Facilities Lease.

3.3. As to the Project Site(s), this Facilities Lease shall be deemed and constitute a sublease.

3.4. No Disruption to Educational Activities

3.4.1. **Occupied Site(s).** The Contractor acknowledges that portions of the Project Site(s) shall, at all times, be occupied by the District as an operating school. The Parties have agreed to a plan and process whereby the Contractor’s activities shall be kept separate from the operating school even though the operating school is within the Project Site(s). The specifics of the plan and process are as indicated in **Exhibit J.**

3.4.2. **Work During Instructional Time.** Contractor affirms that Work may be performed during ongoing instruction in existing facilities. If so, Contractor agrees to cooperate to the best of its ability to minimize any disruption to the Site(s) up to, and including, rescheduling specific work activities, at no additional cost to the District.

4. Term.

4.1. Facilities Lease is Legally Binding. This Facilities Lease is legally binding on the Parties upon execution by the Parties and the District Board’s approval of this Facilities Lease. The Term of this Facilities Lease for the purposes of District’s occupancy and obligation to make Lease Payments shall commence on the earlier of the following two (2) events (“**Commencement Date**”) and shall terminate **twelve (12) months** after the Commencement Date (the “**Term**”):

4.1.1. The date the District takes beneficial occupancy of the Project; or

4.1.2. The Substantial Completion Date, as defined in **Exhibit D and Exhibit F** to this Facilities Lease.

4.2. On the Commencement Date, the Parties shall execute the Memorandum of Commencement attached hereto as **Exhibit E** to memorialize the commencement and expiration dates of the Term. Notwithstanding this Term, the Parties hereby acknowledge that each has obligations, duties, and rights under this Facilities Lease that exist upon execution of this Facilities Lease and prior to the beginning of the Term.

4.3. The Term may be extended or shortened upon the occurrence of the earliest of any of the following events, which shall constitute the end of the Term:

4.3.1. An Event of Default by District as defined herein and Contractor’s election to terminate this Facilities Lease as permitted herein, or

4.3.2. An Event of Default by Contractor as defined herein and District’s election to terminate this Facilities Lease as permitted herein, or

4.3.3. A third-party taking of the Project under Eminent Domain, only if the Term is ended as indicated more specifically herein.

4.3.4. Damage or destruction of the Project, only if the Term is ended as indicated more specifically herein.

5. Payment. In consideration for the lease of the Project Site(s) by the Contractor back to the District and for other good and valuable consideration, the District shall make the Tenant Improvements Payments and Lease Payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C.**

6. Termination; Lease Terminable Only as Set Forth Herein.

6.1. Except as otherwise expressly provided in this Facilities Lease, this Facilities Lease shall not terminate, nor shall District have any right to terminate this Facilities Lease or be entitled to the abatement of any all necessary payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** or any reduction thereof unless Contractor's right to perform is terminated for default or if this Facilities Lease is terminated by the District. It is the intention of the Parties hereto that all necessary payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall continue to be payable, and the obligations of the District hereunder shall continue unaffected unless the requirement to pay or perform the same shall be terminated by the District's termination of Contractor's right to perform for default or this Facilities Lease is terminated by the District.

6.2. Nothing contained herein shall be deemed a waiver by the District of any rights that it may have to bring a separate action with respect to any Event of Default by Contractor hereunder or under any other agreement to recover the costs and expenses associated with that action. The District covenants and agrees that it will remain obligated under this Facilities Lease in accordance with its terms.

6.3. Following the Commencement Date, that the District will not take any action to terminate, rescind or avoid this Facilities Lease, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Contractor or any assignee of Contractor in any such proceeding, and notwithstanding any action with respect to this Facilities Lease which may be taken by any trustee or receiver of Contractor or of any assignee of Contractor in any such proceeding or by any court in any such proceeding. Following Substantial Completion, except as otherwise expressly provided in this Facilities Lease, District waives all rights now or hereafter conferred by law to quit, terminate or surrender this Facilities Lease or the Project or any part thereof.

6.4. District acknowledges that Contractor may assign an interest in some or all of the necessary payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** to a lender in order to obtain financing for the cost of constructing the Project and that the lender may rely on the foregoing covenants and provisions in connection with such financing.

6.5. Termination of Contractor for Convenience. The District in its sole discretion may terminate for convenience this Facilities Lease upon three (3) days written notice to the Contractor. In case of a termination for convenience, the Contractor shall have no claims against the District except the actual portion of the Guaranteed Project Cost expended for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, through the date of termination, plus necessary and reasonable documented demobilization costs.

7. Title.

7.1. During the Term of this Facilities Lease, the District shall hold fee title to the Site(s), including the Project Site(s), and nothing in this Facilities Lease or the Site Lease shall change, in any way, the District's ownership interest.

7.2. During the Term of this Facilities Lease, Contractor shall have a leasehold interest in the Project Site(s) pursuant to the Site Lease.

7.3. During the Term of this Facilities Lease, the Contractor shall hold title to the Project improvements provided by Contractor which comprise fixtures, repairs, replacements or modifications thereto.

7.4. If the District makes all necessary payments under the Guaranteed Project Cost Provisions indicated in **Exhibit C**, all right, title and interest of Contractor, its assigns and successors in interest in and to the Project

and the Project Site(s) shall be transferred to and vested in the District at the end of the Term. Title shall be transferred to and vested in the District hereunder without the necessity for any further instrument of transfer; provided, however, that Contractor agrees to execute any instrument requested by District to memorialize the termination of this Facilities Lease and transfer of title to the Project.

8. Quiet Enjoyment. Upon District's possession of the Project, Contractor shall thereafter provide the District with quiet use and enjoyment of the Project, and the District shall during the Term peaceably and quietly have and hold and enjoy the Project, without suit, trouble or hindrance from Contractor, except as otherwise may be set forth in this Facilities Lease. Contractor will, at the request of the District and at Contractor's cost, join in any legal action in which the District asserts its right to such possession and enjoyment to the extent Contractor may lawfully do so. Notwithstanding the foregoing, Contractor shall have the right to inspect the Project and the Project Site(s) as provided herein.

9. Representations of the District. The District represents, covenants and warrants to the Contractor as follows:

9.1. Due Organization and Existence. The District is a community college district, duly organized and existing under the Constitution and laws of the State of California.

9.2. Authorization. The District has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.

9.3. No Violations. Neither the execution and delivery of this Facilities Lease nor the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the District is now a party or by which the District is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the District, or upon the Project Site(s), except Permitted Encumbrances

9.4. CEQA Compliance. The District has complied with all requirements imposed upon it by the California Environmental Quality Act (Public Resource Code Section 21000 *et seq.* ("**CEQA**") in connection with the Project, and no further environmental review of the project is necessary pursuant to CEQA before the construction of the Project may commence. Contractor shall comply will all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act. (Public Resources Code section 21000 *et. seq.*).

9.5. No Litigation. Except for a validation action related to this transaction that the District may file, there is no pending or, to the knowledge of District, threatened action or proceeding before any court or federal, state, municipal, or other government authority or administrative agency which will materially adversely affect the ability of District to perform its obligations under this Facilities Lease.

9.6. Condemnation Proceedings.

9.6.1. District covenants and agrees, but only to the extent that it may lawfully do so, that so long as this Facilities Lease remains in effect, the District will not seek to exercise the power of eminent domain with respect to the Project so as to cause a full or partial termination of this Facilities Lease.

9.6.2. If for any reason the foregoing covenant is determined to be unenforceable or in some way invalid, or if District should fail or refuse to abide by such covenant, then, to the extent it may lawfully do so, District agrees that the financial interest of Contractor shall be as indicated in Section 6.1 of this Facilities Lease.

10. Representations of the Contractor. The Contractor represents, covenants and warrants to the District as follows:

10.1. Due Organization and Existence. The Contractor is a California corporation licensed to provide such services in the state of California, duly organized and existing under the laws of the State of California, has the power to enter into this Facilities Lease and the Site Lease; is possessed of full power to lease, lease back, and hold real and personal property and has duly authorized the execution and delivery of all of the aforesaid agreements.

10.2. Authorization. Contractor has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease.

10.3. No Violations. Neither the execution and delivery of this Facilities Lease and the Site Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which Contractor is now a party or by which Contractor is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Contractor, or upon the Project Site(s), except Permitted Encumbrances.

10.4. No Bankruptcy. Contractor is not now nor has it ever been in bankruptcy or receivership.

10.5. No Litigation. There is no pending or, to the knowledge of Contractor, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of Contractor to perform its obligations under this Facilities Lease.

10.6. No Encumbrances. Contractor shall not pledge any District payments of any kind, related to the Site Lease, this Facilities Lease, or in any way derived from the Project Site(s), and shall not mortgage or encumber the Project Site(s), except as may be specifically permitted pursuant to the provisions of this Facilities Lease related to Contractor's financing the construction of the project.

10.7. Continued Existence. Contractor shall not voluntarily commence any act intended to dissolve or terminate the legal existence of Contractor, at or before the latest of the following:

10.7.1. Eighteen (18) months following the Commencement Date,

10.7.2. After dismissal and final resolution of any and all disputes between the Parties and/or any third-party claims related, in any way, to the Project,

Contractor shall give District sixty (60) days written notice prior to dissolving or terminating the legal existence of Contractor.

11. [RESERVED]

12. Construction of Project

12.1. Project Site(s) Conditions and Contract Documents. Contractor acknowledges that it has and will perform certain special services in preparation to construct the Project.

12.2. Construction of Project.

12.2.1. Contractor agrees to cause the Project to be developed, constructed, and installed in accordance with the terms hereof and the Construction Provisions set forth in **Exhibit D**, including those things reasonably inferable in the Construction Provisions as being within the scope of the Project and necessary to produce the stated result even though no mention is made in the Construction Documents.

12.2.2. **Contract Time / Construction Schedule.**

12.2.2.1. The Construction shall be performed pursuant to the construction schedule(s), attached hereto as **Exhibit F** ("**Construction Schedule(s)**"). The time period between the Notice to Proceed and Final Completion shall be the total Contract time ("**Contract Time**").

12.2.2.2. The Construction Schedule must be approved by the District pursuant to the Contract Documents. District and Contractor may, if agreed to in writing, approve changes in the Construction Schedule.

12.2.3. **Schedule of Values.** The Contractor will provide a schedule of values, approved by the District, which will be attached hereto as **Exhibit G** ("**Schedule(s) of Values**"). The Schedule of Values must be approved by the District prior to the District's approval of the Contractor's first Application for Tenant Improvement Payment.

12.2.4. **Liquidated Damages:** Time is of the essence for all work Contractor must perform on the Project. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the District will sustain in the event of and by reason of Contractor's delay; therefore, pursuant to Government Code section 53069.85 and Public Contract Code section 7203, Contractor shall forfeit and pay to District the following sum(s) as liquidated damages ("**Liquidated Damages**"):

B. **Five Thousand Dollars (\$5,000) per day** as liquidated damages for each and every day's delay beyond the Substantial Completion Date for each Site(s); plus

C. **One Thousand Dollars (\$1,000) per day** as liquidated damages for each and every day's delay after the Final Completion Date for each Site(s).

12.2.4.1. Each portion of the Liquidated Damages shall be calculated cumulatively. For example, if both milestones are passed on any given day, the Contractor forfeits and must pay both applicable liquidated damage amounts as indicated here.

12.2.4.2. It is hereby understood and agreed that neither the total cumulative Liquidate Damages amount nor any portion of the Liquidated Damage amount are penalties.

12.2.4.3. In the event any portion of the liquidated damages are not paid to the District, the District may deduct that amount from any money due or that may become due to the Contractor under this Facilities Lease. The District's right to assess liquidated damages is as indicated herein and in **Exhibit D**. Contractor and Surety shall be liable for and pay to District the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by District.

12.2.4.4. The time during which the construction of the Project is delayed for cause as hereinafter specified may extend the Substantial Completion Date and/or the Final Completion Date for a reasonable time as the District may grant. This provision does not exclude the recovery of damages for delay by either party under other provisions in this Facilities Lease.

12.2.4.5. If the District's determination that the Contractor has substantially completed the Project is later determined by the District to be incorrect due to a later-discovered condition such that the District would not have initially determined the Project to be substantially complete, the District may assess all applicable Liquidated Damages for the days until the Project is actually substantially complete.

12.2.5. **Guaranteed Project Cost.** Contractor will cause the Project to be constructed within the Guaranteed Project Cost as set forth and defined in the Guaranteed Project Cost Provisions indicated in **Exhibit C** and Contractor will not seek additional compensation from District in excess of that amount.

12.2.6. **Modifications.** If the DSA requires changes to the Contract Documents submitted by District to Contractor, and those changes change the construction costs and/or construction time for the Project, then those changed costs will be handled as a Modification pursuant to the provisions of **Exhibit D**.

12.2.7. Contractor shall cooperate with the District's efforts to obtain State funding for the Project by complying with any State requirements as reasonably requested.

12.2.8. **Compliance Monitoring and Enforcement by the Department of Industrial Relations.**

12.2.8.1. District hereby provides notice of the requirements described in Labor Code section 1771.1, subdivision (a), which states the following:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

12.2.8.2. Contractor acknowledges that, for purposes of Labor Code section 1725.5, this work is a public work to which Labor Code section 1771 applies. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all "subcontractors" (as defined by Labor Code section 1722.1) shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Work. Contractor represents to the District that all "subcontractors" (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.

12.2.8.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

13. Maintenance. After the Contract Time, the repair, improvement, replacement and maintenance of the Project and the Project Site(s) shall be at the sole cost and expense and the sole responsibility of the District, subject only to all warranties against defects in materials and workmanship of Contractor as provided in **Exhibit D**. The District shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Project resulting from ordinary wear and tear. The District waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the District under the terms of this

Facilities Lease.

14. Utilities. After Commencement Date, the cost and expenses for all utility services, including, but not limited to, electricity, natural gas, telephone, water, sewer, trash removal, cable television, janitorial service, security, heating, water, internet service and all other utilities of any type shall be paid by District. During construction, Contractor shall pay for utilities pursuant to the Contract Documents.

15. Taxes and Other Impositions. All ad valorem real property taxes, special taxes, possessory interest taxes, bonds and special lien assessments or other impositions of any kind with respect to the Project, the Project Site(s) and the improvements thereon, charged to or imposed upon either Contractor or the District or their respective interests or estates in the Project, shall at all times be paid by District. In the event any possessory interest tax is levied on Contractor, its successors and assigns, by virtue of this Facilities Lease or the Site Lease, District shall pay such possessory interest tax directly, if possible, or shall reimburse Contractor, its successors and assigns for the full amount thereof within thirty (30) days after presentation of proof of payment by Contractor.

16. Insurance

16.1. Contractor's and Subcontractor's Insurance. This Project is within an Owner Controlled Insurance Program (OCIP). The Contractor shall comply with the insurance requirements as indicated in **Exhibit K**, which includes the scopes of insurance required by of the Contractor that are NOT part of the scopes of insurance in the OCIP.

16.2. District's Insurance.

16.2.1. Upon the execution of the Memorandum of Commencement, the District will include the facilities constructed as part of the Project to be thereafter a facility that the District is leasing and that will thereafter be covered by the insurance program in which the District currently participates. If requested by Contractor, District shall provide portions of the District's current insurance documents for the following. At the Contractor's request, District shall include Contractor as an additional covered party on those policies:

16.2.1.1. Property Program Liability Coverage

16.2.1.2. Interruption of Business / Extra Expense and Rental Value Coverage

16.2.1.3. Excess Liability

17. Indemnification.

17.1. Contractor's Indemnity Obligation. The Contractor shall indemnify, defend with legal counsel reasonably acceptable to the District, keep and hold harmless the District, and their respective board members, officers, representatives, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, caused by, arising out of, resulting from, or incidental to, the performance of the Work under this Contract by the Contractor or its Subcontractors to the full extent allowed by the laws of the State of California, and not to any extent that would render these provisions void or unenforceable, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, subcontractor procurement/selection, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself not covered by Contractor's and/or District's insurance policy(s) and including the loss of use resulting therefrom), except to the extent caused by the negligence or willful misconduct of the Indemnitees. This agreement and obligation of the Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Contractor to comply with any provision of law or the Contract Documents, including, without limitation, any stop notice actions,

stop payment notice actions, or liens by the California Department of Labor Standards Enforcement.

- 17.1.1. The Contractor shall give prompt notice to the District in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if the Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the Parties that these circumstances shall not otherwise affect the validity or enforceability of the Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, the Contractor shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.
- 17.1.2. In any and all claims against any of the Indemnitees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

17.2. District's Indemnity Obligation.

17.2.1. District shall indemnify, but shall not be obligated to defend, Contractor from and against any claims, damages, expenses or liabilities connected with this Facilities Lease, only:

17.2.1.1. If those claims, damages, expenses or liabilities relate to District's status as a sublessee under this Facilities Lease;

17.2.1.2. To the extent that those claims, damages, expenses or liabilities arise from the negligence or willful acts or omissions of District, its officers, agents or employees; and

17.2.1.3. If those claims, damages, expenses or liabilities are unrelated to District's obligations to pay the Guaranteed Project Cost.

17.2.2. After the Commencement Date, the District shall also indemnify and defend Contractor from and against any claims, damages, expenses or liabilities including third-party tort or contract claims that are not covered by Contractor's warranty(s) or guarantee(s) and that arise from the District's use of the Facilities.

17.2.3. Under no circumstances does the District's indemnity obligation herein include any obligation to indemnify the Contractor from any claims, damages, expenses or liabilities connected in any way with a third-party's challenge to the validity of the Site Lease and/or the Facilities Lease.

17.3. The Parties understand and acknowledge that the indemnity obligations stated herein may be mutual, comparative or contributory depending on the facts of specific circumstances.

18. Eminent Domain.

18.1. Total Taking After Project Delivery. If, following delivery of possession of the Project by Contractor to District, all of the Project and the Project Site(s) is taken permanently under the power of eminent domain,

the Term shall cease as of the day possession shall be so taken.

18.1.1. The financial interest of Contractor shall be limited to the amount of principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due together with all remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term.

18.1.2. The balance of the award, if any, shall be paid to the District.

18.2. Total Taking Prior to Project Delivery. If all of the Project and the Project Site(s) is taken permanently under the power of eminent domain and the Contractor is still performing the work of the Project and has not yet delivered possession of the Project to District, the Term shall cease as of the day possession shall be so taken. The financial interest of Contractor shall be the amount Contractor has expended to date for work performed on the Project, subject to documentation reasonably satisfactory to the District.

18.3. Partial Taking. If, following delivery of possession of the Project by Contractor to District, less than all of the Project and the Project Site(s) is taken permanently, or if all of the Project and the Project Site(s) or any part thereof is taken temporarily, under the power of eminent domain:

18.3.1. This Facilities Lease shall continue in full force and effect and shall not be terminated by virtue of that partial taking and the Parties waive the benefit of any law to the contrary, and

18.3.2. There shall be a partial abatement of any principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** as a result of the application of the net proceeds of any eminent domain award to the prepayment of those payments hereunder. The Parties agree to negotiate, in good faith, for an equitable split of the net proceeds of any eminent domain award and a corresponding reduction in the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and

19. Damage and Destruction. If, following delivery of possession of the Project by Contractor to District, the Project is totally or partially destroyed due to fire, acts of vandalism, flood, storm, earthquake, Acts of God, or other casualty beyond the control of either party hereto, the Term shall end and District shall still no longer be required to make any payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** that are then due or past due or any remaining and succeeding principal payments pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** for the remainder of the original Term. The Contractor shall still be due any funds, payments, or disbursements from the District's rental interruption insurance to pay for the amounts that would otherwise have been due and owing from the District under **Exhibit C**.

20. Abatement.

20.1. If, after the Parties have executed the Memorandum of Commencement Date attached hereto as **Exhibit E**, the Project becomes destroyed or damaged beyond repair, the District may determine its use of the Project abated. Thereafter, the District shall have no obligation to make, nor shall the Contractor have the right to demand, any future Lease Payments as indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C** to this Facilities Lease. The Term shall cease at that time.

20.2. The Parties hereby agree that the net proceeds of the District's rental interruption insurance that the District must maintain during the Term, as required herein, shall constitute a special fund for the payment of the Lease Payments indicated in the Guaranteed Project Cost Provisions indicated in **Exhibit C**.

20.3. The District shall as soon as practicable after such event, apply the net proceeds of its insurance policy intended to cover that loss ("Net Proceeds"), either to:

20.3.1. Repair the Project to full use;

20.3.2. Replace the Project, at the District's sole cost and expense, with property of equal or greater value to the Project immediately prior to the time of the destruction or damage, with that replacement, once completed, shall be substituted in this Facilities Lease by appropriate endorsement; or

20.4. The District shall notify the Contractor of which course of action it desires to take within thirty (30) days after the occurrence of the destruction or damage. The Net Proceeds of all insurance payable with respect to the Project shall be available to the District and shall be used to discharge the District's obligations under this Section.

21. Access

21.1. By Contractor. Contractor shall have the right at all reasonable times to enter upon the Project Site(s) to construct the Project pursuant to this Facilities Lease. Following the acceptance of the Project by District, Contractor may enter the Project at reasonable times with advance notice and arrangement with District for purposes of making any repairs required to be made by Contractor.

21.2. By District. The District shall have the right to enter upon the Project Site(s) at all times. District shall comply with all safety precautions and procedures required by Contractor.

22. Assignment, Subleasing

22.1. Assignment and Subleasing by the District. Any assignment or sublease by District shall be subject to all of the following conditions:

22.1.1. This Facilities Lease and the obligation of the District to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall remain obligations of the District; and

22.1.2. The District shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Contractor a true and complete copy of any assignment or sublease; and

22.2. Assignment by Contractor. Contractor may assign its right, title and interest in this Facilities Lease, in whole or in part to one or more assignees, only after the written consent of District, which District will not unreasonably withhold. No assignment shall be effective against the District unless and until the District has consented in writing. Notwithstanding anything to contrary contained in this Facilities Lease, no consent from the District shall be required in connection with any assignment by Contractor to a lender for purposes of financing the Project as long as there are not additional costs to the District.

23. Events of Default of District

23.1. Events of Default by District Defined. The following shall be "Events of Default" of the District under this Facilities Lease. The terms "Event of Default" and "Default" shall mean, whenever they are used as to the District in the Site Lease or this Facilities Lease, shall only be one or more of the following events:

23.1.1. Failure by the District to pay payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, and the continuation of such failure for a period of forty-five (45) days.

23.1.2. Failure by the District to perform any material covenant, condition or agreement in this Facilities

Lease and that failure continues for a period of forty-five (45) days after Contractor provides District with written notice specifying that failure and requesting that the failure be remedied; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Contractor shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected.

23.2. Remedies on District's Default. If there has been an Event of Default on the District's part, the Contractor may exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Lease; provided, however, there shall be no right under any circumstances to accelerate any of the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** or otherwise declare those payments not then past due to be immediately due and payable.

23.2.1. Contractor may rescind its leaseback of the Project Site(s) to the District under this Facilities Lease and re-rent the Project Site(s) to another lessee for the remaining Term for no less than the fair market value for leasing the Project Site(s), which shall be:

23.2.1.1. An amount determined by a mutually-agreed upon appraiser, or

23.2.1.2. If an appraiser cannot be agreed to, an amount equal to the mean between a District appraisal and a Contractor appraisal for the Project Site(s), both prepared by an MAI-certified appraiser.

23.2.2. District's obligation to make the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be:

23.2.2.1. Increased by the amount of costs, expenses, and damages incurred by the Contractor in re-renting the Project Site(s), and

23.2.2.2. Decreased by the amount of rent Contractor receives in reletting the Project Site(s).

23.2.3. The District agrees that the terms of this Facilities Lease constitute full and sufficient notice of the right of Contractor to re-rent the Project Site(s) in the Event of Default without effecting a surrender of this Facilities Lease, and further agrees that no acts of Contractor in performing a re-renting as permitted herein shall constitute a surrender or termination of this Facilities Lease, but that, on the contrary, in the event of an Event of Default by the District the right to re-rent the Project Site(s) shall vest in Contractor as indicated herein.

23.3. District's Continuing Obligation. Unless there has been damage, destruction, a Taking as described above, or the Contractor is in Default as indicated herein, the District shall continue to remain liable for the payments required pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** and those amounts shall be payable to Contractor at the time and in the manner as therein provided.

23.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to Contractor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Facilities Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Contractor to exercise any remedy reserved herein, it shall be necessary to give notice, as indicated in this Facilities Lease and by law.

24. Events of Default of Contractor

24.1. Events of Default by Contractor Defined. The following shall be “Events of Default” of the Contractor under this Facilities Lease. The terms “Event of Default” and “Default” shall mean, whenever they are used as to the Contractor in the Site Lease or this Facilities Lease, shall only be one or more of the following events:

- 24.1.1.1. Contractor unreasonably refuses or fails to prosecute the work on the Project with such reasonable diligence such that the Contractor will not perform all required Work by the Substantial Completion Date or the Final Completion Date or any extension(s) thereof;
- 24.1.1.2. Prior to the Substantial Completion Date, Contractor is adjudged a bankrupt, or files for bankruptcy, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency;
- 24.1.1.3. Contractor persistently disregards applicable law as indicated in **Exhibit D**, or otherwise be in violation of **Exhibit D**.
- 24.1.1.4. Contractor unreasonably refuses or fails to perform any material covenant, condition or agreement in this Facilities Lease and that failure continues for a period of seven (7) days after District provides Contractor with written notice specifying that failure and requesting that the failure be remedied. If the failure stated in the notice cannot be corrected within the applicable period, District shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Contractor within the applicable period and diligently pursued until the default is corrected.

24.2. Remedies on Contractor’s Default. If there has been an Event of Default on the Contractor’s part, the District may, without waiver of or prejudice to any other right or remedy, terminate the Site Lease and Facilities Lease.

- 24.2.1. If District terminates the Site Lease and the Facilities Lease pursuant to this section, the Project Site(s) and any improvements built upon the Project Site(s) shall vest in District upon termination of the Site Lease and Facilities Lease, and District shall thereafter be required to pay only the principal amounts then due and owing pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C**, less any damages incurred by District due to Contractor’s Default.
- 24.2.2. The District shall retain all rights it possesses as indicated in **Exhibit D** including, without limitation,
 - 24.2.2.1. The right to assess liquidated damages due as permitted herein;
 - 24.2.2.2. All rights the District holds to demand performance pursuant to the Contractor’s required performance bond;

25. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the persons indicated below:

- 25.1.** If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery.
- 25.2.** If notice is given by overnight delivery service, it shall be considered delivered on (1) day after date deposited, as indicated by the delivery service.

If to District:
Rancho Santiago Community College District
2323 N. Broadway, Suite 112
Santa Ana, CA 92706

If to Contractor:
_____, Inc.
_____, Avenue
_____, CA _____

ATTN: Carri M. Matsumoto

ATTN: _____

With a copy to:
Orbach Huff Suarez & Henderson
1901 Avenue of the Stars, Ste. 575
Los Angeles, CA 90067
Attention: Philip J. Henderson, Esq.

The Contractor and the District, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

26. Binding Effect. This Facilities Lease shall inure to the benefit of and shall be binding upon Contractor and the District and their respective successors, transferees and assigns.

27. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Facilities Lease should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

28. Severability. In the event any provision of this Facilities Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless elimination of such invalid provision materially alters the rights and obligations embodied in this Facilities Lease or the Site Lease.

29. Amendments, Changes and Modifications. Except as to the termination rights of both Parties as indicated herein, this Facilities Lease may not be amended, changed, modified, altered or terminated without the written agreement of both Parties hereto.

30. Net-Net-Net Lease. This Facilities Lease shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that all payments it makes pursuant to the Guaranteed Project Cost Provisions indicated in **Exhibit C** shall be an absolute net return to Contractor, free and clear of any expenses, charges or set-offs.

31. Execution in Counterparts. This Facilities Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

32. Contractor and District Representatives. Whenever under the provisions of this Facilities Lease the approval of Contractor or the District is required, or Contractor or the District is required to take some action at the request of the other, such approval or such request shall be given for Contractor by Contractor’s Representative and for the District by the District’s Representative, and any party hereto shall be authorized to rely upon any such approval or request.

33. Applicable Law. This Facilities Lease shall be governed by and construed in accordance with the laws of the State of California, and venued in the County within which the Site(s) is located.

34. Attorney's Fees. If either party brings an action or proceeding involving the Property or to enforce the terms of this Facilities Lease or to declare rights hereunder, each party shall bear the cost of its own attorneys’ fees.

35. Captions. The captions or headings in this Facilities Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Facilities Lease.

36. Prior Agreements. This Facilities Lease and the corresponding Site Lease collectively contain all of the agreements of the Parties hereto with respect to any matter covered or mentioned in this Facilities Lease and no prior agreements or understanding pertaining to any such matter shall be effective for any purpose.

37. Further Assurances. Parties shall promptly execute and deliver all documents and instruments reasonably requested to give effect to the provisions of this Facilities Lease.

38. Recitals Incorporated. The Recitals set forth at the beginning of this Facilities Lease are hereby incorporated into its terms and provisions by this reference.

39. Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Facilities Lease.

40. Force Majeure. A party shall be excused from the performance of any obligation imposed in this Facilities Lease and the exhibits hereto for any period and to the extent that a party is prevented from performing such obligation, in whole or in part, as a result of delays caused by the other party or third parties, a governmental agency or entity, an act of God, war, terrorism, civil disturbance, forces of nature, fire, flood, earthquake, strikes or lockouts, and such nonperformance will not be a default hereunder or a grounds for termination of this Facilities Lease.

41. Interpretation. None of the Parties hereto, nor their respective counsel, shall be deemed the drafters of this Facilities Lease for purposes of construing the provisions thereof. The language in all parts of this Facilities Lease shall in all cases be construed according to its fair meaning, not strictly for or against any of the Parties hereto.

IN WITNESS WHEREOF, the Parties have caused this Facilities Lease to be executed by their respective officers who are duly authorized, as of the Effective Date.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20_____

Dated: _____, 20_____

Rancho Santiago Community College District

[Contractor Name]

By: _____

By: _____

Print Name: Peter J. Hardash

Print Name: _____

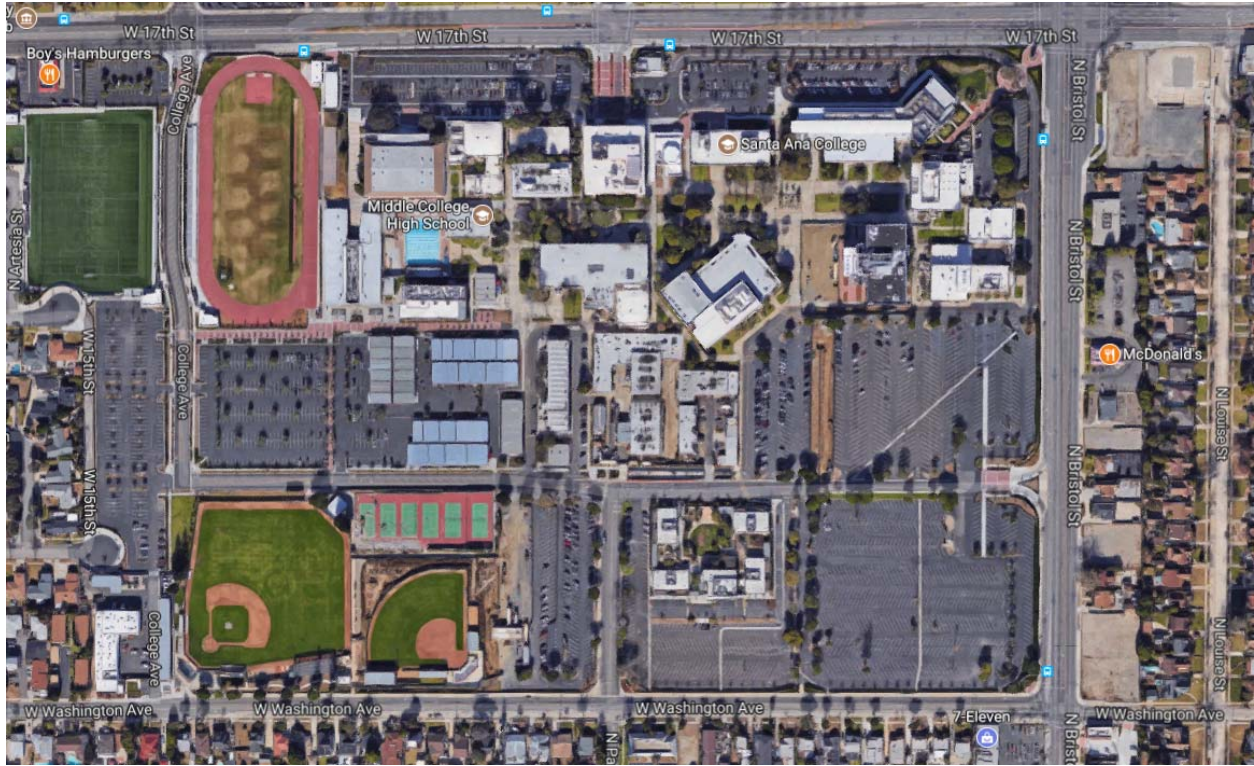
Print Title: Vice Chancellor Business Operations and
Fiscal Services

Print Title: _____

**EXHIBIT A
TO SITE LEASE**

DESCRIPTION OF SANTA ANA COLLEGE SITE(S)

Santa Ana College, located at 1530 W. 17th Street, Santa Ana, CA 92706-3398



**EXHIBIT B
TO SITE LEASE**

**DESCRIPTION OF PROJECT SITE(S)
AND
DESCRIPTIONS OF THE PROJECTS AT [NAME] SITE(S)**

PROJECT SITE(S) DESCRIPTION:

Below is a site diagram for the portions of the Santa Ana College Site(s) that are subject to the Site Lease and the Facilities Lease and upon which Contractor will construct the Project(s).

[Insert site diagram(s)]

PROJECT(S) DESCRIPTION:

The Science Center Project is a new three-story building, approximately 67,000 square feet. It will house modern laboratories, classrooms, lecture classrooms and Division/Faculty offices, including:

- Division Office
- Faculty Offices
- (2) Standard Classrooms
- (1) Large Classroom
- (1) Divisible Classroom
- (1) Computer Lab
- (1) Engineering Lab & Support Space
- (6) Biology Labs & Support Spaces
- (2) Geology Labs & Support Space
- (5) Chemistry Labs & Support Spaces
- (1) Physics Lab & Support Space
- (1) Science Learning Center
- Student Collaboration Areas

The Project consists of two (2) phases. Phase 1 is demolition of existing buildings and construction of new masonry wall including all required electrical upgrades to furnish power at the new wall. Phase 2 is the all remaining project scope not included in Phase 1.

**EXHIBIT C
TO
FACILITIES LEASE**

GUARANTEED PROJECT COST AND OTHER PROJECT COST, FUNDING, AND PAYMENT PROVISIONS

1. **Site Lease Payments.** As indicated in the Site Lease, Contractor shall pay One Dollar (\$1.00) per year to the District as consideration for the Site Lease.

2. **Guaranteed Project Cost (or Guaranteed Maximum Price).** Pursuant to the Facilities Lease, Contractor will cause the Project to be constructed for **[Spell Out] Dollars (\$Numeric)**, (“Guaranteed Project Cost” or “GPC” or “Guaranteed Maximum Price” or “GMP”). Except as indicated herein for modifications to the Project approved by the District, Contractor will not seek additional compensation from District in excess of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments as indicated herein. The Guaranteed Project Cost includes the following components and as further detailed herein and as outlined in the GPC Table below:

2.1. Cost to Perform Work.

- 2.1.1. **Subcontract Costs.** Payments made by the Contractor to Subcontractors, which payments shall be made in accordance with the requirements of the Contract Documents.

- 2.1.2. **Contractor-Performed Work.** Costs incurred by the Contractor for self-performed work.

2.2. General Conditions (including General Requirements and all Overhead (Home Office and Field Office)). The fixed amount to be paid for all costs for labor, equipment, materials, supervision, transportation, and overhead for the items identified therein which are necessary for the proper management of the Project, and shall include all costs paid or incurred by the Contractor for insurance (except for insurance covered by OCIP), permits, taxes, and all contributions, assessments and benefits, holidays, vacations, retirement benefits, and incentives, whether required by law or collective bargaining agreements or otherwise paid or provided by Contractor to its employees. The District reserves the right to request changes to the personnel, equipment, or facilities provided as General Conditions as may be necessary or appropriate for the proper management of the Project, in which case, the cost of General Conditions may be increased or reduced accordingly.

2.3. Bonds and Insurance. Contractor shall **not** base its bonds and insurance cost on an amount that includes the Construction Contingency or any Allowances.

2.4. Profit and Fee. Contractor shall **not** base its profit and fee cost on an amount that includes the Construction Contingency or any Allowances.

2.5. Allowance(s). [Amounts and Scopes to be determined by District]

2.6. Construction Contingency. [Amount to be determined by District] A Construction Contingency is included in the Guaranteed Project Cost and is as defined in Exhibit D to the Facilities Lease.

2.7. GPC / GMP Table.

GPC / GMP Table	
Subcontract Costs	\$ _____
Contractor-Performed Work	\$ _____
General Conditions (including General Requirements and Overhead (Home Office and Field Office))	\$ _____
Subtotal	\$ _____
Bonds and Insurance (as _____ % of the Subtotal)	\$ _____

Profit and Fee (as ____ % of the Subtotal)	\$ _____
Allowances	\$ _____
Construction Contingency	\$ _____
GUARANTEED PROJECT COST	\$ _____

3. Payment of Guaranteed Project Cost. District shall pay the Guaranteed Project Cost to Contractor in the form of Tenant Improvement Payments and Lease Payments plus interest as indicated herein.

3.1. Tenant Improvement Payments. Prior to the District’s taking delivery or occupancy of the Project, the District shall pay to Contractor **[Spell Out] Dollars (\$Numeric)** (“**Tenant Improvement Payment(s)**”), based on the amount of Work satisfactorily performed and approved by the District less the total amount to be paid as Lease Payments, according to the Contractor’s Schedule of Values (**Exhibit G** to the Facilities Lease) and pursuant to the provisions in **Exhibit D** to the Facilities Lease.

3.2. Lease Payments Plus Interest. After the Parties execute the Memorandum of Commencement Date, attached to the Facilities Lease as **Exhibit E**, the District shall pay to Contractor **[Spell Out] Dollars (\$Numeric)** (“**Lease Payment(s)**”) plus interest, as indicated below.

3.2.1. The Lease Payments plus interest shall be consideration for the District’s rental, use, and occupancy of the Project and the Project Site and shall be made in equal monthly installments for the duration of the Term.

3.2.2. The District represents that the total annual Lease Payment plus interest obligation does not surpass the District’s annual budget and will not require the District to increase or impose additional taxes or obligations on the public that did not exist prior to the execution of the Facilities Lease.

3.2.3. **Fair Rental Value.** District and Contractor have agreed and determined that the total Lease Payments plus interest constitute adequate consideration for the Facilities Lease and are reasonably equivalent to the fair rental value of the Project. In making such determination, consideration has been given to the obligations of the Parties under the Facilities Lease and Site Lease, the uses and purposes which may be served by the Project and the benefits therefrom which will accrue to the District and the general public.

3.2.4. Each Payment Constitutes a Current Expense of the District.

3.2.4.1. The District and Contractor understand and intend that the obligation of the District to pay Lease Payments plus interest and other payments hereunder constitutes a current expense of the District and shall not in any way be construed to be a debt of the District in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the District, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or moneys of the District.

3.2.4.2. Lease Payments plus interest due hereunder shall be payable only from current funds which are budgeted and appropriated or otherwise made legally available for this purpose. This Facilities Lease shall not create an immediate indebtedness for any aggregate payments that may become due hereunder.

3.2.4.3. The District covenants to take all necessary actions to include the estimated Lease Payments plus interest in each of its final approved annual budgets.

3.2.4.4. The District further covenants to in good faith make all necessary appropriations (including

any supplemental appropriations) from any source of legally available funds of the District for the actual amount of Lease Payments plus interest that come due and payable during the period covered by each such budget. Contractor acknowledges that the District has not pledged the full faith and credit of the District, State of California or any state agency or state department to the payment of Lease Payments plus interest or any other payments due hereunder. The covenants on the part of District contained in this Facilities Lease constitute duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the covenants and agreements in this Facilities Lease agreed to be carried out and performed by the District.

3.2.4.5. The Contractor cannot, under any circumstances, accelerate the District’s payments under the Facilities Lease.

3.2.5. The Lease Payment Amount shall be paid pursuant to the following structure and the annual interest rate shall be at **[Spell out] Percent (Numeric%)**:

Date of Payment	(A) Total Lease Payment	(B) Total Interest Due on Lease Payment	Total Lease Payment plus interest due by District to Contractor (A + B)
30 Days after execution of Memorandum of Commencement	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
30 days thereafter	\$Numeric Lease Payments/12	\$__	\$__
Total	\$Numeric Sum	\$__	\$__

3.2.6. **Financed Portion of Lease Payments.** The District requires the Contractor to finance a portion of the Lease Payments and that financing is reflected in the table above.

3.3. In no event shall the cumulative total of the Tenant Improvement Payments and the Lease Payments plus interest ever exceed the Guaranteed Project Cost as defined herein, unless modified pursuant to **Exhibit**

D to the Facilities Lease.

4. District Contingency. The District shall have a District Contingency of _____ Dollars (\$_____). The District Contingency is **not** included in the Guaranteed Project Cost and is as defined in **Exhibit D** to the Facilities Lease.

5. Changes to Guaranteed Project Cost.

5.1. As indicated in the Facilities Lease, the Parties may add or remove specific scopes of work from the Project. Based on these change(s), the Parties may agree to a reduction or increase in the Guaranteed Project Cost. If a cost impact or a change is agreed to by the Parties, it shall be reflected as a reduction or increase in the Tenant Improvement Payments and paid upon the payment request from the Contractor when the work is performed, or deducted from the next payment request from the Contractor, as applicable.

5.2. The Parties acknowledge that the Guaranteed Project Cost is based on the Construction Documents, including the Plans and Specifications, as identified in **Exhibit J** to the Facilities Lease.

5.3. Cost Savings. Contractor shall work cooperatively with Architect, subcontractors and District, in good faith, to identify appropriate opportunities to reduce Project costs and promote cost Savings. Savings will be managed as indicated in the Contract Documents, including **Exhibit D** to the Facilities Lease.

5.4. Insurance and Bond Reimbursements. At the Final Completion Date, Contractor shall require reimbursement from its insurance brokers and/or insurers and its bond brokers and/or sureties, all portions of Contractor's bond premiums, either paid or to be paid, that are not at-risk due to a reduction in the Guaranteed Project Cost. All amounts of premium reimbursement that Contractor receives from the Contractor's insurance brokers and/or insurers and its bond brokers and or sureties, shall be withheld by District from Contractor's Lease Payment(s). The District shall estimate this amount until Contractor indicates what the total amount of this reimbursement.

**EXHIBIT D
TO
FACILITIES LEASE**

GENERAL CONSTRUCTION PROVISIONS

1. [RESERVED]

2. TITLE 24 RESPONSIBILITIES

Contractor accepts the contractual relationship established between it and District by Contract Documents, including these General Construction Provisions, and Contractor covenants with District to furnish reasonable skill and judgment in constructing the Project as set forth in the Contract Documents, as defined in Facilities Lease Exhibit J for the Project. Contractor agrees to furnish efficient business administration, coordination review of the plans and specifications, coordination of the work of the subcontractors and vendors and superintendence to furnish at all times an adequate supply of professionals, workers, and materials and to perform the work appropriately, expeditiously, economically, and consistently with the General Construction Provisions and the Contract Documents as defined in Article 14.

2.1 Title 24 Responsibilities. The Contractor shall continually supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures; and shall coordinate all portions of the Work in conformance with the Contract Documents. Specific duties of the Contractor shall include those set out in Section 43 of Title 21 of the California Code of Regulations and Section 4-343 of Title 24 of the California Code of Regulations. These duties include, but are not limited to the following:

2.1.1 *Responsibilities.* It is the duty of the Contractor to complete the Work covered by his or her Contract in accordance with the approved Plans and Specifications. The Contractor in no way is relieved of any responsibility by the activities of the Architect, Engineer, Inspector, or DSA in the performance of their duties.

2.1.2 *Performance of the Work.* The Contractor shall carefully study the approved Plans and Specifications and shall plan its schedule of operations well ahead of time. If at any time it is discovered that work is being done which is not in accordance with the approved plans and specifications, the Contractor shall correct the Work immediately.

2.1.3 *Inconsistencies.* All inconsistencies or timing or sequences which appear to be in error in the Plans and Specifications shall promptly be called to the attention of the Architect or, Engineer, for interpretation or correction. Local conditions which may affect the structure shall be brought to the Architect's attention at once. In no case, shall the instruction of the Architect be construed to cause work to be done which is not in conformity with the approved plans, specifications, change orders, Construction Change Documents, and as required by law. (See Title 24 Section 4-343)

2.1.4 *Verified Reports.* The Contractor shall make and submit to the office from time to time, verified reports as required in Title 24 Section 4-366. As part of the Closeout of the Project (see Article 13.16), Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343.

2.1.5 *Reporting Requirements.* Contractor shall fully comply with any and all reporting requirements of Education Code Sections 81147, et seq., in the manner prescribed by Title 24, as applicable.

- 2.1.6 *Contractor Responsibility.* The Contractor shall be responsible to the District for acts and omissions of the Contractor’s employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.
- 2.1.7 *All Work is performed Under the Direction of Inspector.* Pursuant to Title 24 requirements, the Contractor shall not carry on Work except with the knowledge of the Inspector. (See Title 24 generally)
- 2.1.8 *Contractor to Establish Timing and Protocol with Inspector.* Contractor shall establish a protocol for requesting inspection with Inspector so as to not delay the Work and provide adequate time for the Inspector to perform inspection. If such a protocol is not established ahead of time, Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. DSA requirements under PR 13-01 specifically gives the Special Inspector fourteen (14) days to post to the DSA website. Contractor is responsible for delays and for failure to plan.
- 2.1.9 *Conformance with Approved Submittals.* This conformance includes performing all Work only in conformance with approved Submittals, Shop Drawings, and Samples or the Inspector may be required to issue a DSA Form 154 Notice of Deviation from approved DSA Contract Documents.
- 2.1.10 *Incremental Assemblies.* For some Projects, there may be a need to incrementally install certain assemblies. It is up to Contractor to identify areas and assemblies that may be constructed incrementally. Contractor must identify and establish incremental areas of construction and establish protocols with Inspector for DSA 152 approvals so they may be presented to DSA. See PR-13 item 2.1.10 for further discussion.
- 2.1.11 *Coordination with Outside Contractors.* If any of the Work for the Project is known to include Work performed by contractors retained directly by the District, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule.

3. [RESERVED]

4. DEFINITIONS

- 4.1 Action of the Governing Board is a vote of a majority of the District’s Board of Trustees.
- 4.2 Allowance(s) means budgets established for specific scopes of the Work that cannot be clearly defined at the time that the GMP is established, but that are set, not-to-exceed amounts within the GMP at the time that the GMP is established. Contractor shall only use Allowance(s) with the District’s prior, written approval. All unused Allowance(s) shall be kept by the District at the end of the Project.
- 4.3 As-Builts are a set of Plans and Specifications maintained by the Contractor clearly showing all changes, revisions, substitutions, field changes, final locations, and other significant features of the Project. The As-Builts shall be maintained continuously throughout the Work for the Project and is both a prerequisite to the issuance of Pay Application and a requirement for Contract Closeout. See Article 13.14 and 13.16.
- 4.4 Architect means the architect, engineer, or other design professional engaged by the District to design and perform general observation of the work of construction and interpret the drawings and specifications for the Project. Also see Article 11.

- 4.5 Beneficial Occupancy is the point in time when a building or buildings are fit for occupancy and its intended use. Basic requirements are the building is safe, at Substantial Completion, and all life safety is operational. The fact that a building is occupied does not mean that the building is ready for Beneficial Occupancy if there are elements that are unsafe or if life safety items are not operational. Taking occupancy on a structure that is under a fire watch is not considered beneficial occupancy. Further, taking of Beneficial Occupancy is not a point in time when Lease Payments are due unless the entire Project has obtained a Certificate of Substantial Completion that meets the definition of Article 4.42.
- 4.6 Claims. A Claim is as defined in the “Claims Resolution” Provisions herein.
- 4.7 Closeout means the process for Final Completion of the Project, but also includes the requirements for the DSA Certification that the Project is complete for DSA (See DSA Certification Guide). See Article 13.16.
- 4.8 Construction Change Document (CCD). A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved plans and specifications. There are two types of Construction Change Documents. 1) DSA approved CCD Category A (DSA Form 140) for work affecting Structural, Access or Fire-Life Safety of the Project which will require a DSA approval; and 2) CCD Category B (DSA Form 141) for work NOT affecting Structural Safety, Access Compliance or Fire and Life Safety that will not require a DSA approval (except to confirm that no Approval is required). See Article 17.5.
- 4.9 Construction or Construction Services means all labor and services necessary for the construction of the Project, and all materials, equipment, tools, supplies and incidentals incorporated or to be incorporated in such construction as fully described in the Contract Documents.
- 4.10 Construction Costs means any and all costs incurred by the Contractor with respect to the construction and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the date hereof, including, without limitation, costs for Site preparation, the removal or demolition of existing structures, the construction of the Project and related facilities and improvements, and all other work in connection therewith, security of the Site and Project, Contractors’ overhead and supervision at the Project site, all costs and expenses including any taxes or insurance premiums paid by the Contractor with respect to the Property, and administrative and other expenses necessary or incident to the Project, excluding Contractor’s home office overhead and field office overhead (which both shall be part of the Contractor’s General Conditions) and Contractor’s profit and fee. The term “Construction Costs” includes all Contractor’s costs associated with preparing or generating additional copies of any Contract Documents, as defined below, related to or required for the Project, including preparation or generation of additional plans and specifications for Contractor’s subcontractors. In no event shall Construction Costs exceed the Guaranteed Maximum Price.
- 4.11 Construction Contingency. The Construction Contingency set forth in Exhibit C is for the use of the Contractor, as approved by the District, to pay for miscellaneous work items which are required to complete the Project including to cover trade scope gaps, missed work, areas of damage that may occur between trades during construction, Subcontractor coordination problems, and Contractor coordination errors. The Contractor shall obtain written approval from the District’s representative prior to using the Construction Contingency
- 4.11.1 The following may be considered valid Construction Contingency items:

- a. overtime and premium time not anticipated at time of GMP to prevent or mitigate delays in the work;
 - b. coordination issues and errors;
 - c. scope gaps;
 - d. trade damage for which neither the District nor the Contractor can determine the Subcontractor(s) that caused the damage;
 - e. extension of general conditions and/or general requirement expenses for non-compensable delays if and only if the amounts for general conditions and/or general requirements are specified in the GMP as Allowances; and
 - f. for other items requested by the Contractor if approved by the District and in the District's sole discretion.
- 4.11.2 The Contractor shall not use the Construction Contingency to pay for costs related to the following:
- a. enhancements or additions to the Scope of Work desired by the District; and
 - b. unforeseen underground conditions as defined in Article 46 except for those conditions that should have been reasonably discovered pursuant to Article 5;
 - c. correction of non-conforming work when such condition is determined by the District to be the result of the Contractor's failure to implement adequate Quality Control procedures or adequate planning and coordination of the work; and
 - d. additional general conditions and/or general requirement expenses when the District and Contractor has agreed to Lump Sum amounts for these items in the GMP.
- 4.11.3 The District shall have the authority to determine and approve or reject which costs are to be allocated to the Construction Contingency. Contractor shall prepare the costs in accordance with Article 17.6. If on Final Completion of the Project, funds are remaining in the Construction Contingency, such funds are the sole property of the District without any right, title or interest of the Contractor thereto or any portion thereof.
- 4.12 Contract Documents (Sometimes referred to as Construction Documents) consist of the Site Lease, the Facilities Lease, these General Construction Provisions, any approved Supplementary and other Conditions, Drawings, Specifications, Addenda issued prior to the entry into the Lease Agreements, Modifications issued after execution of the Lease Agreements, and any other documents listed in Facilities Lease Exhibit J. A Modification is a written amendment to the Contract signed by parties, a Change Order, a Construction Change Document, or a written order for a minor change in the Work issued by the Architect. The Contract Documents collectively form the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Architect and Contractor, between the

District and any Subcontractor or Sub-subcontractor, or between any persons or entities other than the District and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. (See Article 14).

- 4.13 Contract Time is the time period between the Notice to Proceed and Final Completion.
- 4.14 Day means a calendar day unless specifically designated as a business day.
- 4.15 District Contingency. An amount for use by the District that can be used to pay the Contractor to perform additional services ("Additional Services") not described in the Contract Documents and that are not appropriately paid for out of the Construction Contingency or an Allowance. The District Contingency is outside of the GMP, and may be used for District-requested additions, revisions to the Project and other District unforeseen items. Contractor shall provide a cost estimate and a written description of the Additional Services required to perform that work. Compensation for those Additional Services shall be negotiated and agreed upon in writing, in advance of Contractor's performing or contracting for those Additional Services. Contractor shall not be entitled to compensation for Additional Services required as a result of Contractor's acts, errors, or omissions. Any funds remaining in the District Contingency at the completion of the Project shall remain unspent and remain allocated to the District.
- 4.16 Drawings or Plans are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn or approved by the Architect. Sometimes Drawings will also be included in Addenda, Change Orders, and Specifications.
- 4.17 Due Diligence is the review and analysis of As Builts, title documents, prior design documents, geotechnical reports, prior design reports, surveys, and site investigations provided by the District and synthesizing of information utilized to determine the components of the GMP. Requirements for Due Diligence are further addressed at Article 5.
- 4.18 DSA is the Division of State Architect. DSA is the agency that provides design and construction oversight for K-12 Schools, Community Colleges, and State Funded Charter School Projects. DSA is the responsible agency for this Project and Contractor has submitted a bid for the Project since Contractor is familiar with Contractor's responsibilities under the DSA requirements more thoroughly set forth at Title 24 of the California Code of Regulations. Contractor agrees to abide by the jurisdiction of DSA and shall construct the Project to conform with the approved plans, specifications, Addenda, and Change Orders (inclusive of approved CCD's and ICD's issued by the District pending CCD approval). The DSA website is at <http://www.dgs.ca.gov/dsa>.
- 4.19 Facilities Lease(s) means the Facilities Lease(s) of even date herewith by and between the District and Contractor together with any duly authorized and executed amendment hereto under which the District subleases the Site from the Contractor.
- 4.20 Final Completion (or "Completion") means that all Work in the Contract Documents is finished, the requirements of the Contract Documents have been met, the Project has been Closed-Out, and all Work has ceased on the Project. In most cases, the recording of a Notice of Completion shall represent Completion of the Project. Beneficial Occupancy or Substantial Completion does not mean the Work is at Final Completion. The Parties shall determine the "Date of Final Completion" which shall be as indicated in the Construction Schedule and which shall also be the "Completion Date."

- 4.21 Float is the total number of days an activity may be extended or delayed without delaying the Substantial Completion Date shown in the schedule. See Article 9.2. Note that the Substantial Completion Date indicated in the Construction Schedule includes and incorporates all Float as noted in Article 9.3 and as otherwise specifically noted in Article 9.
- 4.22 General Construction Provisions means these General Construction Provisions, together with any duly authorized and executed amendments hereto.
- 4.23 Guaranteed Maximum Price or Guaranteed Project Cost (or “GPC” or “Contract Price” or “GMP”): The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
- 4.24 Immediate Change Directive (ICD). A written order prepared by the Architect or the District and signed by the District and the Architect, directing a change in the Work where the Work must proceed immediately and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. See Article 17.5.
- 4.25 Inspector of Record (IOR) or Project Inspector (PI) is the individual retained by the District in accordance with Title 24 of the California Code of Regulations who will be assigned to the Project.
- 4.26 Lease Agreements(s) (or the “Contract”). The Site Lease(s) and the Facilities Lease(s) and all exhibits and approved attachments to same.
- 4.27 Notice of Non-Compliance (DSA Form 154) is a document issued by the Project Inspector if there is a deviation from the DSA approved Plans, Specifications, and Change Orders. See Article 17.3.
- 4.28 Notice to Proceed. After execution of these General Construction Provisions, the Site Lease(s), and Facilities Lease(s) between the parties, the District shall issue a notice to the Contractor to proceed with the Project (“Notice to Proceed”). Notice to Proceed shall include the date upon which commencement for the Project shall commence.
- 4.29 Project means the improvements and equipment to be constructed and installed by the Contractor, as more particularly described and/or referenced in the Site Lease and Facilities Lease.
- 4.30 Provide, when used throughout these General Construction Provisions, shall incorporate the phrases “provide complete in place,” and “furnish and install complete.”
- 4.31 Punch List is a list of minor repair items, prepared after the issuance of a Certificate of Substantial Completion, by the Project Inspector and Architect of Work required in order to reach Final Completion and ensure compliance with the DSA Approved Plans so the Project may be Closed-Out. Issuance of the first Lease Payment is dependent upon the proper completion of the Punch List. See Article 13.16 and Article 29.
- 4.32 Request for Information (RFI) is a written request prepared by the Contractor requesting the Architect to provide additional information necessary to clarify or amplify an item which the Contractor believes is not clearly shown or called for in the drawings or specifications, or to address problems which have arisen under field conditions.
- 4.33 Schedule is the Contractor’s view of the practical way in which the Work will be accomplished. In the Contract Documents there is a requirement for a Construction Schedule and regular Schedule Updates that show all Work to be completed during the Contract Time and shall include all items listed under Article 9.

- 4.34 Schedule of Values is a detailed breakdown of the Contract Price for each Project, building, Phase of Work or Site as determined by the District. This Schedule of Values shall adequately detail the price for the Work so Tenant Improvement Payment Applications can be meaningfully reviewed by the Project Inspector, Construction Manager, Architect of Record, Engineer of Record, and District. See Article 13.12.
- 4.35 Separate Contracts are Contracts that the District may have with other Contractors, vendors, suppliers, or entities to perform Work on the Project. This may include, but is not limited to Multi-Prime Trade Contractors, furniture installers, testing agencies, clean-up contractors, or network or low voltage contractors. Contractor shall plan for certain other contractors that may also be working on the Project site and address these other contractors in Contractor's Schedule. See Article 32.
- 4.36 Site refers to the grounds of the Project or in some cases may refer to multiple sites as defined in the Contract Documents and such adjacent lands as may be directly affected by the performance of the Work.
- 4.37 Site Lease means the Site Lease(s) of even date herewith, by and between the District and the Contractor together with any duly authorized and executed amendment thereto under which the District leases the Site to the Contractor.
- 4.38 Specifications are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.
- 4.39 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. Federal, state and local regulations are incorporated into the Contract Documents by reference.
- 4.40 Stop Work Order, or an Order to Comply is issued when either 1) the Work proceeds without DSA approval; 2) the Work proceeds without a DSA Inspector of Record; or 3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code Section 81133.5, the District shall not be held liable in any action filed against the District for any delays caused by compliance with the Stop Work Order
- 4.41 Subcontractor means any person or entity, including trade contractors, who have a contract with Contractor to perform any work or supply materials for the Project.
- 4.42 Substantial Completion means when each of the following three (3) conditions have been met: 1) all contractually required items have been installed with the exception of only minor and Incomplete Punch Items (See Article 13.16); 2) All Fire/Life Safety Systems have been installed, and are working and signed off on the DSA Form 152 Inspection Card, all building systems including mechanical, electrical and plumbing are all functioning; and 3) the Project is fit for occupancy and its intended use. The Parties shall determine the "Date of Substantial Completion" which shall be as indicated in Exhibit F, Construction Schedule.
- 4.43 Substitution is a change in product, material, equipment, or method of construction from those required by the Contract Documents proposed by the Contractor. Specific requirements for substitutions are set forth in Article 16.
- 4.44 Tenant Improvement Payment means any payment required to be made by the District pursuant to the Lease Agreements.

- 4.45 Work shall include all labor, materials, services and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents. It shall include extension of Contractor's obligations to subcontractor to perform Subcontractor Due Diligence including, but not limited to, visiting the Site of the proposed Work (a continuing obligation after the commencement of the Work), fully acquainting and familiarizing itself with the conditions as they exist and the character of the operations to be carried out under the Contract Documents, and make such investigation as it may see fit so that it shall fully understand the facilities, physical conditions, and restrictions attending the Work under the Contract Documents. Each such Contractor or Subcontractor shall also thoroughly examine and become familiar with the Drawings, Specifications, and associated Contract Documents.
- 4.46 Workers include laborers, workers, and mechanics.

5. DUE DILIGENCE

- 5.1 *Documents Reviewed.* Contractor has visited the site, entered and evaluated the structures on the site, reviewed all As-Builts, environmental reports, Asbestos Hazard Emergency Response Act of 1986 reports applicable to the Project, lead reports, reports on any other hazardous substances, reviewed environmental impact reports, reviewed applicable mitigation measures for the Project, and verified to the fullest extent possible by physical inspection and reasonable investigation and without any destructive action, to assure Contractor of the current site conditions, reviewed available records from City and/or County Records on the Project.
- 5.2 *Review of Existing Conditions.* Contractor must have performed basic confirmation of the As-Builts that exist as part of the Due Diligence process. This basic confirmation shall include:
- 5.2.1 Confirmation of overall dimensions of major column lines, location of elements where coordination of new construction to existing construction is to occur, confirmation that the rooms noted are located on the drawings, review and confirmation that rooms have not been reconfigured.
- 5.2.2 Confirmation of location for utilities and supporting infrastructure. Contractor shall review the utilities and confirm that the infrastructure from the As-Builts and Contract Documents are consistent.
- 5.2.3 Confirmation that fire/life safety elements are consistent with expectations of the Contract Documents. Specifically, confirmation of the integrity of one-hour corridors, fire separations, working fire sprinklers, working fire alarms, communications systems, EMS systems, and other systems that are to remain in use and relied upon as part of the anticipated Project.
- 5.2.4 Confirmation of Working hours and specific conditions which will affect the ability to work. Contractor shall check requirements for the local city and county and confirm working hours and days, testing schedules at the District for days when work shall not occur, other critical days when work cannot occur, mitigation measures in the EIR or Negative Declaration that may affect the ability to Work on the Project. This review shall help Contractor build a working schedule for the Project.
- 5.3 *Pre-Construction Review of Contract Documents.*
- 5.3.1 Prior to when required to initially proceed with the Work, the Contractor shall complete a careful and detailed review of all Contract Documents in order to: i) determine and confirm all materials, labor, services and other things of any nature

required to fully complete the Work in accordance with the Contract Documents; ii) determine whether the Contractor perceives any errors, inconsistencies, conflicts, ambiguities, omissions, or lack of sufficient detail or explanation in the Drawings, Specifications or other Contract Documents; iii) determine whether the requirements of the Drawings, Specifications and other Contract Documents conform with all laws, ordinances, codes, rules, regulations and other governmental requirements applicable to the Work, including, without limitation, Title 21 and Title 24 of the CCR, applicable building codes, and utility-company requirements. Neither the requirements of this Section, nor any delay by the Contractor in complying with such requirements, shall be deemed to relieve the Contractor from complying with requirements for commencing and/or completing the Work, and Contractor shall schedule and complete its pre-construction activities to accommodate the review required pursuant to this Section.

- 5.3.2 *Notice After Pre-Construction Review.* If, as a result of this review, the Contractor perceives: i) any error, inconsistency, conflict, ambiguity, omission, or lack of sufficient detail or explanation in the Drawings, Specifications or other Contract Documents; or ii) that any of the Drawings, Specifications or other Contract Documents do not conform in all respects with all laws, ordinances, codes, rules, regulations and other governmental requirements applicable to the Work; then, prior to commencing any portion of the Work, the Contractor shall provide written notice thereof to the District and Architect. Within a reasonable time after notice, and to the extent necessary and appropriate, the Architect will issue a Construction Change Directive or other written directive to the Contractor setting forth a correction or clarification of the matters specified in the notice.
- 5.4 *Ongoing Review of Contract Documents.* The Contractor shall maintain on an ongoing basis such knowledge and understanding of the Contract Documents as necessary for full and timely compliance therewith. At any time during the course of the Work, if the Contractor perceives any error, inconsistency, conflict, ambiguity, omission, or lack of sufficient detail or explanation in the Drawings, Specifications or other Contract Documents, or any non-conformance of the Drawings, Specifications or other Contract Documents with all laws, ordinances, codes, rules, regulations and other governmental requirements applicable to the Work, then the Contractor shall provide written notice to the District and Architect. The Contractor shall provide such notice promptly after discovering any problem with the Contract Documents, so that the matter may be addressed without any resulting delay in the Work or Work by Others. Within a reasonable time after receipt of such notice, and to the extent necessary and appropriate, the Architect will issue an Architect Field Directive or other written directive to the Contractor setting forth a correction or clarification of the matters specified in the notice.
- 5.5 *Price Fluctuations.* As part of Contractor's due diligence responsibilities, Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from District to assure that there will be no delays. Contractor understands that this is a multi-year contract and that materials fluctuate in value and shall have adequately addressed market fluctuations through agreements with Contractor Vendors or by other means. Contractor further understands and incorporates into Contractor's bid cost any wage rate increases during the Project for the Contractor's labor force as well as all other subcontractor and vendor labor forces. Contractor also understands the length of the Project schedule and has incorporated an appropriate budget to include labor, material, and equipment escalation costs into the GMP. At no time will the District accept any costs associated with these increases. District shall not be responsible for market fluctuations in costs or labor rate increases during the Project. Contractor further has incorporated any and all cost increases in areas of Work

where there may be schedule variations so that cost increases are not passed through to the District.

- 5.6 *Coordination Review.* Contractor has thoroughly reviewed the Contract Documents and other Due Diligence documents and has performed, as it determines necessary, site investigations, interviews, constructability reviews, cost estimating, testing, investigation with subcontractors and suppliers on pricing and availability of materials, and other actions to satisfy Contractor that the Project GMP, including the Construction Contingency and Allowance(s), are sufficient for it to reach Final Completion of the Project.
- 5.7 *Implied Warranty Plans Are Fit for Construction Does Not Apply.* Public Contract Code Section 1104 addressing the warranty that plans are fit for construction does not apply to this Project since Contractor has had an opportunity to conduct this Due Diligence Review and set the Construction Contingency to address potential constructability or coordination problems in the plans. District has, however, excluded both underground conditions and hazardous substances from the Construction Contingency due to the unpredictability associated with encountering such conditions. Nevertheless, Contractor is to notify District, conduct testing, and continue with Work on areas containing underground and hazardous conditions so as to not delay the Work.
- 5.8 *Schedule.* Contractor's Due Diligence will also be critical to the Contractor's determination of the number of days required to reach Substantial Completion and Final Completion of the Project. Contractor will determine if the suggested number of days from the District and Architect can be performed and shall also consider whether the Project requires additional Governmental Delay Float or Inclement Weather Float that exceeds that set forth in Article 9. If Contractor does not note any concerns with the suggested Substantial Completion Date or the Final Completion Date at the time of GMP submission, then it is presumed that Contractor is in agreement with the Substantial Completion Date and the Final Completion Date and the Contractor, by entering into the Lease Agreements, has determined for itself that the Substantial Completion Date and the Final Completion Date are realistic, reasonable and includes all required Float under Article 9.

6. SELECTION OF SUBCONTRACTORS

- 6.1 Open Book Accounting. The Contractor's GMP shall be based on actual procured quotes and bids from subcontractors, vendors, and suppliers that are procured as indicated by the RFQ and/or RFP issued by the District and the process outlined therein.
- 6.2 Contractor shall provide the District with full documentation regarding the bids or competitive quotes received by Contractor. In no event shall such documentation be redacted or obliterated.
- 6.3 DVBE. Participation in Disabled Veteran Business Enterprise (DVBE) contracting goals is required under the Contract Documents. In accordance with Education Code section 71028 the District has a DVBE participation goal of 3% per year of the overall dollar amount expended each year by the District. The Contractor shall make good faith efforts to achieve the DVBE participation goal under the Contract Documents. The Contractor must require bidding subcontractors to make a good faith effort to contact and utilize DVBE contractors and suppliers in securing bids for performance of the Project. Their efforts shall be documented on the DVBE Good Faith Effort Form attached to the Facilities Lease. Information regarding certified DVBE firms can be obtained from the Office of Small Business Certification and Resources (OSBCR) at (916) 323-5478 or (916) 322-5060 as well as the OSBCR website at www.dgs.ca.gov/osbcr. Verification of DVBE status must be obtained from the OSBCR by receiving an approved certification letter and reference

number from that office. Contractor must retain documentation of its good faith efforts, in the event such documentation is requested by the District. Good faith efforts are demonstrated by evidence of the following: a) contact was made with the District regarding the identification of DVBEs; b) contact was made with other state agencies and with DVBE organizations to identify DVBEs; c) advertising was published in trade papers and papers focusing on DVBEs; d) invitations to bid were submitted to potential DVBE contractors; and e) available DVBEs were considered.

7. PROJECT MANAGEMENT SOFTWARE

- 7.1 Contractor shall utilize a cloud-based project management software with email interface such as Primavera, Procore, or similar. Contractor shall allow access to the system to the entire team for efficient document management and processing.

8. SAVINGS AND VALUE ENGINEERING

- 8.1 General Intent. "Savings" is the reduction in the expenditure of funds for the construction of the Project on items that 1) exceed the minimum criteria required for the Project and that do not have a corresponding benefit to the District or 2) eliminate excess quality levels or performance criteria provided in the Contract Documents so long as that elimination does not alter the design, aesthetics, safety standards or configuration or space, and does not increase future maintenance and operation costs.

- 8.2 The District and the Contractor shall work cooperatively with each other, in good faith, to identify appropriate opportunities to reduce the Project costs and promote Savings. There are two stages when Savings may be generated. They are 1) Value Engineering and 2) Savings generated through changes, reductions, or subcontractor negotiations that may occur after the GMP is established.

- 8.2.1 *Value Engineering* is a review of systems so excess quality, unnecessary design elements, reconfiguration for efficiency, or other changes may be made to reduce the cost of a project. Sometimes, timing and sequences or re-use of materials that are unique to a project or area may generate Savings. For example, if export soil is generated on a site that may have a substantial cost for transportation and removal could be sold to offset the costs incurred, then a Savings may be generated for the Project. Similarly, if concrete is ground, it may be sold for aggregate rather than as demolished construction materials.

- 8.2.2 *Other Savings* is Savings generated over the course of the Project and which shall be calculated as part of the overall costs for the Project as part of the "Open Book Accounting" of the Project and shall be counted towards Project Savings.

- 8.3 Calculation of Savings. The District may utilize all Savings associated with the Project at its discretion. Contractor shall track all Savings under a monthly report and provided as part of the pay application documents and the Contractor shall provide all information and documents to confirm and reconcile Savings on a monthly basis as part of Open Book Accounting.

- 8.3.1 If Contractor realizes a Savings on any aspect of the Project after the GMP is established and after execution of the Contract Documents, the District intends to allocate those Savings to the Construction Contingency, but reserves the right to allocate those to the District Contingency.

- 8.3.2 Any cost reductions as a result of scope reduction or Deductive Changes Orders may be considered Savings as determined and approved by the District. Contractor shall

track separately all Savings resulting from Deductive Change Orders and, at the District's discretion, will be allocated to the District Contingency. In addition, the Contractor's mark-up on Deductive Change Orders shall be credited after Final Completion of the Project.

- 8.4 If the Contractor fails to accurately track Savings on a monthly basis or fails to provide documents or information to confirm and reconcile Savings on a monthly basis or if District disputes the Contractor's calculation of Savings, the District has the right to independently calculate Savings by adding all expenses for the Project (excluding expenses for either Change Orders or the use of the Construction Contingency), separating out overhead costs and applying the percentage for profit against the GMP (less Change Orders, and Construction Contingency). Any remaining money shall be considered Savings. If the Project expenses exceed the GMP, then there are no Savings for the Project and the GMP shall apply. A separate calculation of whether there are Savings associated with Change Orders under the Construction Contingency may be performed to determine if there are any Savings that remain on these areas and applied to the overall Savings calculation. Any Savings shall be deducted from the GMP and the Cost of Work component of the GMP.
- 8.5 Savings Determined Through Audit. District may, at its own costs, have an audit conducted of the Project related job costs to determine Savings.

9. SCHEDULE

- 9.1 Contract Time: Contractor shall perform and reach the Substantial Completion Date and the Final Completion Date within the time specified in the Contract Documents. Moreover, Contractor shall proceed on a properly developed and approved CPM Master Construction Schedule, which represents the Contractor's view of the practical way in which the Work will be accomplished.
- 9.2 Float: Float is not for the exclusive use or benefit of any single party. Float time shall be apportioned according to needs of the Project, as determined by the District. Float is owned by the Project and may be utilized as necessary for critical path delays once the days become available for consumption (i.e. a Rain Day arrives and is not utilized since rain did not occur or Work was performed on the interior of a building). However, Governmental Delay float shall not be utilized for purposes other than to address critical path delays that arise due to approvals, Inspector approvals or verifications on governmental forms.
- 9.2.1 *Governmental Delay Float.* No less than fifteen (15) days per calendar year shall be set aside as Governmental Float to be utilized on critical path delays. Governmental Delay Float may include, in the District's sole and absolute discretion, delays associated with other governmental agencies that have jurisdiction over the Project, District or campus "black-out" days, testing days, etc. A pro-rated number of days shall be calculated based on length of Contract Time. (For example, if the Contract Time is 182 days, then the Contract Time shall require seven and one half (7.5) days of Governmental Float.) Contractor shall incorporate Governmental Delay Float into the Construction Schedule and in each critical activity as Contractor deems fit. Governmental Delay Float on the Project may exceed fifteen (15) days per one (1) year period, but Contractor is required to include no less than fifteen (15) days of Governmental Delay Float during each one (1) year period.
- 9.2.2 *Inclement Weather (or "Rain Day(s)").* Twenty-two (22) days per calendar year may be recognized as normal inclement weather delay. In order to minimize the initial GMP, Contractor shall incorporate that number of days at the end of the Construction Schedule. A pro-rated number of days shall be calculated based on length of Contract

Time. Additional Rain Days shall be considered under the same criteria that weather days are granted below.

- 9.2.3 *Granting of Days.* The District shall grant a Rain Day only if the weather or impacts of recent weather prevents the Contractor from beginning Work at the usual daily starting time, or prevents the Contractor from proceeding with seventy-five (75%) of the normal labor and equipment force towards completion of the day's current controlling item on the accepted schedule for a period of at least five hours, and the crew is dismissed as a result thereof. The District will designate such time as unavoidable delay and grant one (1) critical path activity calendar-day extension if there is no available Rain Day Float for the calendar year. Further, days to clean-up or dry out shall be included for operations that are likely to require a cleanup or dry out period. Government Delay Float and Increment Weather, if granted by the District, shall be distributed to the Project as approved by the District. Any Rain Days that exceed the above-identified Rain Days may extend the Contract Time, but only if the impact is as indicated here and pursuant to Article 18.6.
- 9.3 Inclusions in Construction Schedule. In addition to Scheduling requirements set forth at Article 9, Contractor is specifically directed to include in Contractor's Construction Schedule and all Schedule updates that provide for the following items required pursuant to these General Construction Provisions, including but not limited to:
- 9.3.1 Minimum Required Elements. The Contractor shall refer to Division 1 of the Specifications for all required elements. The Contractor must specify at least the following elements in the Construction Schedule: i) a single critical path of activities for the Work and any Work by Others; ii) all milestones for "critical" and "constraining" or "controlling" factors as determined by the District, the Architect or the Contractor; iii) a duration of not more than twenty days for any one activity; iv) earliest and latest dates for commencement of each activity; v) earliest and latest dates for completion of each activity; vi) "float" time, if any, for each activity and for the Project overall; vii) order deadlines for long-lead-time items; viii) delivery dates for critical or special equipment and/or materials; ix) dates for providing all submittals to the Architect; x) dates by which each of the Deferred Approvals must be obtained; and (xi) portions of the Work to be performed by any Subcontractor that must be completed prior to commencement of any portions of the Work by any other Subcontractor.
- 9.3.2 Rain Day Float under Article 9.2.2.
- 9.3.3 Governmental Delay Float under Article 9.2.1.
- 9.3.4 Submittal Schedule under Article 9.7 and 15.6.
- 9.3.5 Deferred Approvals under Article 15.3 and 15.6
- 9.3.6 Time for separate contractors, including furniture installation and start up activities, under Article 32.
- 9.3.7 Coordination and timing of any drawings, approvals, notifications, permitting, connection, and testing for all utilities for the Project.
- 9.3.8 Testing, special events, or District activities.
- 9.4 Schedule Updates. Contractor shall update the schedule each month to address actual start dates and durations, the percent complete on activities, actual Substantial Completion Date and Final Completion Date, estimated remaining duration for the Work in progress,

estimated start dates for Work scheduled to start at future times and changes in duration of Work items

- 9.4.1 *Listing of Items Causing Delays.* Schedule Updates shall provide a listing of activities which are causing delay in the progress of Work and a narrative shall be provided showing a description of problem areas, anticipated delays, and impacts on the Construction Schedule. Simply stating “District Delay” or “Architect Delay” shall be an inadequate listing.
- 9.4.2 *Recovery Schedule.* In addition to providing a schedule update every thirty (30) days, the Contractor, shall take the steps necessary to improve Contractor’s progress and demonstrate to the District and Architect that the Contractor has seriously considered how the lost time, the Substantial Completion Date and the Final Completion Date, or the milestones that are required to be met within the terms of the Contract. Contractor shall provide a Recovery Schedule showing how Milestones and the Substantial Completion Date and the Final Completion Date will be met.
- a. If Contractor fails to provide a recovery schedule, Contractor shall be subject to the assessment of Liquidated Damages for failure to meet the Substantial Completion Date and the Final Completion Date.
- 9.5 Time of the Essence. Time limits stated in the Contract Documents are of the essence to the Contract. By executing the Lease Agreements, the Contractor confirms that the Substantial Completion Date and the Final Completion Date are reasonable periods for performing the Work.
- 9.6 Commencement and Diligent Performance of Work. The Contractor must commence performance of the Work upon the issuance of notice(s) to proceed and, thereafter, must diligently perform all acts and cause to be done all other things necessary to complete the Project within the time period(s) specified in the Construction Schedule, including, without limitation: (i) performing all required Work; (ii) obtaining all required services; (iii) providing an adequate workforce at all times; and (iv) providing sufficient quantities of equipment, materials and supplies when needed. If the performance of the Work falls behind schedule, the Contractor must provide to the District and the Architect a proposed revision to the Construction Schedule that clearly specifies how the Contractor will bring the Work back into conformance with the time for completion required pursuant to the Contract Documents (“Recovery Schedule”). Each Recovery Schedule is subject to approval by the District. Upon approval of the Recovery Schedule, it shall be incorporated into a Revised Baseline Construction Schedule and the Contractor must, at its cost, accelerate and/or do all other things as necessary to complete the Project within the time specified in the revised Construction Schedule.
- 9.7 Time for Preparing Submittals Must Be Incorporated in Schedule: Contractor shall include Submittals as line items in the Construction Schedule. Time for preparing and coordinating Submittals shall not delay the Work, Milestones, or the Substantial Completion Date and the Final Completion Date and shall be in conformance with Article 15.
- 9.7.1 Failure to provide the submittals by the listed timelines will subject the Contractor to the assessment of Liquidated Damages for failure to meet the Contract timelines.

10. INSPECTION OF WORK/ PROJECT INSPECTOR AND ARCHITECT

- 10.1 Inspection of Work/Project Inspector. The District shall hire its own Division of State Architect Project Inspector as required by law. District, District’s Representatives, and the Division of the State Architect shall at all times have access to the work whether it is in

preparation or progress, and Contractor shall provide proper facilities for such access and for inspection.

- 10.1.1 *General.* One or more project inspectors employed by the District and approved by the Division of the State Architect will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Project Inspector(s) duties are as specifically defined in Title 24 Section 4-333 and 4-342 and in DSA IR A-8.
- 10.1.2 *Project Inspector's Duties and DSA Noted Timelines for Inspection.* All Work shall be under the observation of the Project Inspector. Contractor shall establish a protocol for requesting inspection with Project Inspector so as to not delay the Work and provide adequate time for the Project Inspector to perform inspection. If such a protocol is not established ahead of time, Project Inspector may utilize the time criteria set by Title 24 of 48 hours in advance of submitting form DSA 156 for each new area. The Project Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Project Inspector such information as may be necessary to keep the Project Inspector fully informed regarding progress and manner of Work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Contract, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Project Inspector is not authorized to make changes in the drawings or specifications nor shall the Project Inspector's approval of the Work and methods relieve the Contractor of responsibility for the correction of subsequently discovered defects, or from its obligation to comply with the Contract Documents.
- 10.1.3 *Electronic Posting.* Project Inspector shall electronically post DSA required documents on the DSA electronic posting website. It is the Contractor's responsibility to determine the status of posting and determine if all the criteria for sign off of a category of Work on the Project Inspection Card (Form DSA 152) as defined more thoroughly in the most current version of the DSA 152 manual posted on the DSA website.
- 10.1.4 *Incremental Approvals under PR-13.* Project Inspector may collaborate with Contractor about approval of areas that may be constructed and approved incrementally under the DSA 152 card pursuant to the guidelines of PR-13. Project Inspector shall work with Contractor to present incremental approval proposals to DSA.
- 10.1.5 *Project Inspector's Authority to Reject or Stop Work.* The Project Inspector shall have the authority to reject Work whenever provisions of the Contract Documents are not being complied with, and Contractor shall instruct its Subcontractors and employees accordingly. In addition, the Project Inspector may stop any Work that poses a probable risk of harm to persons or property. The Contractor shall instruct its employees, Subcontractors, material and equipment suppliers, etc., accordingly. The absence of any Stop Work Order or rejection of any portion of the Work shall not relieve the Contractor from any of its obligations pursuant to the Contract Documents.
- 10.1.6 *Testing Times.* The District will provide inspection and testing at its cost during the normal eight (8) hour day Monday through Friday (except holidays). Work by the Contractor outside of the normal eight (8) hour day shall constitute an authorization from the Contractor to the District to provide inspection and testing as required outside of the normal eight (8) hour day. Contractor shall provide adequate time for inspections so as to not delay the Work. An advanced timing protocol may be

established pursuant to this Article 10. If the Contractor is behind Schedule then it is incumbent on the Contractor to provide advance forecast through look ahead of the anticipated date for inspection so the Project Inspector may plan their activities so as to not delay the Project. Contractor shall reimburse District for any additional costs associated with inspection and testing (including re-inspection and re-testing) outside the normal eight-hour day and for any retests caused by the Contractor pursuant to Article 10.4.

- 10.1.7 *Contractor Is Required to Coordinate Testing and Inspections.* It is the Contractor's responsibility to request special inspections with sufficient time so all testing may be timely completed and posted so work may proceed and the Project Inspector's signature is attached to the Project Inspection Card (Form 152). Specifically, timely request for special inspection under the DSA Verified Report Forms 291 (Laboratory), DSA Verified Report Form 292 (Special Inspection), and DSA Verified Report 293 (Geotechnical) since DSA requirements under PR 13-01 specifically gives the Special Inspections 14 days to post to the DSA website. Failure to plan and pay (if applicable) for quicker delivery of Special Inspections may be counted as Float, but is not considered Governmental Delay Float under Article 9.2.1.
- 10.1.8 *Special Inspection Out of State, Out of Country or Remote from Project.* If Contractor has a subcontractor or supplier that requires in plant or special inspections or tests that are out of the Country, out of State or a Distance of more than 200 miles from the Project site, the District shall provide the Special Inspector or individual performing tests time for inspection and testing during normal work hours. Contractor, however, is responsible for the cost of travel, housing, food, out of area premiums that may be in the inspector/testing agreement with District, or other expenses necessary to ensure proper inspection or testing is provided by a DSA Certified Inspector, Special Inspector, or individual performing tests. In some cases all three (DSA Inspector, Special Inspector, and Testing) may be required. In addition, if the DSA Certified Inspector, Special Inspector, or individual performing test has contractual travel clauses or special rates for out of town inspection, Contractor is responsible for all costs associated with the contractual travel costs in addition to all other costs. Arrangements for inspection and/or testing shall be made far enough in advance so as to not delay the Work.
- 10.2 STOP WORK ORDER. DSA may issue a Stop Work Order, or an Order to Comply, when either 1) the Work proceeds without DSA approval; 2) the Work proceeds without a DSA Project Inspector, or 3) where DSA determines that the Work is not being performed in accordance with applicable rules and regulations, and would compromise the structural integrity of the Project or would endanger lives. If a Stop Work Order is issued, the Work in the affected area shall cease until DSA withdraws the Stop Work Order. Pursuant to Education Code Section 81133.5, the District shall not be held liable in any action filed against the District for any delays caused by compliance with the Stop Work Order, except to the extent that an error or omission by the District is the basis for the issuance of the Stop Work Order.
- 10.3 *[RESERVED]*
- 10.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE DISTRICT FOR PROFESSIONAL SERVICES
 - 10.4.1 If at any time prior to the Final Completion Date, the District is required to provide or secure additional professional services (including CM, Inspection, Architect, Engineering and Special Consultant Services) for any reason by any act of the Contractor, the District may seek a Deductive Change Order for any costs incurred for

any such additional services, which costs shall be deducted from the next Tenant Improvement Payments and/or Lease Payments. A Deductive Change Order shall be independent from any other District remedies and shall not be considered a waiver of any District rights or remedies. District will develop a tracking mechanism to track the deductive CORs required for the items identified in this Section. Contractor will be advised of the associated costs and will be given proper notification and reporting of the potential deductive change order amounts. If payments then or thereafter due to the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the District. Additional services shall include, but shall not be limited to, the following:

- a) Services made necessary by the default of the Contractor (Article 12.2 or Article 9).
- b) Services made necessary due to the defects or deficiencies in the Work of the Contractor.
- c) Preparation of a CCD or ICD to correct a Contractor Deficiency or Contractor Caused Notice of Non-Compliance (Article 17.2)
- d) Services required by failure of the Contractor to perform according to any provision of the Contract Documents.
- e) Services in connection with evaluating substitutions of products, materials, equipment, Subcontractors' proposed by the Contractor, and making subsequent revisions to drawings, specifications, obtaining DSA approvals, DSA costs for review of CCD's, other governmental agency review costs, and providing other documentation required (except for the situation where the specified item is no longer manufactured or available). (Article 16)
- f) Services for evaluating and processing Claims or Disputes submitted by the Contractor in connection with the Work outside the established Change Order process.
- g) Services required by the failure of the Contractor to prosecute the Work in a timely manner in compliance within the specified time of the applicable Substantial Completion Date and/or Final Completion Date.
- h) Services in conjunction with the testing, adjusting, balancing, and start-up of equipment other than the normal amount customarily associated for the type of Work involved.
- i) Services in conjunction with more than one (1) re-review of submittals of shop drawings, product data, samples, RFI's, etc.

11. ARCHITECT

- 11.1 Architect's Status. In general and where appropriate and applicable, the Architect shall observe the progress and quality of the work on behalf of the District. The Architect shall have the authority to act on behalf of District only to the extent expressly provided in the Contract Documents. After consultation with the Project 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 reasonable opinion to insure the proper execution of the Contract Documents. Contractor further acknowledges that the Architect shall be, in the first instance, the judge of the performance of the Contract Documents.

- 11.2 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 Project.

12. DISTRICT RESPONSIBILITIES

- 12.1 District Site Representations. District warrants and represents that, District has, and will continue to retain at all times during the course of construction, legal title to the Site and that said land is properly subdivided and zoned so as to permit the construction and use of said Site. District further warrants and represents that title to said land is free of any easements, conditions, limitation, special permits, variances, agreements or restrictions which would prevent, limit, or otherwise restrict the construction or use of said facility. However, in the event easements for permanent structures or permanent changes in existing facilities are necessary, they shall be secured and paid for by District, unless otherwise specified. Reference is made to the fact that District has provided information on the Site to Contractor. Such information shall not relieve the Contractor of its responsibility; and the interpretation of such data regarding the Site, as disclosed by any borings or other preliminary investigations, is not warranted or guaranteed, either expressly or implicitly, by the District. The Contractor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site and for having satisfied itself as to the conditions under which the work is to be performed. After the Due Diligence engaged in by Contractor to establish a proper price for the GMP, no claim for any additional time or payment because of Contractor's error or negligence in acquainting himself with the conditions at the Site will be recognized except as specifically noted as unforeseen under Article 13.15.5 or Article 18.2.

- 12.2 Partial Default: District's Right to Take Over Work (Two (2) Day Notice to Cure and Correct). If the Contractor Defaults or neglects to carry out the Work in accordance with the Contract Documents, the District may provide a two (2) business day written notice to cure (a shorter period of time in the case of Emergency or a critical path delay) Contractor's Partial Default in a specific segregated area of work. The District's right to issue a Partial Default of the Contractor's Work and take over that segregated area of Work includes, but is not limited to:

- a) Failure to supply adequate workers on the entire Project or any part thereof;
- b) Failure to supply a sufficient quantity of materials;
- c) Failure to perform any provision of this Contract;
- d) Failure to comply with safety requirements, or due to Contractor is creation of an unsafe condition;
- e) Cases of bona fide emergency;
- f) Failure to order materials in a timely manner;
- g) Failure to prepare deferred-approval items or Shop Drawings in a timely manner;
- h) Failure to comply with the Construction Schedule or Update Schedule, meet critical Milestones which would result in a Delay to the Critical Path, or Delay the Substantial Completion Date and the Final Completion Date;

- i) Failure to comply with the Subletting and Subcontracting Fair Practices, Public Contract Code section 4100, et seq.
- j) Failure to meet the requirements of the American's with Disabilities Act;
- k) Failure to complete Punch List work;
- l) Failure to proceed on an Immediate Change Directive

- 12.2.1 *Failure to correct a Notice of Deviation.* If during the two (2) business day period, the Contractor fails to cure and correct the deficiency noted in the notice of Partial Default with diligence and promptness, the District may correct such deficiencies without prejudice to other remedies the District may have, including a Termination for Cause as set forth in Article 19.
- 12.2.2 *Service of Notice of Partial Default with Right to Cure.* A written notice of Partial Default and right to cure under Article 12.2 shall be served by e-mail to the e-mail address provided on the Bid submitted and copied to the Project Superintendent.
- 12.2.3 *Shortened Time for Partial Default in the Case of Emergencies.* In an Emergency situation, the District may correct any of the deficiencies described in Article 12.2 without prejudice to other remedies by providing service of written notice of Emergency requiring a shortened time for Partial Default specifying the time given to cure, if any.
- 12.2.4 *Shortened Time for Partial Default in the Case of Critical Path Delay.* In the case of critical path delay, the District may correct any of the deficiencies described in Article 12.2 without prejudice to other remedies providing service of written notice of Critical Path Delay to the Contractor with a specific description of the critical path delay items noting the line item or area of Work that is on the Critical Path and prescribe the length of shortened time to cure, if any.
- 12.2.5 *Written Notice of Partial Default to be Deducted by Deductive Change Order.* The District shall have the right to determine the reasonable value of the Article 12.2 Partial Default Work, or if there is an actual value for the Work, shall use that value and issue a Deductive Change Orders under Article 17.7.

13. CONTRACTOR RESPONSIBILITIES.

- 13.1 Full Time Supervision. Contractor shall keep on the Work at all times during its progress a competent, English speaking construction Superintendent satisfactory to the District. The Superintendent shall be present on a full-time basis, shall be dedicated exclusively to the Project and shall not share superintendency duties with another project or job. The Superintendent shall not be replaced except with written consent of the District. The Superintendent shall represent the Contractor in its absence and shall be fully authorized to receive and fulfill any instruction from the Architect, the Inspector, the District or any other District representative (including CM in the cases where the District has a CM representative). All Requests for Information shall be reviewed and signed by the Superintendent and Project Manager and responses thereto shall be given to the Superintendent and Project Manager. The Superintendent shall have authority to bind Contractor through the Superintendent's acts. The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be binding on the Contractor. Before commencing the Work, Contractor shall give written notice to District (and CM representative) and Architect of the name and a Statement of Qualifications of such superintendent. Superintendent shall not be changed except with written consent of

District, unless a superintendent ceases to be in Contractor's employ, in which case, Contractor shall notify District and Architect in writing. Contractor shall provide a replacement superintendent approved by the District prior to performing additional work.

13.2 Replacement or Changing Project Manager. Project Manager shall not be changed except with written consent of District, unless a Project Manager ceases to be in Contractor's employ, in which case, Contractor shall notify District and Architect in writing. Contractor shall provide a replacement Project Manager approved by the District prior to performing additional work. District shall have the right, at any time, to direct a change in Contractor's Project Manager if performance is unsatisfactory, as determined by District, in its sole discretion.

13.3 Contractor's Staff.

13.3.1 Notwithstanding other requirements of the Contract Documents, the Contractor and each Subcontractor shall: 1) furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; 2) organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and 3) keep an adequate force of skilled and fit workers on the job reach Final Completion of the Project in accordance with all requirements of the Contract Documents.

13.3.2 District reserves the right to assess a one-time fee equal to 25% of the annual, burdened full-time employee salary for any Superintendent or Project Manager that (1) remains Contractor's employee and (2) Contractor removes from the Project without the District's prior written consent.

13.4 Contractor shall give efficient supervision to the work, using its skill and attention and shall cause working drawings and specifications to be prepared and submitted to the District. Following agreement by Contractor and District with respect to said working drawings and specifications, it shall be Contractor's responsibility to perform the work described in said working drawings and specifications in substantial compliance with the Contract Documents.

13.5 Right to Remove. District shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier.

13.6 Discipline. The Contractor shall enforce strict discipline and good order among the Contractor's and Subcontractor's employees, and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. As used in this subsection, "unfit" includes any person who the District concludes is improperly skilled for the task assigned to that person, who fails to comply with the requirements of this Article 13, or who creates safety hazards which jeopardize other persons and/or property.

13.7 Labor and Materials

13.7.1 *Contractor to Provide.* Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, air conditioning, utilities, transportation, and other facilities, services and permits necessary for proper execution and Final Completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

- 13.7.2 *Quality.* Unless otherwise specified, all materials and equipment to be permanently installed in the Project shall be new and shall be of the highest quality or as specifically stated in the Contract Documents. The Contractor shall, if requested, furnish satisfactory evidence as to kind and quality of all materials and equipment within ten (10) days of a written request by the District, including furnishing the District with bona fide copies of invoices for materials or services provided on the Project. All labor shall be performed by workers skilled in their respective trades, and shall be of the same or higher quality as with the standards of other public construction.
- 13.7.3 *Replacement.* Any work, materials, or equipment, which do not conform to these requirements or the standards set forth in the Contract Documents, may be disapproved by the District, in which case, they shall be removed and replaced by the Contractor at no additional cost or extension of time to the District.
- 13.8 *Requests for Information Regarding the Work or the Contract Documents.*
- 13.8.1 *Submittal to District and Architect.* The Contractor may submit to the District and the Architect a written request for information regarding the Work or the Contract Documents (each an "RFI") at any time the Contractor reasonably: i) does not understand any requirement of the Contract Documents relating to the performance of the Work; ii) is not sure or believes that the Contract Documents do not sufficiently detail or describe a portion of the Work; or iii) believes that information or an interpretation of the Contract Documents otherwise is necessary to permit the Contractor to proceed with the Work. The Contractor must provide copies of each RFI to the Project Inspector. The Contractor must submit an RFI sufficiently in advance as will avoid and/or prevent any delays in the Work or any Work by Others. Therefore, the Contractor must review and understand the requirements for each of the various portions of the Work sufficiently in advance of undertaking such portions of the Work so that, if necessary, the Contractor can timely submit an RFI. Each RFI must: i) be in writing on the "Request for Information" form provided by and/or approved in advance by the District"; ii) sufficiently identify the specific portion of the Contract Documents that is the subject of the RFI, including, without limitation, Drawing and detail number, Specification section, page number, etc.; iii) describe in reasonable detail what the Contractor does not understand, what the Contractor believes is not sufficiently detailed or provided for, or other matter that is the subject of the RFI; and iv) describe the Contractor's interpretation or suggested resolution of the matter that is the subject of the RFI.
- 13.8.2 *Each RFI Must be Submitted Timely and in Good Faith.* The Contractor must submit each RFI in good faith, and must not abuse the RFI process, including, without limitation, by requesting that the District and the Architect provide information that is equally available to the Contractor. The Contractor shall be responsible and liable for any and all costs and/or delays, including, without limitation, costs of additional professional services incurred by the District, arising from any failure by the Contractor to comply with the requirements of submitting RFIs.
- 13.8.3 *Review and Response to RFI.* The District and/or the Architect may return an RFI to the Contractor for clarification or additional information if the RFI does not set forth information reasonably sufficient for the District and the Architect to fully understand the Contractor's question or issue. The District and/or the Architect will respond in writing to each sufficiently-detailed RFI. The District and/or the Architect will provide copies of the response to an RFI to the Project Inspector. If the response indicates that a change in the Work is required, the change shall be implemented by means of Record of Change.

- 13.9 [RESERVED]
- 13.10 Budget/Cash Flow Reports. The Contractor shall incorporate approved changes as they occur, and develop cash flow reports and forecasts for submittal to the District on a monthly basis. The Contractor shall provide regular monitoring of the approved estimates of Construction Costs, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Contractor shall identify variances between actual and budgeted or estimated costs, and advise the District and the Architect whenever Project costs exceed budgets or estimates. The Contractor shall maintain cost accounting records on authorized additional services or work performed under unit costs, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.
- 13.11 Progress Reports. The Contractor shall record the progress of the Project, and shall submit monthly written progress reports to the District and the Architect including information on the entire Project, showing percentages of completion and the number and amounts of proposed Work Modifications and their effect on the Construction Costs as of the date of the report. The Contractor shall also keep a daily log containing a record of weather, Contractors, work on the site, number of workers, work accomplished, problems encountered, and other similar relevant data as the District may require. The Contractor shall make the log available to the District and the Architect. The District shall be promptly informed of all anticipated delays. In the event that the Contractor determines that a schedule modification is necessary, the Contractor shall promptly submit a revised Schedule for approval by the District
- 13.12 Schedule of Values.
- 13.12.1 *Break Down of Schedule of Values.* A detailed Schedule of Values shall be submitted, in accordance with the Contract Documents and Exhibit C. The Schedule of Values shall be broken down by Project, site, building, milestone, or other meaningful method to measure the level of Project Completion as determined by the District. The Schedule of Values shall include, but not be limited, to the Subcontractor Costs, the costs for the Submittals, Punch Lists (maximum of 2% of total cost of the work), Commissioning and Start-Up, and Closeout Submittals/As-Builts (minimum of 2% of total cost of the work).
- 13.12.2 *Based on Contractor Bid Costs.* The Schedule of Values shall be based on the costs from Contractor's bid to the District. However, the submission of the Schedule of Values shall not be front loaded so the Contractor is paid a greater value than the value of the Work actually performed and shall not shift funds from parts of the Project that are later to Work that is performed earlier.
- 13.12.3 *Largest Dollar Value for Each Line Item.* Identify subcontractors and materials suppliers proposed to provide portions of Work equal to or greater than ten thousand dollars (\$10,000) or one-half (1/2) of one percent (1%) of their Contract Price, whichever is less.
- 13.12.4 *Allowances.* Any Allowances provided for in the Contract shall be a line item in the Schedule of Values.
- 13.12.5 *Labor and Materials Shall Be Separate.* Labor and Materials shall be broken into two separate line items unless specifically agreed in writing by the District.
- 13.12.6 *District Approval Required.* The District shall review all submissions of Schedule of Values received pursuant to this Article 13 in a timely manner. All submissions must be approved by the District before becoming the basis of any payment.

- 13.13 Scheduling. Contractor shall reach Substantial Completion and Final Completion pursuant to the CPM Construction as required under Article 9.
- 13.14 As Builts. Throughout the duration of the Project, Contractor shall maintain on a current basis an accurate and complete set of As-Built Drawings (and Annotated Specifications) clearly showing all changes, revisions to specifications and substitutions during construction, including, without limitation, field changes and the final location of all electrical and mechanical equipment, utility lines, ducts, outlets, structural members, walls, partitions, and other significant features. In case a specification allows Contractor to elect one of several brands, makes, or types of material or equipment, the annotations shall show which of the allowable items the Contractor has furnished. The Contractor will update the As-Built Drawings and Annotated Specifications as often as necessary to keep them current, but no less often than weekly. When requested by the District during the Project, Contractor shall provide an electronic copy of the updated as-builts for District use. Refer to Article 13.16 for additional requirements.
- 13.14.1 *Updates.* Contractor shall update As-Built Drawings with complete information on an area of Work at or near the time when the Work is being performed and prior to any DSA 152 sign off and prior to any Work being covered.
- 13.14.2 *Storage.* The As-Built Drawings and Annotated Specifications shall be kept at the Site and available for review and inspection by the District and the Architect. Failure to maintain and update the As-Built Drawings is a basis to withhold Tenant Improvement Payments and/or Lease Payments pursuant to Article 29.3.
- 13.14.3 *As-Builts at Completion of Work.* Prior to Final Completion of the Work, the Contractor shall provide one neatly prepared and complete set of As-Built Drawings and Annotated Specifications to the District. Contractor shall certify the As-Builts as a complete and accurate reflection of the actual construction conditions of the Work by affixing a Stamp indicating the Drawings are As-Builts and Certifying Accuracy on the final set of As-Builts. Contractor shall also scan the As-Builts in color and provide a complete PDF copy on a flash drive to the Architect and the District.
- 13.14.4 *Log of Control and Survey Documentation.* Contractor shall complete and maintain an accurate log or all control and survey documentation for the Project as the Work progresses. All reference and control points shall be recorded on the As-Built drawings. The basis of elevations shall be one of the established benchmarks that must be maintained on the As-Builts.
- 13.14.5 *Record Coordinates for Key Items.* Contractor shall record, by coordinates, all utilities on-site with top of pipe elevations, major grade and alignment changes, rim, grate or top of curb and flow line elevations of all drainage structures and sewer manholes. Contractor shall update record information at or near the time when work is occurring in an area and prior to DSA 152 sign off on any category of Work and prior to covering the Work.
- 13.14.6 *BIM As-Built Drawings.* If BIM is utilized for the Project, then an electronic version of such As-Built Drawings and Annotated Specifications shall be delivered to District (in an acceptable format to District).
- 13.15 Miscellaneous Obligations of Contractor
- 13.15.1 *District Permit and Other Obligations.* It is expressly understood that the District shall pay for the Project Inspector, soils testing, DSA fees, special testing, etc. If additional review or permits become necessary for reasons not due to Contractor's fault or

because of DSA requirements or regulations implemented after the date the GMP is established and not reasonably anticipated at the time the GMP is established, Contractor may seek compensation only for the direct cost (without mark up or added fees) of that review, as an additional cost. In the alternative, District may pay such costs directly to DSA. (Offsite costs and additional inspection costs)

- 13.15.2 *Contractor Permit Obligations.* Contractor shall pay for all remaining general building permits and ancillary permits and licenses not paid by District prior to the commencement of the Project. Contractor shall also be responsible for arranging and overseeing all necessary inspections and tests, including inspections by the DSA, permits and occupancy permits, and ensure compliance with any Federal and State laws. All 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 by District at least one (1) week in advance of when the payment is due. Contractor may either request reimbursement from District for such fees (at direct cost only), or obtain the funds from District prior to paying such fees.
- 13.15.3 *Protection.* The Contractor shall establish procedures for the protection of all existing structures, equipment, utilities, and other existing improvements, both on site and off site.
- 13.15.4 *Nuisance Abatement.* The Contractor shall develop a mutually agreed upon documented program with the District to abate and minimize noise, dust, and disruption to normal activities at the existing facilities on the Site, including procedures to control on site noise, dust, and pollution during construction.
- 13.15.5 *Underground Conditions.* Contractor shall be required to undertake Work at its sole cost for items identified in the Due Diligence Documents provided to Contractor. For underground conditions below four (4) feet and hazardous substances that differ from representations in Contract Documents or Due Diligence Documents, Contractor shall provide notice within five (5) days after the discovery of the occurrence of the underground conditions. If Due Diligence documents and information provided to Contractor does not provide notice of the underground condition(s) then the costs for such work shall be added as an Extra pursuant to Article 17. Notwithstanding the above, costs may be billed to Construction Contingency if, in the District's reasonable determination, those conditions should have been discovered by Contractor during the Contractor's Due Diligence.
- 13.15.6 *Utilities.* The Contractor shall perform and pay for all temporary utility hook ups and connections; the District shall pay for use of utilities during construction, as well as any fees owed to utility suppliers for connection to existing mainline facilities, unless noted otherwise in the Contract Documents. Buildings shall be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections shall be made and existing services reconnected.
- 13.15.7 *[RESERVED]*
- 13.15.8 *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 its expense, in accordance with the Contract Documents. 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.

- 13.15.9 *Cutting and Patching.* 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. All cost caused by defective or ill-timed work shall be borne by party responsible therefore. 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.
- 13.15.10 *Documents on the Project Site.* Contractor shall keep a minimum of one copy of all Contract Documents, including addenda, Record of Changes, Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24, and Title 22 of the California Code of Regulations, and the prevailing wage rates applicable to the Project, 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 representatives. Contractor shall be acquainted with and comply with the provisions of said Titles 21, 22 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, 22 and 24.) Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request of District.
- 13.15.11 *Contractor to Bind Subcontractors to the Provisions of this Contract.* Contractor shall ensure that Subcontractors are bound to the same extent as Contractor is bound to District.
- 13.15.12 *Contractor Responsible for Means and Methods.* Contractor shall be solely responsible for the construction means, methods, techniques, sequences, procedures, and coordinating all portions of the work under the Contract Documents, unless the Contract Documents give other specific instructions concerning these matters. Contractor shall be responsible to see that the finished work complies accurately with the Contract Documents. Contractor shall not perform the work without utilizing the Contract Documents or, where required, approved shop drawings, product data, or samples for any such portion of the work.
- 13.15.13 *Contractor Responsible for Acts and Omissions of Employees.* Contractor shall be responsible to District for acts and omissions of Contractor's employees, subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the work under direct or indirect contract with Contractor or any of its subcontractors.
- 13.15.14 *General DSA Compliance.* During the term of the Lease Agreements, Contractor shall coordinate its services with the District, Architect, Project Inspector, and other parties to ensure that all requirements set forth in the DSA's Inspection Card (Form 152) and any subsequent revisions or updates thereto issued or required by DSA, or any other/alternate processes are being met in compliance with DSA requirements. Contractor shall take all action necessary as to not delay progress in meeting any DSA requirements. Contractor shall meet any applicable requirements set forth in DSA's Construction Oversight Process Procedure (PR 13-01) and any subsequent revisions or updates thereto issued or required by DSA. Any references to DSA requirements for the Project shall be deemed to include and incorporate any revisions or updates thereto.

13.16 Closeout

- 13.16.1 *All DSA Closeout requirements (See DSA Certification Guide).* Contractor is also specifically directed to Item 3.2 in the DSA Certification Guide and the applicable certificates for the DSA-311 form.
- 13.16.2 *Punch List Is Prepared Only After the Project Is Substantially Complete.* If any of the conditions noted in Substantial Completion are not met, the Project Inspector, Architect or the District may reject the Contractor's request for Substantial Completion. The Project Inspector and Architect shall prepare a Punch List of items which is an inspection report of the Work, if any, required in order to reach Final Completion and ensure compliance with the DSA Approved Plans so the Project may reach Final Completion by the Contractor and a final DSA Closeout is approved. When all Punch Lists and all Work complies with the approved Contract Documents and Change Orders, the Project has reached Final Completion.
- 13.16.3 *Time for Completion of Punch List.* Contractor shall only be given a period of no more than thirty (30) days to complete the Punch List on Project. During the Punch List period Contractor Superintendent and Project Manager shall remain engaged in the Project and shall not be removed or replaced. If the Punch List is not completed at the end of the Punch List time then Contractor shall issue a valued Punch List within 5 days after the date the Punch List time ends. If Contractor does not issue such a list, the Owner or Architect may issue a valued Punch List to the Contractor and withhold up to 150% of the value of the Punch List Work.
- 13.16.4 *As-Builts Up to Date and Complete.* The intent of this procedure is to obtain an exact "As-Built" record of the Work upon Final 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 As-Built drawings
- a. The exact location and elevations of all covered utilities, including valves, cleanouts, etc. must be shown on As-Builts
 - b. Contractor is liable and responsible for inaccuracies in As-Built drawings, even though they become evident at some future date.
 - c. Upon Final Completion of the Work, Contractor shall obtain the Project Inspector's approval of the "As-Built" information. When completed, Contractor shall deliver corrected sepias and/or a Diskette with an electronic file in a format acceptable to the District.
 - d. District may withhold the cost to hire a draftsman and potholing and testing service to complete Record As-Built Drawings at substantial cost if the Contractor does not deliver a complete set of Record As-Built Drawings. This shall result in withholding of between \$10,000 to \$20,000 per building that does not have a corresponding Record As-Built Drawing.
 - e. Any Work not installed as originally indicated on drawings.
- 13.16.5 *Submission of Form 6-C.* Contractor shall be required to execute a Form 6-C as required under Title 24 Sections 4-343. The Contractor understands that the filing with DSA of a Form 6-C is a requirement to obtain final DSA Approval of the Construction by

Contractor and utilized to verify under penalty of perjury that the Work performed by Contractor complies with the DSA approved Contract Documents.

- 13.16.6 *Contractor shall be Responsible for All Costs to Certify the Project.* The District may Certify the Project complies with Approved Plans and Specifications by utilizing the procedures under the Project Certification Guide (Located at the DSA website at http://www.documents.dgs.ca.gov/dsa/plan_review_process/project_certification_guide_updated_03-15-13.pdf). All costs for professionals, inspection, and testing required for an alternate Project Certification shall be the Contractor's responsibility and the District reserves its right to institute legal action against the Contractor and Contractor's Surety for all costs to Certify the Project and all costs to correct Non-Compliant Work that is discovered during the Alternate Certification Process.
- 13.16.7 *ADA Work that must be corrected* to receive DSA certification. See Article 41.
- 13.16.8 *Maintenance Manuals.* Submit manuals in accordance with the Contract Documents.
- 13.17 Correction of Work: Warranty. Neither final payment nor any provision in the Contract Documents shall relieve Contractor of responsibility for faulty materials or workmanship incorporated in the Project. Contractor warrants that all work under the Contract Documents will be free of faulty materials or workmanship and hereby agrees, within ten (10) days upon receiving notification from District, to remedy, repair or replace, without cost to District, all defects which may appear as a result of faulty materials or workmanship in the Project, at any time, or from time to time, during a period beginning from the date of the Notice to Proceed and ending two (2) years after the date of Final Completion of the Project, as defined in Article 18 hereof. The foregoing warranty of Contractor also applies to the remedy, repair or replacement of defects which may appear as a result of faulty designs prepared by Contractor and/or any party retained by, through or under Contractor in connection with the Project, but the foregoing warranty of Contractor does not guarantee against damage to the Project sustained by use, wear, intentional acts, accidents, or lack of normal maintenance or as a result of changes or additions to the Project made or done by parties not directly responsible to Contractor, except where such changes or additions to the Project are made in accordance with Contractor's directions. No guarantee furnished by a party other than Contractor with respect to equipment manufactured or supplied by such party shall relieve Contractor from the foregoing warranty obligation of Contractor. The warranty period set forth herein above shall not apply to latent defects appearing in the Project, and with respect to such defects, the applicable statute of limitations shall apply. Contractor agrees to provide the District with all equipment and materials warranties provided by manufacturers to District but has no obligation to assist in processing such warranty claims after said two (2) year warranty period.
- 13.17.1 *Assignment of Subcontracts.* Upon the end of the Warranty period, Contractor shall assign to the District all subcontracts with subcontractors, material suppliers or other vendors that provided Work for the Project. This assignment shall include all purchase orders and any change orders or addenda that were executed with the assigned subcontractor.
- a. Documents to be Provided to District. Contractor shall provide the following documents to the District as part of Closeout of the project:
- i. *Subcontractor Warranty.* Contractor shall provide any warranty documents, including warranties consistent with the requirements of this Contract and the Contract Documents. Contractor shall utilize the District's standard form.

ii. *Contracts.* Contractor shall provide copies of all subcontracts, amendments, change orders and other documents associated with the subcontractor's scope of work and price for work on the Project.

iii. *Subcontractors Bound to the Same Extent as Contractor.* The Subcontractors shall be bound to the same extent as the Contractor is bound by these General Construction Provisions and Subcontractors shall be required to include assignment of their contracts to the District.

iv. *Bonds Assignable.* Contractor shall ensure that subcontractor performance and payment bonds are assignable and can be assigned to the District.

v. *Unconditional Releases.* Contractor shall provide, Unconditional Releases in accordance with the Contract Documents for each Subcontractor and Material supplier that provided Work for the Project.

vi. *Project Files.* Contractor shall provide the District a copy of the entire subcontractor file, including any submittals or shop drawings that were provided by subcontractor.

vii. *District Reserves the Right to Assume Subcontractor Contracts Prior to the End of the Warranty Period.* District reserves the right to take assignment of subcontractor contracts prior to the end of the warranty period.

13.18 Assignment of Anti-Trust Claims. The Contractor offers and agrees to assign to the District all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 USC Sec. 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 purchase of goods, services, or materials pursuant to the Lease Agreements. This assignment shall become effective at the time the District tenders the final Lease Payment to Contractor, without further acknowledgment by the parties.

14. CONTRACT DOCUMENTS AND INTERPRETATIONS

14.1 The Contract Documents shall be executed, and/or initialed as appropriate, in duplicate by District and Contractor. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include all labor, services, and materials reasonably necessary for the proper execution of the work.

14.2 It is not intended that work and/or services not covered under any heading, section, branch, class or trade of the specifications shall be supplied, unless it is required elsewhere in the Contract Documents or is reasonably inferable therefrom as being necessary to produce the intended results, in which case such work and/or services shall be supplied by Contractor. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings. Mutual agreement shall be reached with respect to words which do not have a well-known technical or trade meaning and the definition of which come into question.

- 14.3 Drawings and specifications are intended to be fully cooperative and to agree. All drawing and specification changes shall be dated and sequentially recorded. All modifications to drawings and specifications shall be interpreted in conformity with the Contract Documents, which shall govern, unless otherwise specified.
- 14.4 Should any question arise concerning the intent or meaning of the Contract Documents, including the Plans and Specifications, the question shall be submitted to the District for interpretation. If a conflict exists in the Contract Documents, these General Construction Provisions shall control over the Facilities Lease, which shall control over the Site Lease, which shall control over Division 1 Documents, which shall control over Division 2 through Division 49 documents, which shall control over figured dimensions, which shall control over large-scale drawings, which shall control over small-scale drawings. In no case shall a document calling for lower quality and/or quantity material or workmanship control. However, in the case of discrepancy or ambiguity solely between and among the Drawings and Specifications, the discrepancy or ambiguity shall be resolved in favor of the interpretation that will provide District with the functionally complete and operable Project described in the Drawings and Specifications. In case of ambiguity, conflict, or lack of information, District will furnish clarifications with reasonable promptness.

15. SUBMITTALS

15.1 Definitions

- 15.1.1 *Deferred Approvals.* Approval of certain aspects of the construction may be deferred until the construction Contract has been awarded. To facilitate the design process, DSA grants deferred approval to the design and detailing of certain elements of the Project at the request of the Architect or Engineer of Record. Design elements that may be deferred may include, but are not limited to access floors; bleachers; elevator guide rails and related elevator systems; exterior wall systems - precast concrete, glass fiber reinforced concrete, etc.; skylights; curtain wall systems; stage rigging; and other systems as noted in the Contract Documents. (Also see Article 15.3 and 15.6).
- 15.1.2 *Shop Drawings.* The term "Shop Drawings" as used herein means drawings, diagrams, equipment or product schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work, and includes: illustrations; fabrication, erection, layout and setting drawings; manufacturer's standard drawings; schedules; descriptive literature, instructions, catalogs, and brochures; performance and test data including charts; wiring and control diagrams; and all other drawings and descriptive data pertaining to materials, equipment, piping, duct and conduit systems, and methods of construction as may be required to show that the materials, equipment, or systems and their position conform to the requirements of the Contract Documents.
- 15.1.3 *Manufactured* applies to standard units usually mass-produced, and "Fabricated" means items specifically assembled or made out of selected materials to meet individual design requirements. Shop drawings shall establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.
- 15.1.4 *Submittals* is a general term that includes, without limitation, Shop Drawings, Product Data, Schedules and Samples. A Submittal related to a physical item may include a manufacturer's product information and product data including description,

characteristics, size, physical characteristics, and requirements to prepare the jobsite for receiving of the particular manufactured item.

- 15.1.5 *Samples.* The term “samples” as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality and includes natural materials, fabricated items, equipment, devices, appliances, or parts thereof as called for in the Specifications, and any other samples as may be required by the Architect to determine whether the kind, quality, construction, finish, color, and other characteristics of the materials, etc., proposed by the Contractor conform to the required characteristics of the various parts of the Work. All Work shall be in accordance with the approved samples.
- 15.2 Shop Drawings.
- 15.2.1 *When Shop Drawings Are Required.* Shop drawings are required for prefabricated components and for installation and coordination of these prefabricated components into the Project. In addition, Shop Drawings, are prepared to address the actual size and installation of components from various subcontractors and provides an opportunity for the Contractor to coordinate and address conflicts between the subcontracting trades. In some cases, each subcontractor or trade will provide Shop Drawings in a format agreed upon by District.
- 15.2.2 *Purpose for Shop Drawings.* Shop drawings are the Contractor’s manufacturer, subcontractor, supplier, vendor or the Contractor’s detailed drawings showing particularized method for assembly, specifics to a manufacturer, manufacturer component installation requirements, specifics as to a manufactured item, alterations to a manufactured, a custom created item, or drawn version of more detailed information expanding on the Architect’s design shown in the Contract Documents. The Shop Drawings address the appearance, performance, size, weight, characteristics and prescriptive descriptions associated with the Contractor or Contractor’s subcontractor’s plan for installation or assembly based on the design in the specifications and Contract Documents. The shop drawing often is more detailed than the information shown in the Contract Documents to give the Architect and Engineer the opportunity to review the fabricator’s version of the product (along with particulars specific to that particular product), prior to fabrication. References to the Contract Documents, Drawings, Plans, and Specifications assist the Architect and Engineer in their review of the Shop Drawings. Attachment of manufacturer’s material specifications, “catalog cut sheets,” and other manufacturer’s information may be provided to accompany Shop Drawings. Because Shop Drawings facilitate the Architect’s and Engineer’s approval of the system, they should be as clear and complete as possible so they may be reviewed by Architect or Engineer for the Project.
- 15.2.3 *Shop Drawing Requirements.* The Contractor shall obtain and submit with Shop Drawings all seismic and other calculations and all product data from equipment manufacturers. “Product data” as used herein are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for some portion of the Work.
- 15.2.4 *Not a Reproduction of Architectural or Engineering Drawings.* The shop drawing are not a reproduction of the architectural or engineering drawings. Instead, they must show more detail than the Contract Documents and detail the fabrication and/or installation of the items to the manufacturer’s production crew or Contractor’s installation crews.

- 15.2.5 *Shop Drawings Engineering Requirements:* Some shop drawings require an engineer stamp to be affixed on the drawings and calculations. In such cases, a current and valid engineering stamp shall be affixed by a California registered engineer. No out of State engineers shall stamp Shop Drawings. (See DSA IR A-18). In most cases, an engineer means California registered mechanical, structural, electrical or plumbing engineer. California Registered Civil Engineers will not be accepted for structural details unless specifically approved by DSA.
- 15.2.6 *Shop Drawing Identification.* All Shop Drawings must be properly identified with the name of the Project and dated, and accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as “clouding” all qualifications, departures, or deviations from the Contract Documents. Shop drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor.
- 15.3 Deferred Approvals. Deferred approvals shall be submitted and processed to ensure all DSA and other governmental approvals are secured so as to not delay the Project. There may be additional requirements for deferred approvals in Division 1 of the Specifications. All deferred approvals shall be prepared by Contractor or Contractor’s agent early enough so as to not delay the Project. Contractor is aware that Title 24 California Code of Regulations Section 4-317 has specific requirements for deferred approvals as to governing agencies and as to the Architect and Engineer for the Project. As a result, any delay associated with the time for approval by applicable agencies or by the Architect or Architect’s consultants shall be Contractor’s. Contractor is required to comply with inclusion of Deferred Approvals in the Schedule as required under Article 9
- 15.3.1 *DSA Approvals Required Prior to Work.* No work on a deferred approval item may proceed on the components until DSA approval is received. Contractor has provided DSA approval time and allowed adequate time for any DSA revisions in Contractor’s Schedule as required pursuant to Article 9.
- 15.4 Product Data, Shop Drawings and Samples (“Submittals”)
- 15.4.1 *Information Required with Submittals:* Manufacturer, trade name, model or type number, and quantities. Information provided must be of sufficient detail to allow Architect and Engineer to compare the submitted item with the specified products and acceptable products listed, in the specification and addenda.
- 15.4.2 *Description of Use and Performance Characteristics:* Information should be furnished describing the normal use and expected performance of the product. The Architect and Contractor review this information to confirm that the product is appropriate for the intended use.
- 15.4.3 *Size and Physical Characteristics:* The size and physical characteristics, such as adjustment capabilities, which is reviewed by both the Contractor and Architect. The Contractor has the most available information for comparing adjoining materials and equipment. The Contractor also needs to know the size and weight of the equipment for lifting and handling considerations.
- 15.4.4 *Finish Characteristics:* The Architect reviews the available finishes and selects the appropriate finish, if the finish was not previously specified in the documents. The

Contractor should confirm that finish requirements in the specification are being met by the product.

- 15.4.5 *Contractor Responsible for Jobsite Dimensions:* Some material is custom-fabricated to job conditions, requiring dimensions from the jobsite. These jobsite dimensions are provided by the Contractor as part of the Contractor's responsibilities for the Project and shall be provided prior to release of the product for manufacture. Contractor shall not rely on Architect or Engineers to provide jobsite dimensions.
- 15.4.6 *Full Range of Samples Required (When Specific Items Not Specified).* Except in cases where the exact color and type of item is specified since the District is utilizing items Standardized or pre-selected by District, the full range of color, graining, texture, or other characteristics are anticipated for review in finished products, a sufficient number of samples of the specified materials shall be furnished by the Contractor to indicate the full range of characteristics which will be present in the finished products. Products delivered or erected without Submittal and approval without providing a full range of samples shall be subject to rejection. Except for range samples, and unless otherwise called for in the various sections of the Specifications, samples shall be submitted in duplicate.
- 15.4.7 *Labeling of Samples.* All samples shall be marked, tagged, or otherwise properly identified with the name of the submitting party, the name of the Project, the purpose for which the samples are submitted and the date.
- 15.4.8 *Architect's Review.* The Architect will review the submittals for conformance and return them to the Contractor with the Architect's stamp and signature applied thereto, indicating the timing for review and appropriate action in compliance with the Architect's (or District's) standard procedures.
- 15.5 Submittal Submission Procedure
- 15.5.1 *Transmittal Letter and Other Requirements.* All Submittals must be properly identified with the name of the Project and dated, and each lot submitted must be accompanied by a letter of transmittal referring to the name of the Project and to the Specification section number for identification of each item clearly stating in narrative form, as well as "clouding" on the submissions, all qualifications, departures, or deviations from the Contract Documents. Shop drawings, for each section of the Work shall be numbered consecutively and the numbering system shall be retained throughout all revisions. All Subcontractor submissions shall be made through the Contractor. Each drawing shall have a clear space for the stamps of Architect and Contractor. In the case where a CM is hired on the Project, the CM may be designated to receive the Submittals for the Project, log the Submittals, and in some cases reject Submittals that do not conform to Contract requirements.
- 15.5.2 *[RESERVED]*
- 15.5.3 *Corrections.* The Contractor shall make all corrections required by Architect, District or CM and shall resubmit, as required by Architect or CM, corrected copies of Submittals until approved. Contractor shall direct specific attention in writing or on resubmitted Submittals to revisions other than the corrections required by the Architect on previous submissions. Professional services required for more than one (1) re-review of required Submittals are subject to charge to the Contractor pursuant to Article 10.4.

- 15.5.4 *Approval Prior to Commencement of Work.* No portion of the Work requiring a Submittal shall be commenced until the submission has been reviewed by Contractor and Architect (and CM, if applicable) and approved by Architect (and CM where applicable) unless specifically directed in writing by the Architect. All such portions of the Work shall be in accordance with approved Shop Drawings and samples.
- 15.5.5 *District's Property.* All Submittals, Shop Drawings, computer disks, clash check results, constructability reviews, schedules, annotated specifications, samples and other Submittals shall become the District's property upon receipt by the District or Architect.
- 15.6 Submittal Schedule / Schedule Requirements for Submittals. Contractor shall provide to the District for review a draft Submittal Schedule, in accordance with the Contract Documents and Exhibit C. The Submittal Schedule shall indicate the dates Contractor will provide to the District all Submittals required by the Contract Documents. Once the District approves a Submittal Schedule, that shall be the Submittal Schedule for the Project and Contractor shall comply with all dates therein. In addition, Contractor shall obtain and shall submit all required Submittals (i.e. Shop Drawings, Deferred Approvals, Samples, etc.), with such promptness as to cause no delay in its own Work or in that of any other contractor or Subcontractor and in compliance with the Contract Documents and the Construction Schedule (Exhibit F to the Facilities Lease). No extensions of time will be granted to Contractor or any Subcontractor because of its failure to have Submittals submitted in accordance with this Article 15 and the Schedule. Each Subcontractor shall submit all Submittals for the review of the District, the Contractor, and the Architect through the Contractor. Failure to provide the submittals by the listed timelines will subject the Contractor to the assessment of Liquidated Damages for failure to meet the Contract timelines, unless a written extension is requested and approved per section 15.6.1.2. Contractor shall order materials and ensure prices are honored and secured for the Project.
- 15.6.1 *Consideration of Schedule.* Contractor has considered lead times, DSA or other agency governmental review times, Architect or Engineer review times, manufacturing seasons, and specific long lead procurement concerns for all submittals for the Project.
- 15.6.2 It is specifically agreed that submissions of structural steel Submittals shall not be piecemealed (unless some portion is requested separately by the District or Architect), shall provide complete designs, shall be stamped by the Structural Steel subcontractor, Contractor, and Structural Steel Subcontractor's structural engineer at time of submission and as further addressed in this Article 15.
- a. In no case shall the submission of Structural Steel Drawings delay the critical path for the schedule. If a Milestone is provided for submission of complete structural steel Shop Drawings then the date shall be no later than as set forth in the Milestone
- b. Piecemeal Submissions of Submittals. Piecemeal Submittals mean providing portions of Shop Drawings or Submittals as they are being completed. The submission of piecemeal Submittals results in the appearance of a submission when there is inadequate information for the Architect or Engineer to adequately review a submission. Piecemeal differs from submission of complete buildings or phases of buildings or complete assemblies. The Architect may agree to allow submission of single buildings or areas as long as the Submittals are complete.

15.7 General Submittal Requirements

15.7.1 *Contractor Submittal Representations.* By submitting Shop Drawings, Product Data, Samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents, including the construction schedule.

15.7.2 *Contractor Coordination.* By submitting Shop Drawings, Product Data, Samples, etc., the Contractor represents that it has determined and verified all materials, field measurements, catalog numbers, related field construction criteria, and other relevant data in connection with each such submission, and that it has checked, verified, and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents, including the construction schedule. Contractor shall stamp, sign, and date each Submittal indicating its representation that the Submittal meets all of the requirements of the Contract Documents and evidence Contractor's review through execution of the following stamp to be placed on each Submittal:

“[Contractor] has reviewed and approved the field dimensions and the construction criteria, and has also made written notation regarding any information in Submittal that does not conform to the Contract Documents. This Submittal has been coordinated with all other Submittals received to date by me as Contractor and this duty of coordination has not been delegated to subcontractors, material suppliers, the Architect, or the Engineers on this Project.

Signature of Contractor and date

15.7.3 *No Deviation from Contract Documents.* The submission of the Shop Drawings, Product Data, Samples, etc., shall not deviate from the requirements of the Contract Documents including detailing and design intent, which is specifically outlined in Contract Documents, except as authorized by the Architect or through an accepted substitution pursuant to Article 16. All deviations from the Contract Documents shall be narratively described in a transmittal accompanying the Submittal. However, Submittals shall not be used as a means of requesting a substitution, the procedure for which is defined in Article 16, “Substitutions.”

15.7.4 *Contractor Responsibility for Shop Drawings Conformance to Contract Documents.* Review by District and Architect shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper Submittals in accordance with the Contract Documents.

15.7.5 *Incomplete Submittals.* Any submission, which in Architect's opinion is incomplete, contains errors, or has been checked superficially will be returned unreviewed by the Architect for resubmission by the Contractor.

15.7.6 *Submittals Shall Not Be Used as a Method to Make a Substitution.* Submittals shall not be used as a means of requesting a substitution or to make changes in the Contract Documents. If changes are made to the Contract Documents through the Submittal, the Architect shall have the right to reject the Submittal. If the Architect does not note the deviation from the approved plans and specifications, the Contractor is still

responsible for the change and the Architect or the District may require the Submittal be revised to properly reflect the approved Contract Documents. The Architect or District may also require that the Contractor bear all costs under Article 10.4 and consequential damages associated with a CCD to revise plans and specifications to accommodate the deviation from approved plans and specifications.

- 15.7.7 *Extent of Review.* In reviewing Shop Drawings, the Architect will not verify dimensions and field conditions. The Architect will review and approve Shop Drawings, Product Data, Samples, etc., for aesthetics and for conformance with the design concept of the Work and the information in the Contract Documents. The Architect's review shall neither be construed as a complete check which relieves the Contractor, Subcontractor, manufacturer, fabricator, or supplier from responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents unless the Contractor has, in writing, called the Architect's attention to the deviations at the time of submission. The Architect's review shall not relieve the Contractor or Subcontractors from responsibility for errors of any sort in Submittals or schedules, for proper fitting of the Work, coordination of the differing subcontractor trades and Shop Drawings and Work which is not indicated on the Submittal at the time of. Contractor and Subcontractors shall be solely responsible for any quantities which may be shown on the Submittals or Contract Documents.

16. REQUEST FOR SUBSTITUTIONS

- 16.1 Whenever in the Contract Documents any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification shall be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, request a substitution for any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified, but Contractor must do so pursuant to the requirements herein and in the Contract Documents. If the material, process, or article offered by Contractor is not, in the opinion of the District, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified in the Contract Documents without any additional compensation or Change Order. This provision shall not be applicable with respect to any material, product, thing or service for which District made findings and gave notice in accordance with Public Contract Code section 3400(b); therefore, Contractor shall not be entitled to request a substitution with respect to those materials, products or services.
- 16.2 Request for Substitution Prior to Proposal. District must receive any request for substitution a minimum of twenty-two (22) calendar days prior to the date proposals are due.
- 16.2.1 The District's denial of a substitution request prior to the date proposals are due shall be conclusive, requiring Contractors to list only approved items. The District is not responsible and/or liable in any way for a Contractor's damages and/or claims related, in any way, to that Contractor's basing its proposal on any requested substitution that the District has not approved. Contractor's proposal shall be deemed non-responsive if it identifies a product or manufacturer of a non-approved substitution.
- 16.2.2 Approved substitutions shall be listed in Addenda.
- 16.2.3 District reserves the right not to act upon submittals of substitutions until after the date proposals are due.
- 16.3 Request for Substitution after Award. The District is only required to consider substitution requests prior to submittal of proposals. The District need not accept any requests for substitutions after award of the Contract. The District reserves the right to allow the

Contractor to request substitutions after award of the Contract on a case-by-case basis and subject to the District's sole discretion.

- 16.3.1 If the District approves a substitution after the award of the Contract, the District shall memorialize that approval in an Immediate Change Directive or other applicable Contract modification process.
- 16.4 Information with Request. Requests for substitutions shall contain sufficient information to assess acceptability of the product or system and impact to Project. Insufficient information shall be grounds for rejection of substitution. A request for a substitution shall be in writing and shall include:
 - 16.4.1 All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;
 - 16.4.2 Available maintenance, repair or replacement services;
 - 16.4.3 Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;
 - 16.4.4 Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by the District or others under Contract with the District); and
 - 16.4.5 The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.
- 16.5 No substitutions shall be made until approved, in writing, by the District. The burden of proof as to equality of any material, process, or article shall rest with Contractor. The Contractor warrants that if substitutes are approved:
 - 16.5.1 The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;
 - 16.5.2 The Contractor provides the same warranties and guarantees for the substitute that would be provided for that specified;
 - 16.5.3 The Contractor shall be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by the Contractor without a change in the Contract Price or Contract Time;
 - 16.5.4 The Contractor shall be responsible for any re-design costs occasioned by District's acceptance and/or approval of any substitute; and
 - 16.5.5 The Contractor shall, in the event that a substitute is less costly than that specified, credit the District with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, the Contractor agrees to execute a deductive Change Order to reflect that credit.
- 16.6 In the event Contractor furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished shall be borne by Contractor.

- 16.7 In no event shall the District be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.

17. WORK MODIFICATIONS (INCLUSION OF CCD COSTS, DSA COSTS, AND AN ICD PROCESS)

- 17.1 No Changes Without Authorization. There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Change Order Request, Immediate Change Directive, Construction Change Document, documentation for the use of the Construction Contingency or an Allowance, documentation for the use of the District Contingency, or order by the Architect for a minor change in the Work as herein provided ("Record of Change"). CONTRACTOR UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT THE REASON FOR THIS NOTICE REQUIREMENT IS SO THAT DISTRICT MAY HAVE AN OPPORTUNITY TO ANALYZE THE WORK AND DECIDE WHETHER THE DISTRICT SHALL PROCEED WITH THE RECORD OF CHANGE OR ALTER THE PROJECT SO THAT SUCH CHANGE IN WORK BECOMES UNNECESSARY AND TO AVOID THE POSSIBLE DELAYS ASSOCIATED WITH THE ISSUANCE OF A NOTICE OF NON-COMPLIANCE.

- 17.2 District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless authorized District representative has approved the cost in writing by a Record of Change. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Record of Change. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications. Notwithstanding anything to the contrary in this Article 17, all Records of Change shall be prepared and issued by the Architect and/or CM and shall become effective when executed by the authorized District representative, the Architect, and the Contractor.

- 17.3 Notices of Non-Compliance. Contractor deviation or changes from approved plans and specifications may result in the issuance of a Notice of Non-Compliance (See DSA Form 154). Contractor is specifically notified that deviations from the Contract Documents, whether major or minor, may result in the requirement to obtain a DSA Construction Change Document to correct the Notice of Non-Compliance. (See Article 17.5 for definition of CCD). In some cases, the lack of a DSA approved CCD AND verification from the Project Inspector that a Notice of Non-Compliance has been corrected may result in a critical path delay to the next stage of Work on the Project. Specifically, a deviation from approved plans and specifications may prevent approval of the category of Work listed in the DSA 152 Project Inspection Card. Any delays that are caused by the Contractor's deviation from approved plans and specifications shall be the Contractor's responsibility.

- 17.4 Architect Authority. The Architect will have authority to order minor changes in the Work that do not involve any adjustment in the Contract Sum, or an extension of the Substantial Completion Date or Final Completion Date.

- 17.5 CONSTRUCTION CHANGE DOCUMENT (CCD Category A, and CCD Category B) and IMMEDIATE CHANGE DIRECTIVE (ICD)

17.5.1 *Definitions*

- a. Construction Change Document (CCD). A Construction Change Document is a DSA term that is utilized to address changes to the DSA approved plans and specifications. There are two types of Construction Change Documents: 1) DSA approved CCD Category A (DSA Form 140)

for Work affecting Structural, Access or Fire-Life Safety of the Project which will require a DSA approval; and 2) CCD Category B (DSA Form 141) for work NOT affecting Structural Safety, Access Compliance or Fire and Life Safety that will not require a DSA approval (except to confirm that no Approval is required);

- b. Immediate Change Directive (ICD). An Immediate Change Directive is a written order to the Contractor prepared by the Architect and signed by the District, CM (if there is a CM on the Project), and the Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The District may by ICD, without invalidating the Contract, direct immediate changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions within. If applicable, the Contract Sum and Contract Time will be adjusted accordingly.

i. In the case of an ICD being issued, Contractor must commence Work immediately or delays from failure to perform the ICD shall be the responsibility of Contractor and the failure to move forward with Work immediately shall also be grounds for Termination under Article 19 or determination of partial default under Article 12.2.

ii. If adequate time exists, an ICD may be subject of a Request for Price for pricing and determination if any time that may be required. However, if a Request for Price is not completed, Contractor shall immediately commence Work when an ICD is issued. If the Request for Price is incomplete, it may still be completed to be submitted for Pricing Purposes as long as the PR is submitted within the timeline provided by the PR, or within 10 days following issuance of the ICD.

iii. An ICD does not automatically trigger an Article 20 Dispute or Claim. Contractor must timely follow the procedures outlined in Article 20 and this Article 17 where applicable.

iv. Refer to the Construction Documents for a copy of the template Immediate Change Directive form.

- c. Use to Direct Change. An ICD shall be used to move work forward immediately and to avoid delay. In some cases, an ICD shall be issued in the absence of agreement on the terms of an Extra, or a Request for Price. The anticipated not to exceed price for the Work will be inserted into the ICD. In the case of an ICD issued to correct Contractor Deficiencies or to correct a Contractor caused Notice of Non-Compliance, the ICD may be issued with \$0 and 0 time. Contractor may prepare an Extra associated with the ICD pursuant to this Article 17. However, Contractor shall proceed with all Work required under an Approved ICD immediately upon issuance. Failure to proceed with the Work under an ICD shall be grounds for Termination for Cause under Article 19 or take over the Work under Article 12.2.

- d. ICD Issued Over a Notice of Non-Compliance or to Cover Work Subject to a DSA 152 Sign Off. In some cases, an ICD shall be for the purpose of proceeding with Work to keep the Project on Schedule and as an

acknowledgement by the District that Contractor is proceeding with Work contrary to a Notice of Non-Compliance, prior to issuance of a DSA approved CCD Category A, or to direct the covering of Work which has not yet received a DSA 152 Inspection Approval to move forward.

i. Contractor Compliance with all Aspects of an ICD. Contractor is to undertake the ICD and comply with all aspects of the Work outlined in the ICD. Project Inspector is to inspect the Work pursuant to the ICD. Failure to follow the ICD may result in deduction of the ICD Work under Article 12.2 or Termination of the Contractor pursuant to Article 19.

ii. Exception in the Case of DSA Issued Stop Work Order. Contractor must proceed with an ICD even if a CCD has not been approved by DSA except in the case of a DSA issued Stop Work Order. If a DSA Stop Work Order is issued, Contractor must stop work and wait further direction from the District.

iii. ICD Due to Contractor Deficiency or Contractor Caused Notice of Non-Compliance. If an ICD is issued to correct a Contractor Deficiency or a Contractor caused notice of Non-Compliance, Contractor specifically acknowledges responsibility for all consequential damages associated with the Contractor Deficiency or Contractor Caused Notice of Non-Compliance and all consequential damages and costs incurred to correct the deficiency under Article 10.4.

17.6 Work Modifications. Extra work, a modification, or reduction of requirements or of methods of performing the Construction which differ from the work or requirements set forth in the Contract Documents (“Work Modifications”); and for such purposes, the District may at any time during the life of the Lease Agreements by written order, make such changes as it shall find necessary from the Construction Contingency or the Allowance(s) or the District Contingency, if District approves such request in writing. The costs of the Work Modifications, as established pursuant to this Article 17, shall be deducted from the Construction Contingency or the applicable Allowance, if that use is approved by the District.

17.6.1 Cost Components to be Included in All Estimates. The District and/or the Architect may require that reasonable additional or modified cost components or information be included in any necessary cost estimate, but, otherwise, each estimate prepared by the Contractor in response to a Request for Price or in connection with a Change Order Request must include the following cost components and conform to all associated requirements specified below:

a. Labor Costs: Itemize all job classifications for labor necessary to complete the proposed change(s), direct hourly wage rates, and the estimated total number of hours in each job classification required to complete the change(s). Separately itemize any employer-paid payroll taxes, insurance, benefits and other costs attributable to such labor. Do not include on-site management, off-site management, supervision and/or administration in this cost component, as the compensation for such costs shall be deemed to be included within the Contractor’s general markup.

- b. **Materials Costs:** Itemize (in sufficient detail to identify) all materials necessary to complete the proposed change(s), quantities required, taxes, and any delivery costs. The amounts itemized in this cost component must be reduced by the full amount of any credits and/or discounts given in connection with obtaining the materials.
- c. **Equipment Costs:** Itemize all equipment necessary to complete the proposed change(s), hourly costs of rental or operations, and total number of hours required. Separately itemize any rented or leased equipment from any owned equipment. Separately itemize any equipment cost that is based on a per-load amount. Do not include in this cost component any hand tools, equipment with a value of less than \$1,000, or equipment with a daily rental rate of less than \$500, as the compensation for such items shall be deemed to be included within the Contractor's general markup. Also do not include in this cost component the rental of any equipment if other suitable equipment already is available at the Project Site, unless the use of such equipment would unreasonably delay the Work or any Work by Others.
- d. **General Markup:** Specify an amount, in no event in excess of **twelve and one-half percent (12.5%)** of the Labor Costs, Materials Costs and Equipment Costs indicated above, which shall be deemed and construed to fully compensate the Contractor for overhead, profit and all other direct and indirect costs (other than bond markup) attributable to the proposed change(s), including, without limitation, any and all costs of research; negotiations; preparation of estimates and other documents; insurance; home-office overhead; on-site and off-site supervision; interference, delay, acceleration and other affects on the Work; guarantees; protection facilities; materials handling; supplies; safety equipment; and hand tools, equipment with a value of less than \$1,000, and equipment with a daily rental rate of less than \$500. Notwithstanding the foregoing, any portion of the work necessary to complete the proposed change(s) to be performed by any Subcontractor must not include a markup by the Subcontractor in excess of **ten percent (10%)**, or a mark-up by the Contractor in excess of **five percent (5%)**, of the total labor, materials and equipment included within such subcontracted work.
- e. (vi) **Bonds and Insurance Markup:** Specify an amount, in no event in excess of **one percent (1%)** of the Labor Costs, Materials Costs and Equipment Costs indicated above, to compensate the Contractor for any additional insurance and bonding costs incurred in connection with the work necessary to complete the proposed change(s). Do not include any such amount if no additional bonding costs will be incurred.

17.6.2 *Format.* All Record(s) of Change to the Contract shall utilize the following format. The most stringent guidelines will apply to all forms.

	<u>EXTRA</u>	<u>CREDIT</u>
(1) Material (attach itemized quantity and unit cost plus sales tax)	_____	_____

	<u>EXTRA</u>	<u>CREDIT</u>
(2) Actual Labor Cost (attach itemized hours and rates)	_____	_____
(3) Equipment (attach itemized quantity and unit cost plus sales tax)	_____	_____
(4) Subtotal (1+2+3)	_____	_____
(4a) Subcontractor Subtotal: Amount of Item (1+2+3) that is Subcontractor-performed work	_____	_____
(4b) Contractor Subtotal: Amount of Item (1+2+3) that is Contractor Self-Performed work	_____	_____
(5) Subcontractor Overhead & Profit - For Subcontractor-performed work: (Subcontractor's overhead and profit not to exceed 10% of Item (4a) above)	_____	_____
(6) General Contractor Profit and Fee - For General Contractor Self-performed work: (Contractor's overhead not to exceed 12-1/2% of Item (4b) above)	_____	_____
(7) General Contractor Profit and Fee on Subcontractor-performed work: (Contractor's overhead and profit not to exceed 5% of Item (4a) above)	_____	_____
(8) Subtotal (4+5+6+7)	_____	_____
(9) Bond and Insurance Markup (Not to Exceed 1%).	_____	_____
(10) Total Change Order Cost	_____	_____

17.6.3 *Discounts and Refunds Deducted from Change Order Costs.* The Contractor must make reasonable efforts to obtain or otherwise secure any and all discounts, rebates, refunds and/or offsets that may be available with respect to materials, equipment and supplies necessary, or no longer necessary, in connection with any change(s) in the Work or other requirements of the Contract. The Contractor must include in each estimate prepared in accordance with this Article 17 any such discounts, rebates, refunds and/or offsets as reasonably may be available. In the case of any change(s) completed on a time-and-materials basis or a unit-pricing basis, the Contractor must document any and all discounts, rebates, refunds and/or offsets as provided in this Article 17.

17.6.4 *Substantiation of Subcontractor Pricing Included in Estimates.* If an estimate includes any work by a Subcontractor of any tier or materials provided by any materialman, the Contractor must furnish to the District and the Architect: (i) a detailed estimate, prepared and signed, as applicable, by the Subcontractor or materialman, of the cost

for labor, material, equipment, markup, et cetera; and (ii) such information as reasonably substantiates wage rates, bond premiums or other amounts included in the estimate, including, without limitation, any markup by the Subcontractor.

17.6.5 *Substantiation of Time-and-Materials and Unit-Price Costs.*

- a. *Requirement for Notice.* The Contractor must not commence performance of any portion of the Work authorized to be performed on a time-and-materials basis or a unit-price basis unless the Contractor gives notice at least twenty-four hours in advance to the District and the Project Inspector that such Work will be commencing, so that they may be present during performance of such Work.

- b. *Requirements for Daily Time-and-Materials Tickets.* The Contractor must obtain the Project Inspector's signature on a copy of the "Time-and-Materials Ticket", in a format acceptable to the District, for each day during the performance of the Work, specifying: 1) the identification number assigned to that portion of the Work; 2) the location and description of such Work; 3) the job classifications, names and social security numbers of the workers performing such Work; 4) the materials used in performing such Work; and 5) the equipment used in performing such Work, other than tools and equipment included within the Contractor's general markup. The Contractor must prepare the time and material tickets on a form that is reasonably acceptable to the Architect and that permits the Project Inspector to tear off and retain a copy of the form after signing it. The Contractor must provide copies of the daily time and material tickets to the District and the Architect at least once per week until the Work being performed on a time-and-materials basis or unit-price basis has been fully completed. Upon request, the Contractor must also submit any other relevant information as the District may require, including, without limitation, copies of wage rates as included in certified payroll records, receipts, payment invoices, shipping invoices, bills of lading, etc. If the Contractor fails to provide documentary evidence or other information sufficient to substantiate the amount and/or costs of Work performed on a time-and-materials basis or unit-price basis, the District, in its reasonable discretion, may determine such amounts and/or costs. THE CONTRACTOR MUST PROVIDE WRITTEN NOTICE TO THE DISTRICT AND THE ARCHITECT IF AND WHEN THE COST OF ANY WORK PERFORMED ON A TIME-AND-MATERIALS BASIS REACHES EIGHTY PERCENT OF ANY MAXIMUM AMOUNT SPECIFIED IN THE APPLICABLE CHANGE ORDER OR IMMEDIATE CHANGE DIRECTIVE.

- c. *Requirements for Separate Accounting Records.* If the Contractor performs any Work (whether pursuant to the original Contract, any Record of Change) on a time-and-materials basis or a unit-price basis, the Contractor must adequately document all labor, materials and equipment used and/or consumed in connection with such Work. The Contractor must prepare and maintain separate cost-accounting records, in accordance with generally-accepted accounting standards and principles, for each portion of the Work performed on a time-and-materials basis or unit-price basis, and shall make such accounting records available to the District, the State, and other parties to the same

extent as required pursuant to the Contract Documents for other accounting records related to the Work.

- 17.6.6 The following language shall be included in all Record of Change(s) to the Contract and, if not included, shall be deemed to be part of any such document: *The undersigned Contractor approves the foregoing Work Modification as to the changes, if any, and the contract price specified for each item and as to the extension of time allowed, if any, for Substantial Completion or Final Completion of the entire work on account of said Work Modification, and agrees to furnish all labor, materials and service and perform all work necessary to complete any additional work specified therein, for the consideration stated herein. It is understood that said Work Modification shall be effective upon approval from the District's Representative. It is expressly understood that the value of such Work Modification, as determined by any of the aforementioned methods, expressly includes any and all of the Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages or time extensions not included are deemed waived. The Contractor expressly acknowledges and agrees that any change in the Work performed shall not be deemed to constitute a delay or other basis for claiming additional compensation based on theories including, but not limited to, acceleration, suspension or disruption to the Project.*
- 17.6.7 Should Contractor claim that any instruction, request, drawing, specification, action, condition, omission, default, or other situation (i) obligates the District to pay additional compensation to the Contractor; or (ii) obligates the District to grant an extension of time for the Substantial Completion Date or the Final Completion Date; or (iii) constitutes a waiver of any provision in the Lease Agreements, CONTRACTOR SHALL NOTIFY THE DISTRICT, IN WRITING, OF SUCH CLAIM AS SOON AS POSSIBLE, BUT IN NO EVENT WITHIN MORE THAN TEN (10) BUSINESS DAYS FROM THE DATE CONTRACTOR HAS ACTUAL OR CONSTRUCTIVE NOTICE OF THE CLAIM. CONTRACTOR SHALL ALSO PROVIDE DISTRICT WITH SUFFICIENT WRITTEN DOCUMENTATION SUPPORTING THE FACTUAL BASIS OF THE CLAIM under Article 20. Contractor shall be required to certify under penalty of perjury the validity and accuracy of any claims submitted. The Contractor's failure to notify the District within the ten (10) business day period shall be deemed a waiver and relinquishment of the claim against the District. If such notice be given within the specified time, the procedure for its consideration shall be as stated above in this Section.
- 17.6.8 All costs associated with the Work Modification may be in terms of time, money or both.
- 17.7 Deductive Change Orders
- 17.7.1 All Deductive Change Order(s) must be prepared utilizing the format included within this Article 17.6.2 setting forth the actual costs incurred. Except in the case of an Article 12.2 or 19 Deductive Change Order where no mark-up shall be allowed, Contractor will be allowed a maximum of <Agreed Upon Fee Percentage Per Art. 3.10> total Profit and Fee.
- 17.7.2 For Unilateral Deductive Change Orders, or where credits are due from Contractor, Deductive Items, Inspection, Damage, DSA CCD review costs, Architect or Project Inspector costs for after hours or corrective services, Work removed from the Lease Agreements under Article 12.2 or Article 29.4, the District shall also deduct <Agreed Upon Fee Percentage Per Art. 3.10> for Profit and Fee.

- 17.7.3 District may, at any time, after a Deductive Change Order is presented to Contractor by District for items under Article 12.2 or Article 29.4 or if there is disagreement as to the Deductive Change Order, issue a unilateral Deductive Change Order on the Project and deduct the Deductive Change Order from a subsequent payment to Contractor.

18. TIME OF COMPLETION

- 18.1 ONCE THE DISTRICT HAS ISSUED A NOTICE TO PROCEED, CONTRACTOR SHALL PROCEED WITH THE CONSTRUCTION OF THE PROJECT WITH REASONABLE DILIGENCE. CONTRACTOR AGREES THAT THE PROJECT WILL REACH SUBSTANTIAL COMPLETION WITHIN THE CALENDAR DAYS DESIGNATED IN EXHIBIT C AND REACH FINAL COMPLETION WITHIN THE CALENDAR DAYS DESIGNATED IN EXHIBIT C. SAID TIME MAY BE EXTENDED FOR SUCH PERIODS OF TIME AS CONTRACTOR IS PREVENTED FROM PROCEEDING WITH OR COMPLETING THE PROJECT FOR ANY CAUSE DESCRIBED IN ARTICLE 9, OR AS OTHERWISE AGREED TO IN WRITING BY THE DISTRICT AND CONTRACTOR. IF THE WORK IS NOT COMPLETED IN ACCORDANCE WITH THE FOREGOING, IT IS UNDERSTOOD THAT THE DISTRICT WILL SUFFER DAMAGE SINCE CONTRACTOR HAS OVERSTAYED ITS LEASE TERM. IT BEING IMPRACTICAL AND INFEASIBLE TO DETERMINE THE AMOUNT OF ACTUAL DAMAGE, IT IS AGREED THAT CONTRACTOR'S EXTENSION OF THE LEASE SHALL RESULT IN LIQUIDATED DAMAGES, AND NOT AS A PENALTY, THE SUM SET FORTH IN THE CONTRACT DOCUMENTS. CONTRACTOR AND HIS SURETY SHALL BE LIABLE FOR THE AMOUNT THEREOF. ANY MONEY DUE OR TO BECOME DUE THE CONTRACTOR MAY BE RETAINED BY THE DISTRICT TO COVER SAID LIQUIDATED DAMAGES FOR OVERSTAYING THE LEASE. SHOULD SUCH MONEY NOT BE SUFFICIENT TO COVER SAID LIQUIDATED DAMAGES, THE DISTRICT SHALL HAVE THE RIGHT TO RECOVER THE BALANCE FROM THE CONTRACTOR OR ITS SURETIES, WHO WILL PAY SAID BALANCE FORTHWITH.
- 18.2 Contractor shall not be charged for liquidated damages, as set forth in the Lease Agreements, for materially differing soil conditions below four (4) feet underground than those outlined in the soils report and from hazardous substances that are encountered that are not documented in the Contract Documents or in the Due Diligence Documents provided to Contractor.
- 18.2.1 In case of encountering either unforeseen conditions, Contractor shall notify the District in writing immediately prior to testing or continuing work and no later than seven (7) days following encountering the unforeseen condition. After providing written notice, Contractor shall test and provide District with Test results (unless District chooses to test) and shall proceed with Work based on the Test results. A Record of Change pursuant to Article 17 shall be submitted. All time and expenses shall be verified with the Project Inspector or District Designee either on the day the extra work occurs, but no later than 10 am the following business day.
- 18.2.2 Contractor shall not stop work if unforeseen conditions are encountered.
- 18.2.3 Change Orders associated with unforeseen conditions shall be billed as Change Order Work and costs may be billed to Construction Contingency if, in the District's reasonable determination, those conditions should have been discovered by Contractor during the Contractor's due diligence.
- 18.3 Contractor shall within ten (10) calendar days of beginning of any such delay 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. District's findings of fact thereon shall be final and conclusive on the parties hereto. Extension of time shall apply only to that portion of work affected by

the delay, and shall not apply to other portions of work not so affected. Contractor agrees that the extension of time granted under this Article 18 shall be its sole and exclusive remedy for the consequences of any delay described above. For any such delay resulting from the actions or inactions of Architect, District, or their officers, agents, and employees, or changes to the scope of the Work which impact the schedule, Contractor shall be entitled to reimbursement for its reasonable additional costs resulting from such delay, but not any additional profit or fee.

- 18.4 Contractor acknowledges the extreme importance of promptly notifying and thoroughly documenting any request for time extension and further specifically acknowledges that District will suffer extreme prejudice should Contractor fail in any way to comply with this requirement. Failure to comply with the procedures and time limits established in this Article 18 shall constitute a waiver of such request. Evidence presented by Contractor that District had actual notice of the time extension request, that District was not prejudiced by Contractor's failure to comply with this requirement, and/or that District considered Contractor's request despite Contractor's failure to strictly comply with this provision shall not render this requirement unenforceable.
- 18.5 Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from District to assure that there will be no delays. An extension of time will not be granted for a delay caused by a shortage of materials.
- 18.6 Contractor shall not be entitled to additional compensation for delays within its control. Contractor is aware that governmental agencies, such as the Department of General Services, gas companies, electrical utility companies, water districts and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. In the event of delays to the Project from such agencies for which Contractor has no control, in addition to Rain Days that exceed the Rain Days agreed to herein, provided such delays are not caused by Contractor's or any subcontractor's acts or omissions, Contractor may be entitled to a time extension for such delays, but shall not be allowed additional compensation for the costs of such delays.
- 18.7 District reserves the right to occupy any building or portion thereof or use any improvement contemplated by the Contract Documents prior to the Substantial Completion Date or the Final Completion Date. A list of work to be completed and corrected by Contractor, if any, shall be prepared and agreed to between District and Contractor before any such occupancy or use. Such occupancy or use shall not operate as an acceptance of any part of the Project but shall start the guaranty-warranty period on the structure or portion thereof so occupied or improvement or equipment so used; provided, however, that such occupancy or use shall not start the guaranty-warranty period as to items appearing on the list of work yet to be completed and corrected or as to structures or improvements (or portions thereof) that are not occupied or used. No such occupancy or use shall be deemed to have occurred unless and until District has given Contractor written notice of its intention to so occupy or use any particular structure or improvement specifying the portion or portions of the structure, improvement or equipment which will be deemed so occupied or used. District and Contractor shall take reasonable steps to obtain the consent of Contractor's insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse of or reduction of such insurance. Such occupancy or use by District shall relieve Contractor of (and District shall assume) the responsibility for injury or damage to said occupied or used portions of the Project resulting from use by District or the public or from the action of the elements or from any other cause, except injury or damage resulting from the operations, negligence or

intentional acts of Contractor, any subcontractors or materialmen of any tier, or their officers, employees or agents.

19. TERMINATION OF AGREEMENT

19.1 Termination for Breach.

19.1.1 If the Contractor refuses or fails to proceed with the construction of the Project or any separable part thereof with such diligence as will insure its reaching the Substantial Completion Date or the Final Completion Date within the time specified by the Lease Agreements or any extension thereof, or fails to reach the Substantial Completion Date or the Final Completion Date the Project within such time, or if the Contractor should be adjudged bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, or the Contractor or any of its subcontractors should violate any of the provisions of Contract Documents, the District may serve written notice upon the Contractor and its Surety of the District's intention to terminate the Lease Agreements. This notice of intent to terminate shall contain the reasons for such intention to terminate the Lease Agreements and a statement to that effect that the Contractor's right to perform work on the Project shall cease and terminate upon the expiration of ten (10) days unless such violations have ceased and arrangements satisfactory to the District have been made for correction of said violations.

19.1.2 In the event that the District serves such written notice of termination upon the Contractor and the Surety, the Surety shall have the right to take over and perform the Work of the Lease Agreements. If the Surety does not: 1) give the District written notice of Surety's intention to take over and commence performance of the Work of the Lease Agreements within fifteen (15) days of the District's service of said notice of intent to terminate upon Surety; and 2) actually commence performance of the Work of the Lease Agreements within thirty (30) days of the District's service of said notice upon Surety; then the District may take over the Project and prosecute the same to Final Completion by separate contract or by any other method it may deem advisable for the account and at the expense of the Contractor.

19.1.3 In the event that the District elects to obtain an alternative performance of the Work of the Lease Agreements as specified above: 1) the District may, without liability for so doing, take possession of and utilize in Final Completion of the Project such materials, appliances, plants and other property belonging to the Contractor that are on the site and reasonably necessary for such Final Completion; and 2) Surety shall be liable to the District for any cost or other damage to the District necessitated by the District securing an alternate performance pursuant to this Article 19.

19.2 Termination for Convenience.

19.2.1 The District may terminate performance of the Project called for by the Contract Documents in whole or, from time to time, in part, if the District determines that a termination is in the District's interest.

19.2.2 The District shall terminate all or any part of the Project upon delivery to the Contractor of a "Notice of Termination" specifying that the termination is for the convenience of the District, the extent of termination, and the effective date of such termination.

19.2.3 After receipt of Notice of Termination, and except as directed by the District's Representative, the Contractor shall, regardless of any delay in determining or

adjusting any amounts due under this Termination for Convenience clause, immediately proceed with the following obligations:

1. Stop Work as specified in the Notice of Termination.
2. Complete any work specified in the Notice of Termination in a least cost/shortest time manner while still maintaining the quality called for under the Contract Documents.
3. Leave the Property upon which the Contractor was working and upon which the facility (or facilities) forming the basis of the Contract Documents is situated in a safe and sanitary manner such that it does not pose any threat to the public health or safety.
4. Terminate all subcontracts to the extent that they relate to the portions of the work terminated.
5. Place no further subcontracts or orders, except as necessary to complete the continued portion of the Work.
6. Submit to the District's Representative, within ten (10) days from the Project termination date found in the Notice of Termination, all of the usual documentation called for by the Contract Documents to substantiate all costs incurred by the Contractor for labor, materials and equipment through the Project termination date, including termination costs related to demobilizing and closing out the project, found in the Notice of Termination. Any documentation substantiating costs incurred by the Contractor solely as a result of the District's exercise of its right to terminate the Lease Agreements pursuant to this clause or the terms of the Lease Agreements, which costs the Contractor is authorized under the Contract Documents to incur, shall: (i) be submitted to and received by the District no later than thirty (30) days after the Project termination date found in the Notice of Termination; (ii) describe the costs incurred with particularity; and (iii) be conspicuously identified as "Termination Costs occasioned by the District's Termination for Convenience."

19.2.4 Termination of the Lease Agreements shall not relieve the Surety of its obligation for any just claims arising out of or relating to the work performed on the Project.

19.2.5 In the event that the District exercises its right to terminate Lease Agreements pursuant to this clause, the District shall pay the Contractor, upon the Contractor's submission of the documentation required by this provision, and other applicable provisions of the Lease Agreements the following amounts:

1. All actual costs incurred according to the provisions of the Lease Agreements including but not limited to insurance/OCIP costs incurred in connection with the Project.
2. A reasonable amount for profit allowed shall in no event exceed profit on the cost of the work on the Project performed, provided Contractor establishes to the satisfaction of the District, that it is reasonably probable that the Contractor would have made a profit had the Project been substantially completed and provided further, that the profit allowed shall in no event exceed <written #> percent (#%) of costs. In no event shall the total amount exceed GMP.

3. A reasonable amount for Contractor's administrative costs in determining the amount payable due to termination of the Lease Agreements under this Article 19.

- 19.3 Termination of Lease Agreements by Contractor. The Contractor may terminate the Lease Agreements upon ten (10) days written notice to the District, whenever: 1) there is a substantial failure of performance on the part of the District; or 2) the District shall elect not to appropriate funds and/or not to make two (2) successive Lease Payments following the receipt by District of a request from the Contractor in its capacity as Lessor for each such Lease Payment submitted pursuant to the Lease Agreements. In the event of such termination, the Contractor shall have no claims against the District except for work performed on the Project as of the date of termination.
- 19.4 Assignment of Subcontractors and Suppliers. If the Lease Agreements are Terminated, Contractor shall provide District copies of all subcontracts, purchase orders, addenda, invoices, payment records, and project files associated with each Subcontractor and Material Supplier. The District shall have the option to assume any Subcontracts, contracts or purchase orders the District chooses. To the extent that vendors are not paid in full for the labor, materials, or services provided, Contractor shall provide an accounting statement showing the amounts paid and the amounts due to the subcontractor and a statement on the anticipated payment status associated with the Termination.
- 19.5 Continuation of Work During Disputes. In the event of a dispute between the parties as to performance of the work or the interpretation of this contract, or payment dispute, the parties shall attempt to resolve the dispute. Pending resolution of this dispute, Contractor agrees to continue the work diligently to reach Substantial Completion and Final Completion and shall neither rescind nor terminate the agreement.

20. RESOLUTION OF AGREEMENT CLAIMS

- 20.1 Exclusive Remedy.
 - 20.1.1 Compliance with the claim resolution process and timelines described in this Claims Resolution section as well as the notice provisions of the Contract are express conditions precedent to Contractor's right to commence litigation or arbitration, file a claim under the California Government Code, or commence any other legal action related to the Project ("Claims Resolution Process").
 - 20.1.2 Contractor acknowledges that its failure, for any reason, to provide written notice and all required supporting documentation to permit the District's review and evaluation within the time frame required by this Claims Resolution Process, shall be deemed Contractor's waiver, release, discharge and relinquishment of any right to assert, request, or demand any entitlement to an adjustment of the Substantial Completion Date or the Final Completion Date or the Contract Price on account of any instruction, request, drawings, specifications, action, condition, omission, default or other situation.
 - 20.1.3 To the extent any provision(s) of this Claims Resolution Process conflict with or otherwise impair the timeframes and procedures of Public Contract Code section 9204, the provisions of Section 9204 shall control. If provisions of this Claims Resolution Process are supplementary and/or in addition to the requirements of Section 9204, but do not conflict with or otherwise impair the timeframes and procedures of Section 9204, the provisions of this Claims Resolution Process and the Contract shall control.

- 20.2 Performance during Claim Resolution Process. The Contractor shall diligently proceed with Work on the Project at the same time that Claims are addressed under the Claims Resolution Process. It is the intent of District to resolve Claims with the Contractor as close to the events giving rise to the Claims as possible, and to avoid stale or late Claims and the late documenting of Claims. Contractor's failure to diligently proceed in accordance with the District's instructions or the Contract terms will be considered a material breach of the Contract and a waiver of Contractor's rights under this Contract.
- 20.3 Waiver. If Contractor fails to timely submit any written notices required under the terms of the Contract or in this Claims Resolution section, Contractor waives and releases its rights regarding further review of its Claim, unless Contractor and District mutually agree in writing to other time limits.
- 20.4 Intention. The Claims Resolution Process required herein is intended to provide a concise mechanism for resolving Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Claims that are not contemporaneously resolved.
- 20.5 Other Provisions. If portions of the Contract, other than this Claims Resolution Process, establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Claims Resolution Process shall control the resolution of all Claims.
- 20.6 Claim Presentation.
- 20.6.1 Claim: A claim is a written demand by Contractor (or by Contractor on behalf of a Subcontractor) that the Contractor must submit by registered mail or certified mail return receipt requested for:
- a. An extension to the Substantial Completion Date or the Final Completion Date, including relief from damages or penalties assessed by the District for delay;
 - b. Payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or the Contractor is not otherwise entitled; or
 - c. Payment that is disputed by the District.
- 20.7 ("Claim").
- 20.7.1 A PCO may be a Claim, but the Parties agree that a PCO shall only be a Claim if:
- a. The District states in writing that it disagrees with the terms of a PCO and directs the Contractor to utilize the Claim Resolution Process, or
 - b. The District rejects in whole or in part a PCO and the Contractor states in writing that it is utilizing the Claim Resolution Process for the portion of the PCO that the District rejected.
- 20.8 Subcontractors.
- 20.8.1 Public Contract Code section 9204(d)(5) states that the Contractor may present to the District a Claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of

a lower tier Subcontractor, that the Contractor present a claim for Work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the District shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the claim to the District and, if the Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.

20.8.2 Contractor is responsible for providing this Claims Resolution Process to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor are informed of this Claims Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Claims Resolution Process will be considered. Contractor shall indemnify, keep and hold harmless the District and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Claims Resolution Process to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the Contractor.

20.8.3 Contractor Must Timely Identify, Present and Document Any Claim

a. Every Claim shall be stated with specificity in writing and signed by Contractor under penalty of perjury and presented to the District within ten (10) calendar days from the date Contractor discovers or reasonably should discover, that an act, error or omission of District, its agents or employees, or action, condition or other situation has occurred that may entitle Contractor to make a Claim. This shall include the Contractor's actual or constructive knowledge of any instruction, request, drawings, specifications, action, condition, omission, default or other situation for which the contractor believes there should an adjustment of the Contract Price or the Substantial Completion Date or the Final Completion Date. Contractor shall provide this writing even if Contractor has not yet been damaged, delayed, or incurred extra cost when Contractor discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Claim. The writing shall:

- i. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Claim;
- ii. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or the Substantial Completion Date or the Final Completion Date adjustments; and
- iii. Identify in detail line-item costs if the Claim seeks money.
- iv. If the Claim involves extra work, a detailed cost breakdown of the amounts the Contractor is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual

cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within seven (7) days of the date the cost reflected in the record is incurred. At the request of District, extra costs may be subject to further verification procedures (such as having an Project Inspector verify the performance of alleged extra work on a daily basis).

v. If the Claim involves an error or omission in the Contract Documents:

1. An affirmative representation under penalty of perjury by Contractor and any affected Subcontractors and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and

2. A detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Contractor, its Subcontractors and suppliers, prior to submitting a proposal for the Work.

vi. Contractor shall not be entitled to compensation for escalation of materials costs unless Contractor demonstrates to the satisfaction of the District that such cost escalation is the result of unusual, unforeseeable market conditions, not the fault of the Contractor, and were not reasonably foreseeable at the time of the award of the Contract. Contractor shall provide evidence to District of the costs included in the Contract for those materials and that those costs were reasonable at the time and that Contractor timely ordered the materials at issue.

b. The writing shall be accompanied by all documents substantiating Contractor's position regarding the Claim.

c. A Claim that asserts an effect on any schedule milestones and/or the Substantial Completion Date or the Final Completion Date shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or the Substantial Completion Date or the Final Completion Date.

20.8.4 Certification. Each copy of the Claim Documentation shall be certified by a responsible officer of the Contractor in accordance with the requirements of the Contract Documents. This certification shall be under penalty of perjury and must include the following language immediately above or before the Contractor's signature: ***"I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit."*** The Contractor acknowledges that this requirement is not a mere formality but is intended to ensure that the Contractor only submits Claims that it believes are true and correct, substantiated and have merit. Should Contractor fail to submit the foregoing written statement signed under penalty of perjury, Contractor waives and releases its Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of

the Claim from Subcontractor(s) or others who are asserting Claims by and through Subcontractors and/or the Contractor

- 20.8.5 District's Written Statement/Decision on Claim. The District shall issue a written statement/decision regarding the Claim to the Contractor within forty-five (45) days of receipt of the written Claim from the Contractor, or three (3) days after the District's first regular governing board meeting after that 45-day period if the District's governing board does not meet within that first 45-day period. If the District fails to timely provide a written statement/decision regarding the Claim, the Claim shall be deemed rejected in its entirety.
- 20.8.6 Contractor Must Demand an Informal Meet and Confer Conference if Contractor Pursues Any Claim
- a. FAILURE OF A CONTRACTOR TO TIMELY DEMAND A MEET AND CONFER CONFERENCE IS A WAIVER OF ITS RIGHT TO PURSUE ALL OR A PORTION OF ITS CLAIM.
 - b. **Where There Is No Agreement:** If there is no agreement between Contractor and the District on a Claim, then within ten (10) calendar days of the date of the District's written statement/decision in response to a Claim or PCO, if Contractor pursues that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff. A meet and confer conference with District staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below.
 - c. **Where There Is Partial Agreement:** If Contractor and the District partially agree on a Claim but do not reach complete agreement, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, if Contractor pursues those issues from that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with District staff regarding those issues. A meet and confer conference with District staff shall be a condition precedent to Contractor seeking any further relief, including a mediation as indicated below, in connection with the District's rejection.
 - d. **Meet and Confer Conference.** District and Contractor shall schedule the meet and confer conference as soon as reasonably possible after Contractor's written demand for a meet and confer conference, but in no case later than thirty (30) days after Contractor's demand.
 - e. **District's Written Decision.** Within ten (10) business days of the meet and confer conference, the District shall issue a written decision. If the District fails to timely provide a written statement/decision after the meet and confer conference, all Claim issues that were part of the meet and confer conference shall be deemed rejected in their entirety.
 - i. If the District's decision completely resolves the Claim, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to.

- ii. If the District rejects the Contractor's Claim in whole or in part or does not issue a timely written response, then the parties shall mediate the remaining issues of the Claim.
- iii. Contractor's costs incurred in seeking relief for Claims are not recoverable from District.

20.8.7 Mediation.

- a. At the District's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Project Inspector, and/or other District consultants.
- b. The District and Contractor shall mutually agree to a mediator within ten (10) business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

20.8.8 Contractor's Obligation to File a Government Code Claim. Nothing in this Contract, including this Claims Resolution Process, waives, modifies or tolls the Contractor's obligation to present a timely claim under Government Code section 910, et seq. Therefore, in addition to complying with this Claims Resolution Process, the Contractor is required to present claims to the District pursuant to Government Code section 910, et seq. If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by the District, the Contractor may proceed under the post-mediation provisions of this Claims Resolution Process.

20.8.9 Post Mediation Provisions.

- a. Claims of \$375,000 or Less: The provisions of Public Contract Code § 20104.4 shall apply. Pursuant to Public Contract Code § 20104.4(a), within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. Pursuant to Public Contract Code § 9204(d)(2)(D), a mediation conducted pursuant to this Claims Resolution Process shall excuse the obligation under Public Contract Code § 20104.4(a) to mediate after litigation has been commenced unless otherwise agreed to by the parties in writing.
- b. Litigation of Claims in Excess of \$375,000. If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.

20.8.10 The District shall be entitled to remedy any false claims, as defined in California Government Code section 12650 et seq., made to the District by the Contractor or any

Subcontractor under the standards set forth in Government Code section 12650 *et seq.* Any Contractor or Subcontractor who submits a false claim shall be liable to the District for three times the amount of damages that the District sustains because of the false claim. A Contractor or Subcontractor who submits a false claim shall also be liable to the District for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$11,000 for each false claim.

20.9 Documentation of Resolution.

If a Claim is resolved, the District shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate.

20.10 Claim Resolution Process – Non-Applicability.

The procedures and provisions in this Claims Resolution section shall not apply to:

20.10.1 District's determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;

20.10.2 District's rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a contractor from District contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107 of the Public Contract Code, shall be subject to the mandatory dispute resolution provisions of this Claims Resolution section and the Contract;

20.10.3 Personal injury, wrongful death or property damage claims;

20.10.4 Latent defect or breach of warranty or guarantee to repair;

20.10.5 Stop notices or stop payment notices; or

20.10.6 Any other District rights as set forth herein.

20.11 The District's failure to respond to a Claim from the Contractor within the time periods described herein or to otherwise meet the time requirements of Public Contract Code section 9204 shall automatically result in the Claim being deemed rejected in its entirety, with no admission by the District as to the merits of the Claim.

20.12 If District fails timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, the Contractor is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with California Public Contract Code §7107, the District is entitled to withhold up to 150% of disputed amounts and the District shall not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.

21. MAINTENANCE OF RECORDS; AUDIT/OWNERSHIP OF DOCUMENTS

21.1 State Audit. Pursuant to and in accordance with the provisions of Government Code § 8546.7, or any amendments thereto, all books, records, and files of the District, the Contractor, or any Subcontractor connected with the performance of this Contract involving the expenditure of state funds in excess of Ten Thousand Dollars (\$10,000.00), including, but not limited to, the administration thereof, shall be subject to the examination and audit of the Office of the Auditor General of the State of California for a period of five (5) years

after Notice of Completion is Recorded, whichever occurs first. Contractor shall preserve and cause to be preserved such books, records, hard drives, electronic media, and files for the audit period.

- 21.2 District Audit. Pursuant to the remedies under Public Contract Code Section 9201 and Government Code Section 930.2, Contractor, through execution of the Lease Agreements, also agrees the District shall have the right to review and audit, upon reasonable notice, the books and records of the Contractor concerning any monies associated with the Project. The purpose of this Audit is to quickly and efficiently resolve disputes based on the actual costs incurred and to reduce the uncertainty in resolving disputes with limited information. The District shall perform any audits at its own cost and any such audit shall be performed by an independent auditor, having no direct or indirect relationship with the functions or activities being audited or with the business conducted by the Contractor or District. In the even the independent auditor determines that Change Orders, Response to Request for Proposals, Claims, Appeal of Claims, or other requests for payment the Auditor shall report the results of the Audit findings to the District and provide a copy to the Contractor after giving the District Board the opportunity for at least 10 days review. If the Contractor disputes the findings of the independent auditor, such dispute shall be handled in the manner set forth under Article 20.
- 21.3 Failure to Produce Books or Records. If Contractor having agreed to the terms of this Contract fails to produce books or records requested by Auditor, such failure to produce books or records that were required to be preserved for audit, it shall be presumed that the information contained in the withheld books or records were unfavorable to the Contractor and the Auditor shall note this refusal in the results of the Audit findings for further evaluation by the District and the District's Board. The refusal to release records that are concerning monies associated with the Project may be used as a grounds to Debar the Contractor from future Projects for failure to preserve records under this Article 21 and the failure to produce required audit records may also be used as a grounds for a negative finding against the Contractor depending on the significance of the records that are withheld by Contractor. Failure to produce Job Cost Data tied to Job cost categories and budgets shall be presumed an intentional failure to produce key audit records. Similarly, failure to produce daily time records (prepared at or near the time of the Work actually took place shall be presumed an intentional failure to produce key audited records.
- 21.4 Inefficiency, Acceleration or Delay Claims. If Contractor is seeking costs for inefficiency, home office overhead, or unanticipated increased costs due to delays or acceleration, Contractor shall also produce copies of the original bid tabulation utilized in submitting Contractors bid for the Project. This document shall be considered confidential and shall not be subject to disclosure through a Public Records Act and shall not be distributed to anyone other than the District and the District's counsel. This bid tabulation shall only be used in litigation, arbitration, evaluation of Claims or Disputes, Audit, and trial. If the records for the bid tabulation are kept on a computer, the Contractor shall also produce all metadata (in native format) that accompanies the bid tabulation for inspection to prove the authenticity of the underlying bid tabulation. Failure to produce the bid tabulation for review of inefficiency, home office overhead, or unanticipated increased costs due to delays or accelerations shall be considered material evidence that the bid tabulation was not favorable to the Contractor. This evidence shall be entered as a jury instruction for trial that the bid tabulation was not produced and the bid tabulation information was unfavorable to the Contractor. The evidence may also be used in Debarment Proceedings, and noted as an exception to an Audit Findings.
- 21.5 Upon notification of Contractor concerning the results of the audit and a reasonable time has passed for Contractor to respond to Audit Findings and if either there is no Dispute of

the Audit findings under this Article 21 or if the result after utilizing the Disputes Clause confirms the Audit findings, the District may seek any Savings that have not been accounted for with District and may also seek reimbursement for overstated Claims, Change Orders, or Appeal of Claims.

- 21.6 Ownership of Drawings. Notwithstanding any provision of the Lease Agreements, 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 Final Completion of work.

22. PREVAILING RATES OF WAGES; RECORDS, APPRENTICES

- 22.1 The Contractor and its Subcontractors shall comply with the Community and Student Workforce Project Agreement that is attached to the Facilities Lease, and the provisions of this section.

- 22.2 Wage Rates. Pursuant to the provisions of Article 2 (commencing at § 1720), Chapter 1, Part 7, Division 2, of the Labor Code, the District has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public works project is to be performed for each craft, classification, or type of worker needed for this Project from the Director of the Department of Industrial Relations ("Director"). These rates are on file at the administrative office of the District and are also available from the Director of the Department of Industrial Relations. Copies will be made available to any interested party on request The Contractor shall post a copy of such wage rates at appropriate, conspicuous, weatherproof points at the Site.

Any worker employed to perform Work on the Project, but such Work is not covered by any classification listed in the published general prevailing wage rate determinations or per diem wages determined by the Director of the Department of Industrial Relations, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to the employment of such person in such classification.

- 22.3 Holiday and Overtime Pay. Holiday and overtime work, when permitted by law, shall be paid for at the rate set forth in the prevailing wage rate determinations issued by the Director of the Department of Industrial Relations or at least one and one-half (1½) times the specified basic rate of per diem wages, plus employer payments, unless otherwise specified in the Contract Documents or authorized by law

- 22.4 Wage Rates Not Affected by Subcontracts. The Contractor shall pay and shall cause to be paid each worker engaged in the execution of the Work on the Project not less than the general prevailing rate of per diem wages determined by the Director, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such workers.

- 22.5 Per Diem Wages. The Contractor shall pay and shall cause to be paid to each worker needed to execute the Work on the Project per diem wages including, but not limited to, employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided for in Labor Code §1773.1.

- 22.6 Forfeiture and Payments. Pursuant to Labor Code §1775, the Contractor shall forfeit to the District, not more than Two Hundred Dollars (\$200.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing wages rates as determined by the Director of the Department of Industrial Relations, for the work or craft in which the worker is employed for any Work done under the Lease Agreements by the Contractor or by any Subcontractor under it. The amount of the penalty shall be determined by the Labor

Commissioner and shall be based on consideration of: 1) whether the Contractor or Subcontractor's failure to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily correct upon being brought to the attention of the Contractor or Subcontractor; and 2) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations.

23. RECORDS OF WAGES PAID

23.1 Payroll Records

- 23.1.1 Pursuant to §1776 of the Labor Code, each Contractor and Subcontractor shall keep an accurate payroll record showing the name, address, social security number, work classification and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed by him or her in connection with the Project.
- 23.1.2 All payroll records shall be certified and submitted electronically directly to the Labor Commissioner/Compliance Monitoring Unit and to the District's Labor Compliance Consultant with each application for payment, but shall not be submitted less than once per month. All payroll records shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:
- 23.1.3 A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- 23.1.4 A certified copy of all payroll records shall be made available for inspection or furnished upon request to a representative of District, the Division of Labor Standards Enforcement or the Division of Apprenticeship Standards of the Department of Industrial Relations.
- 23.1.5 A certified copy of all payroll records 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 the District, 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) above, the requesting party shall, prior to being provided the records, reimburse the costs, according to law for the preparation by the Contractor, Subcontractor(s), and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.
- 23.1.6 Unless required to be furnished directly to the Labor Commissioner in accordance with Labor Code §1771.4(a)(C), 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 of Labor Standards Enforcement.
- 23.1.7 The Contractor or Subcontractor(s) shall file a certified copy of all payroll records with the entity that requested such records within 10 calendar days after receipt of a written request.
- 23.1.8 Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated 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(s) 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. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.

- 23.1.9 The Contractor shall inform the District of the location of all payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
- 23.1.10 The Contractor or Subcontractor(s) shall have ten (10) calendar days in which to comply subsequent to receipt of a written notice requesting payroll records. In the event that the Contractor or Subcontractor(s) fails to comply within the 10-day period, the Contractor or Subcontractor(s) shall, as a penalty to the District, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from Tenant Improvement Payments and/or Lease Payments then due.
- 23.1.11 Responsibility for compliance with this Article 23 shall rest upon the Contractor.

23.2 Withholding of Contract Payments & Penalties

- 23.2.1 The District may withhold or delay contract payments to the Contractor and/or any Subcontractor if:
 - a. The required prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations is not paid to all workers employed on the Project; or
 - b. The Contractor or Subcontractor(s) fail to submit all required certified payroll records with each application for payment, but not less than once per month; or
 - c. The Contractor or Subcontractor(s) submit incomplete or inadequate payroll records; or
 - d. The Contractor or Subcontractor(s) fail to comply with the Labor Code requirements concerning apprentices; or
 - e. The Contractor or Subcontractor(s) fail to comply with any applicable state laws governing workers on public works projects.

24. APPRENTICES

- 24.1 The Contractor and its Subcontractors shall comply with the Community and Student Workforce Project Agreement that is attached to the Facilities Lease, and the provisions of this section.
- 24.2 Apprentice Wages and Definitions. All apprentices employed by the Contractor to perform services under the Contract shall be paid the standard wage paid to apprentices under the

regulations of the craft or trade for which he or she is employed, and as determined by the Director of the Department of Industrial Relations, and shall be employed only at the craft or trade to which he or she is registered. Only apprentices, as defined in §3077 of the Labor Code, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprenticeship agreements under Chapter 4 (commencing with §3070) of Division 3, are eligible to be employed under this Contract. The employment and training of each apprentice shall be in accordance with the apprenticeship standards and apprentice agreements under which he or she is training, or in accordance with the rules and regulations of the California Apprenticeship Council.

- 24.3 Employment of Apprentices. Contractor agrees to comply with the requirements of Labor Code §1777.5. The Contractor awarded the Project, or any Subcontractor under him or her, when performing any of the Work under the Contract or subcontract, employs workers in any apprenticeable craft or trade, the Contractor and Subcontractor shall employ apprentices in the ratio set forth in Labor Code §1777.5. The Contractor or any Subcontractor must apply to any apprenticeship program in the craft or trade that can provide apprentices to the Project site for a certificate approving the contractor or subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor upon the Contractor's or Subcontractor's request. "Apprenticeable craft or trade" as used in this Article 24 means a craft or trade determined as an apprenticeable occupation in accordance with the rules and regulations prescribed by the California Apprenticeship Council. The ratio of work performed by apprentices to journeyman employed in a particular craft or trade on the Project shall be in accordance with Labor Code §1777.5.
- 24.4 Submission of Contract Information. Prior to commencing Work on the Project, the Contractor and Subcontractors shall submit contract award information to the applicable apprenticeship program(s) that can supply apprentices to the Project and make the request for the dispatch of apprentices in accordance with the Labor Code. The information submitted shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the District if requested. Within sixty (60) days after concluding Work on the Project, the Contractor and Subcontractors shall submit to the District, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Project.
- 24.5 Apprentice Fund. The Contractor or any Subcontractor under him or her, who, in performing any of the Work under the Contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. The Contractor and Subcontractors may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. The Contractor and Subcontractors may add the amount of the contributions in computing his or her bid for the Contract.
- 24.6 Prime Contractor Compliance. The responsibility of compliance with Article 13 and §1777.5 of the Labor Code for all apprenticeable occupations is with the Prime Contractor. Any

Contractor or Subcontractor that knowingly violates the provisions of this Article 24 or Labor Code §1777.5 shall be subject to the penalties set forth in Labor Code §1777.7.

- 24.7 WHEN DETERMINING GMP, CONTRACTOR SHALL INCLUDE TO THE EXTENT POSSIBLE ANTICIPATED GENERAL PREVAILING WAGE RATES FOR THE TIME WHEN WORK ON THE PROJECT WILL ACTUALLY BE PERFORMED.

25. DEBARMENT OF CONTRACTORS AND SUBCONTRACTORS AND REGISTRATION WITH DEPARTMENT OF INDUSTRIAL RELATIONS

- 25.1 The Contractor and its Subcontractors shall comply with the Community and Student Workforce Project Agreement that is attached to the Facilities Lease, and the provisions of this section.
- 25.2 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.
- 25.3 This Project is a public works project. Each Contractor bidding on this Project and all Subcontractors performing any portion of the Work must comply with the requirements of Labor Code Sections 1725.5 and 1771.1.
- 25.4 Each Contractor and all Subcontractors performing any portion of the Work must register with the California Department of Industrial Relations ("DIR"). The DIR's website is <http://www.dir.ca.gov>. Proof of such registration must be provided to the District.

26. HOURS OF WORK

- 26.1 The Contractor and its Subcontractors shall comply with the Community and Student Workforce Project Agreement that is attached to the Facilities Lease, and the provisions of this section.
- 26.2 Eight (8) hours of work shall constitute a legal day's work. The Contractor and each subcontractor shall forfeit, as penalty to the District, twenty five dollars (\$25) for each worker employed in the execution of work on the Project by the Contractor or any subcontractor under him for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any calendar week in violation of the provisions of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of the Contractor and his subcontractors in excess of eight hours per day at not less than one and one half times the basic rate of pay, as provided in Labor Code section 1815.
- 26.3 Generally, construction work on the Project shall be accomplished on a regularly scheduled eight (8) hour per day work shift basis, Monday through Friday, between the hours of 7:00 a.m. and 5:00 p.m. ("Regular Working Hours"), however nothing herein shall prevent Contractor from working weekends and after class hours in order to reach the Substantial Completion Date or the Final Completion Date so long as not otherwise prohibited by law or local ordinances or regulations.

- 26.4 Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed and included within the GMP, unless otherwise agreed to in writing before the work in question is commenced pursuant to Section 9, Work Modifications.
- 26.5 *Permissive Work Outside of Regular Working Hours.* If the Contractor desires to perform any portion of the Work on, at or in the vicinity of the Project Site on any days or at any times other than during Regular Working Hours, or for more than eight working hours per day, the Contractor must obtain the written consent of the District, the Project Inspector and/or any special inspector, and, if necessary, any city, County and other governmental agencies having competent jurisdiction. The Contractor may request such consent for the Contractor's convenience, including, without limitation, because the Contractor desires to accelerate the Work in order to comply with requirements of the Construction Schedule. The Contractor shall be responsible for paying any and all additional or increased management, supervision, inspection and other costs incurred by the District attributable to: (i) the Contractor performing any of the Work on, at or in the vicinity of the Project Site on any days or at any times other than Regular Working Hours, or for more than eight working hours per day, based on consent obtained as required herein; (ii) the Contractor performing any Work at a location that is not on, at or in the vicinity of the Project Site on any days or at any times other than Regular Working Hours; or (iii) the District requiring that the Contractor perform any of the Work on any days or at any times other than Regular Working Hours for any reason that is the fault of, caused by, or otherwise the responsibility of, the Contractor. Any such amounts payable by the Contractor shall be charged to the Contractor and/or deducted from amounts otherwise payable to the Contractor pursuant to the Contract.

27. PAYROLL RECORDS

- 27.1 The Contractor and its Subcontractors shall comply with the Community and Student Workforce Project Agreement that is attached to the Facilities Lease, and the provisions of this section.
- 27.2 This Project is subject to labor compliance monitoring and enforcement by the Compliance Monitoring Unit ("CMU") within the Division of Labor Standards Enforcement pursuant to Title 8, California Code of Regulations, Section 16450 et seq.
- 27.3 The Contractor and all Subcontractors shall be required to furnish, at least monthly, electronic certified payroll records directly to the District's Labor Compliance Consultant and the Labor Commissioner/Compliance Monitoring Unit in accordance with Labor Code §1771.4 and Title 8, California Code of Regulations, Section 16450 et seq. All payroll records shall be furnished in a format prescribed by Title 8, California Code of Regulations, Section 16401. The Contractor and all Subcontractors are directed to go to <https://app.mylcm.com> and follow the instructions to enroll in CMU's eCPR system to submit electronic certified payroll records. The District will have direct and immediate access to all CPRs for the Project that are submitted through the eCPR system. The District can use this information for any appropriate purpose, including monitoring compliance, identifying suspected violations, and responding to Public Records Act requests.
- 27.4 The CMU and/or the District's Labor Compliance Consultant may conduct various compliance monitoring and enforcement activities including, but not limited to, confirming the accuracy of payroll records, conducting worker interviews, conducting audits, requiring submission of itemized statements prepared in accordance with Labor Code section 226, and conducting random in-person inspections of the Project site ("On-Site Visits"). On-Site Visits may include inspections of records, inspections of the work site and observation of

work activities, interviews of workers and others involved with the Project, and any other activities deemed necessary by the CMU to ensure compliance with prevailing wage requirements. The CMU shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner.

- 27.5 Any lawful activities conducted or any requests made by the CMU shall not be the basis for any delays, claims, costs, damages or liability of any kind against the District by the Contractor. Contractor and all Subcontractors shall cooperate and comply with any lawful requests by the Compliance Monitoring Unit. The failure of the CMU, the Division of Labor Standards Enforcement, or any other part of the Department of Industrial Relations to comply with any requirement imposed by the California Code of Regulations, Title 8, Chapter 8 shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Division 2, Part 7, Chapter 1 of the Labor Code.
- 27.6 Prior to commencing any work on the Project, the Contractor shall post the notice/poster required under Title 8, California Code of Regulations, Section 16451(d) in both English and Spanish at a conspicuous, weatherproof area at the Project site. The required notice/poster is available on the CMU website, at the Division of Labor Standards Enforcement District Offices or can be obtained by emailing a request to CMU@dir.ca.gov.

28. PROTECTION OF PERSONS AND PROPERTY

- 28.1 Contractor and subcontractor personnel on Site shall not have been convicted of any criminal offense which may have a discernible adverse impact on District or its students. Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the Site any employee in violation of these requirements as determined by Contractor or by District. Contractor shall impose these requirements on its subcontractors.
- 28.2 Contractor has been advised and is aware that District limits the use of tobacco products on the construction site, including smokeless tobacco. Contractor shall be responsible for the enforcement of District's tobacco policy among all Contractor's employees and subcontractors while on District property. Contractor understands and agrees that should any employee or subcontractor of Contractor violate this policy, after having already been warned once for violating District's tobacco policy, Contractor shall remove the individual for the duration of the Project. Contractor shall not be entitled to any additional compensation and/or time in completing the Project as a result of such removal.
- 28.3 Contractor shall take all steps necessary to insure that employees of Contractor or any of its subcontractors' employees do not use, consume, or work under the influence of alcohol or illegal drugs while on the Project. Contractor shall prevent any of its employees or its subcontractors' employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the project. Contractor shall also prevent its employees or subcontractors' employees from bringing any animal onto the Project.
- 28.4 Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care and protection of all materials delivered and work performed until Final Completion and final acceptance by District.
- 28.5 Contractor shall take, and require subcontractors to take, all necessary precautions for safety of workers on the work and shall comply with all applicable federal, state, local and

other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed and to provide a safe and healthful place of employment. In addition to meeting all requirements of OSHA, Cal-OSHA, state, and local codes, Contractor shall furnish, erect and properly maintain at all times, as directed by District or required by conditions and progress of work, all necessary safety devices, safeguards, construction canopies, signs, audible devices for protection of the blind, 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. Contractor shall designate a responsible member of its organization on the work, whose duty shall be to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety and health of workers. Name and position of person so designated shall be reported to District by Contractor. Contractor shall correct any violations of safety laws, rules, orders, standards or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, such violation shall be corrected promptly.

- 28.6 In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is hereby permitted to act, at its discretion, to prevent such threatened loss or injury; and Contractor shall so act if so authorized or instructed by District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- 28.7 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.
- 28.8 Contractor shall take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations. All permits, licenses, or inspection fees required for such repair work shall be obtained and paid for by Contractor.
- 28.9 In the event Contractor is required to access District's computer system or network in the performance of the Contract, Contractor shall provide 48-hours advance notification to District. In the event such access infects District's computer network, system, or device with a virus, Trojan Horse, worm, or any other computer programming routine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system data or personal information, Contractor agrees to indemnify District and pay for any and all losses, damages and expenses incurred by District to remedy any such infection.
- 28.10 Trenches.
- 28.10.1 The Contractor shall submit to the District, in advance of excavation, 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. The plan shall be prepared by a registered civil or structural engineer. As part of the plan, a note shall be included stating that the registered civil or structural engineer certifies that the plan complies with CAL OSHA Construction Safety Orders, or stating that the registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders.
- 28.10.2 All shoring submittal shall include surcharge loads from adjacent embankments, construction loads and spoil bank. Submittal shall indicate minimum horizontal

distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.

- 28.10.3 Nothing in this Article shall relieve Contractor of the full responsibility for providing shoring, bracing sloping, or other provisions adequate for worker protection. 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 and shall be approved by CAL-OSHA. No excavation of such trench or trenches shall be commenced until said plan has been accepted by the District or the person to whom authority to accept has been delegated by the District.
- 28.10.4 No Excavation Without Permits. The Contractor shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed on the Site prior to the commencement of any excavation.
- 28.10.5 The Contractor shall also submit a copy of its annual trench/excavation permit approved by CAL-OSHA.
- 28.10.6 No Tort Liability of District. Pursuant to Labor Code section 6705, nothing in this Article 28 shall impose tort liability upon the District or any of its employees.
- 28.10.7 Discovery of Hazardous Waste, Unusual Conditions and /or Unforeseen Conditions
- a. Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four feet below the Surface, the Contractor shall immediately, but in no case longer than two (2) Business Days, and before the following conditions are disturbed, notify the District, in writing, of any:
 - i. Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
 - ii. Subsurface or latent physical conditions at the Site differing from those indicated.
 - iii. 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. 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, shall issue a Change Order under the procedures described herein.
 - c. In the event that a dispute arises between 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

the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided by the Contract or by law that pertain to the resolution of disputes and protests, which include the requirement that Contractor complies with the notice and PCO provisions of the Contract Documents. Contractor's failure to submit a proposed change order pursuant to the terms of the Contract Documents shall be deemed a waiver of Contractor's right to an adjustment of the GPC of Contract Time.

28.11 Contractor shall (unless waived by District in writing):

- 28.11.1 When performing construction on existing sites, become informed and take into specific account the maturity of the students on the site; and when performing work which may interfere with the academic routine before, during, or after hours, enclose working area with a substantial barricade, and arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular activities.
- 28.11.2 Not allow any person, other than workers on the Project, or individuals authorized by District to come upon any portion of the premises where work is being performed. Contractor shall require all workers on the Project to be conspicuously identified either by a firm logo on their clothing, or by means of a prominent identification badge.
- 28.11.3 Provide substantial barricades around any shrubs or trees indicated to be preserved.
- 28.11.4 Deliver materials to building area over route designated by District.
- 28.11.5 Take preventive measures to eliminate dust.
- 28.11.6 Confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of District; and shall not interfere with the work or unreasonably encumber premises or overload any structure with materials; and enforce all instructions of District regarding signs, advertising, fires, smoking, the presence of liquor, and the presence of firearms and require that all workers comply with all regulations while on construction site.
- 28.11.7 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 land surveyor or civil engineer at no cost to District.
- 28.11.8 Not allow personal radios on the work site
- 28.11.9 Where the Project involves work at an operating campus, inform and take such preventive measures necessary to ensure that all employees, subcontractors and other individuals authorized on the Project site refrain from any personal contact or conversations with the students on site.
- 28.11.10 Contractor shall not impose structural loading upon any part of the work under construction or upon existing construction on or adjacent to the Site in excess of safe limits, or loading such as to result in damage to the structural, architectural, mechanical, electrical, or other components of the work. The design of all temporary construction equipment and appliances used in construction of the work and not a permanent part thereof, including, without limitation, hoisting equipment, cribbing, shoring, and temporary bracing of structural steel, is the sole responsibility of Contractor. All such items shall conform with the requirements of governing codes

and all laws, ordinances, rules, regulations, and orders of all authorities having jurisdiction. Contractor shall take reasonable and customary precautions, such as shoring of masonry walls and temporary tie bracing of structural steel work, to prevent possible wind damage during construction of the work. The installation of such bracing or shoring shall not damage the work in place or the work installed by others. Any damage which does occur shall be promptly repaired by Contractor at no cost to District.

- 28.11.11 Contractor shall require that subcontractors participate in, and enforce, the safety and loss prevention programs established by Contractor for the Project, which will cover all work performed by Contractor and its subcontractors. All subcontractors and material or equipment suppliers shall cooperate fully with Contractor, District, and all insurance carriers. Subcontractors shall immediately, within twenty four (24) hours, report in writing to Contractor all accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. Contractor shall thereafter immediately, within two (2) days, report the facts in writing to District giving full details of the accident.
 - 28.11.12 Contractor and subcontractors shall use only those ingress and egress routes designated by District, observe the boundaries of the Site designated by District, park only in those areas designated by District, which areas may be on or off the Site, and comply with any parking control program established by District, such as furnishing license plate information and placing identifying stickers on vehicles.
 - 28.11.13 Contractor shall be responsible for providing security services for the Site as needed for the protection of the Site and as determined in District's reasonable discretion.
 - 28.11.14 Contractor shall, for all contracts involving state funds, submit a "Drug-Free Workplace Certification." Contractor shall take all reasonable steps necessary to ensure that any employees of Contractor or any of its subcontractors' employees report for work in a manner fit to do their job. Such employees shall not be under the influence of or in possession of any alcoholic beverage or of any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Project Site is not affected thereby). Contractor shall advise its employees of these requirements before they enter on the Site and shall immediately remove from the site any employee in violation of these requirements as determined by Contractor or by the District. Contractor shall impose these requirements on its subcontractors.
 - 28.11.15 Contractor and subcontractors shall at all times enforce strict discipline and good order among their employees and other persons carrying out the Contract and shall not employ on work any unfit person or anyone not skilled in work assigned to such person. It shall be the responsibility of Contractor to ensure compliance with this Article 28. Any person in the employ of Contractor or subcontractors whom District may deem incompetent, unfit, intemperate, troublesome or otherwise undesirable shall be excluded from the work Site and shall not again be employed on it except with written consent of District. Contractor must sign and cause all subcontractors to sign the Conduct Rules for Contractors form attached as Exhibit "I" and incorporated herein by this reference prior to commencing work on the Project.
- 28.12 Contractor shall be at all times during the performance of work hereunder in full compliance with the provisions of the Immigration Reform and Control Act of 1986 ("IRCA") in the hiring of its employees, and Contractor shall indemnify, hold harmless and defend District against

any and all actions, proceedings, penalties or claims arising out of Contractor's failure to comply strictly with the IRCA.

- 28.13 Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the prosecution of this Contract and shall take all necessary measures and be responsible for the proper care, Final Completion and final acceptance by District. Contractor shall not be responsible for damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

29. TENANT IMPROVEMENT PAYMENTS AND LEASE PAYMENTS

- 29.1 Contractor shall finance a percentage of a portion of the cost of construction of the Project which costs shall not exceed the GMP, except as otherwise provided in the Lease Agreements.

29.1.1 Subject to the provisions set forth in the Facilities Lease(s), each month while Contractor is providing Construction Services, District shall pay to Contractor a sum equal to one hundred percent (100%) of value of the Tenant Improvement Payments associated with the construction service work performed up to the last day of the previous month, less aggregate of previous payments. If all of the necessary information is submitted and accurate (including the schedule of values), District shall approve the Tenant Improvement Payments within fifteen (15) days after District's receipt of the periodic estimate for partial payment and District shall pay such payments within fifteen (15) days after the District's approval of the periodic estimate for partial payment.

29.1.2 The parties agree that the District may, in its sole and absolute discretion, decrease any and all remaining Tenant Improvement Payments and/or Lease Payments for Project scope of work to a fixed amount, after such work has reached Substantial Completion Date or Final Completion, and still allow for Work Modifications as may be agreed upon by the parties pursuant Section 9 hereof for minor work added to the Project's additional scope of work. Tenant Improvement Payments shall be made on the basis of monthly estimates which shall be prepared by Contractor on a form approved by District and certified by Architect and Project Inspector, or any other approved representative of the 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 release Contractor or any bondsman from such work or from enforcing each and every provision of this document and District shall have the right subsequently to correct any error made in any estimate for payment.

29.1.3 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 non-complying work or any portion thereof given by the District lacks correction by Contractor. District shall withhold from Tenant Improvement Payments and/or Lease Payments 150% of the estimated value of non-complying work unless satisfactorily corrected or remedied.

- 29.2 In no event shall the cumulative total of the Lease Payments and Tenant Improvements Payments ever exceed the GMP as defined herein, unless specifically allowed.

29.2.1 Title to new materials and/or equipment for the work of this contract, on a continuous basis while the Project is being completed, shall vest in the District. However, responsibility for such new material and/or work of this contract shall remain with the Contractor until incorporated into the work and accepted by District; no part of said

materials and/or equipment shall be removed from its place of storage except for immediate installation in the work of this contract; and Contractor shall keep an accurate inventory of all said materials and/or equipment in a manner satisfactory to the owner or his authorized representative

Notwithstanding anything to the contrary stated above, the Contractor may include in its Request for Payment the value of any structural steel, glue laminated beams, trusses, bleachers and other such custom-made materials prepared specifically for the Project and unique to the Project so long as all of the following requirements are satisfied:

- a. The aggregate cost of materials stored off-site shall not exceed Twenty Five Thousand Dollars (\$25,000) at any time or as otherwise agreed to be District in writing;
- b. Title to such materials shall be vested in the District as evidenced by documentation satisfactory in form and substance to the District, including, without limitation, recorded financing statements, UCC filings and UCC searches;
- c. With each Contractor Request for Payment, the Contractor shall submit to the District a written list identifying each location where materials are stored off-site (which must be a bonded warehouse) and the value of the materials at each location. The Contractor shall procure insurance satisfactory to the District (in its reasonable discretion) for materials stored off-site in an amount not less than the total value thereof;
- d. The consent of any Surety shall be obtained to the extent required prior to payment for any materials stored off-site;
- e. Representatives of the District shall have the right to make inspections of the storage areas at any time; and
- f. Such materials shall be 1) protected from diversion, destruction, theft and damage to the reasonable satisfaction of the District; 2) specifically marked for use on the Project; and 3) segregated from other materials at the storage facility.

29.3 Reasons to Withhold Payment. The District may withhold payment in whole, or in part, to the extent reasonably necessary to protect the District if, in the District's opinion, the representations to the District required by Article 9.4 cannot be made. The District may withhold payment, in whole, or in part, to such extent as may be necessary to protect the District from loss because of, but not limited to:

1. Defective Work not remedied;
2. Stop Notices served upon the District;
3. Liquidated damages assessed against the Contractor;
4. The cost of Substantial Completion and Final Completion of the Contract if there exists reasonable doubt that the Work cannot be completed for the unpaid balance of any Contract Price or by the Substantial Completion Date or the Final Completion Date, as applicable;

5. Damage to the District or other contractor;
 6. Unsatisfactory prosecution of the Work by the Contractor;
 7. Failure to store and properly secure materials;
 8. Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract Documents, including, without limitation, acceptable monthly progress schedules, Shop Drawings, Submittal schedules, schedule of values, product data and samples, proposed product lists, executed Change Order, Construction Change Documents, and verified reports;
 9. Failure of the Contractor to maintain As-Built drawings;
 10. Erroneous estimates by the Contractor of the value of the Work performed, or other false statements in an Application for Payment;
 11. Unauthorized deviations from the Contract Documents (including but not limited to Unresolved Notices of Deviations (DSA Form 154));
 12. Failure of the Contractor to prosecute the Work in a timely manner in compliance with established progress schedules and the Substantial Completion Date and/or the Final Completion Date;
 13. Failure to properly pay prevailing wages as defined in Labor Code section 1720, et seq.;
 14. Failure to properly maintain or clean up the Site;
 15. Payments to indemnify, defend, or hold harmless the District;
 16. Any payments due to the District including but not limited to payments for failed tests, or utilities changes or permits;
 17. Failure to submit an acceptable schedule in accordance with Article 9;
 18. Failure to pay Subcontractor or suppliers as required by Article 31;
 19. Failure to secure warranties, including the cost to pay for warranties;
 20. Failure to provide release from material suppliers or subcontractors when requested to do so;
 21. Items deducted pursuant to Article 17.7;
 22. Incomplete Punch List items under Article 13.6 which have gone through the Article 12.2 process; or
 23. Allowance(s) that have not been used.
- 29.4 Reallocation of Withheld Amounts. District may, in its discretion, apply any withheld amount to payment of outstanding claims or obligations as defined in Article 29.3. In so doing, District shall make such payments on behalf of Contractor. If any payment is so made by District, then such amount 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

obligation. District will render Contractor an accounting of such funds disbursed on behalf of Contractor.

If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision thereof, District may, after ten (10) calendar days written notice to the Contractor and without prejudice to any other remedy make good such deficiencies. The District shall adjust the total Contract price by reducing the amount thereof by the cost of making good such deficiencies. If District deems it inexpedient to correct Work which is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract price (of at least 150% of the estimated reasonable value of the nonconforming Work) shall be made therefor.

- 29.5 Payment After Cure. When the grounds for declining approval are removed, payment shall be made for amounts withheld because of them. No interest shall be paid on any retainage or amounts withheld due to the failure of the Contractor to perform in accordance with the terms and conditions of the Contract Documents.

30. NONCONFORMING WORK

- 30.1 Contractor shall promptly remove from premises all Work identified by District as failing to conform to the Contract whether incorporated or not. Contractor shall promptly replace and re-execute its own Work to comply with the Contract 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.
- 30.2 If Contractor does not remove such Work which has been identified by District as failing to conform to the Contract Documents 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) calendar days' time thereafter, District may, upon ten (10) calendar 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.
- 30.3 *Costs of Erroneous or Non-Conforming Work.* If, at any time during the course of the Work, the Contractor or any Subcontractor performs, or permits the performance of, any portion of the Work that is affected by or relates to any provision of the Contract Documents that the Contractor knows or reasonably should have known: (i) is erroneous, inconsistent, conflicting, ambiguous, omitted, or not sufficiently detailed or explained (including, without limitation, and notwithstanding any approval by the Architect, any materials, equipment, processes or other items for which the designs or Specifications were submitted by or on behalf of the Contractor); or (ii) does not conform with any applicable law, ordinance, code, rule, regulation or other governmental requirement; then the Contractor shall bear any and all costs arising therefrom including, without limitation, the cost of correction, without increase or adjustment to the Final GMP or the time for performance, if: (i) the work was performed without the Contractor having first notified and/or sought written directive(s) from the District and Architect as required herein; or (ii) the work was performed contrary in any manner to the instructions, Addenda or other written directive(s) of the Architect or District.

31. SUBCONTRACTOR PAYMENTS

- 31.1 Payments to Subcontractors. No later than ten (10) days after receipt, or pursuant to Business and Professions Code Section 7108.5, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's

portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

- 31.2 No Obligation of District for Subcontractor Payment. The District shall have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.
- 31.3 Payment Not Constituting Approval or Acceptance. An approved Request for Payment, a Tenant Improvement Payments and/or Lease Payments, a Certificate of Substantial Completion, or partial or entire use or occupancy of the Project by the District shall not constitute acceptance of Work that is not in accordance with the Contract Documents.
- 31.4 Joint Checks. District shall have the right, if necessary for the protection of the District, to issue joint checks made payable to the Contractor and Subcontractors and material or equipment suppliers. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the District and a Subcontractor of any tier, any obligation from the District to such Subcontractor, or rights in such Subcontractor against the District. The District may choose to issue joint checks at District's sole discretion and only after all the requirements of that particular district and county are specifically met. Some districts cannot issue joint checks, so the ability to issue joint checks depends on the District and the specific circumstances.

32. SEPARATE CONTRACTS

- 32.1 Reservation of Rights to have other Contractors on Site. District reserves the right to let other contracts in connection with the construction of portions of the Project which are not being performed by Contractor hereunder. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate the Project with the work of such Contractors. Such contractors shall comply with all applicable State safety laws and regulations and shall provide a certificate of insurance naming Contractor as additional insured
- 32.2 Notice of Coordination of Work. If the proper execution of any part of the Contractor's work on the Project depends upon the work of any such Contractors, Contractor shall inspect and promptly report to District any patent defects or other problems it identifies in such work that render it unsuitable for such proper execution and results. Contractor is only required to inspect the work of such other Contractors prior to commencing its own further work in connection with or in relation to that other work. Further, Contractor is only expected to identify patent defects or other problems, and is not required to do any destructive testing or to monitor the progress of such work by other Contractors prior to its Final Completion. In no event shall the work of such other Contractors be covered by the warranty given by Contractor to the District, nor shall Contractor be required to provide insurance for such work.

33. USE OF PREMISES/SAFETY

Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site or existing facilities on the Site with any materials or equipment. Contractor shall not load or permit any part of the work to be loaded with a weight so as to endanger the safety of persons or property at the Site. The Contractor shall maintain emergency

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

34. CLEANING UP

- 34.1 Contractor's Responsibility to Clean Up. Contractor at all times shall keep premises free from debris such as waste, dust, excess water, storm water runoffs, rubbish, and excess materials and equipment. Contractor shall not leave debris under, in, or about the premises, but shall promptly remove same from the premises and dispose of it in a lawful manner. Waste disposal receipts or dump tickets shall be furnished to the Architect and/or CM within five (5) days of request.

Contractor shall remove rubbish and debris resulting from the Work on a daily basis. Contractor shall maintain the structures and Site in a clean and orderly condition at all times until acceptance of the project by the District. Contractor shall keep its access driveways and adjacent streets, sidewalks, gutters and drains free of rubbish, debris and excess water by cleaning and removal each day. All concrete, sidewalks, and paths of travel shall be broom cleaned daily.

- 34.2 General Final Clean-Up. Upon Final Completion of Work, Contractor shall employ experience workers or professional cleaners for final cleaning. Clean each surface to the condition expected in a normal, commercial, building cleaning and maintenance program.

1. Clean interior and exterior of buildings, 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;
2. Clean the Project site. The grounds should be cleared of any Contractor equipment, raked clean of debris and trash removed. Sweep paved areas broom clean.
3. Repair or replace any damaged materials. Replace any chipped or broken glass.
4. Remove any and all stains.
5. Remove labels that aren't permanent labels.
6. Clean and polish all glass, plumbing fixtures, equipment, finish hardware and similar finish surfaces. Remove any glazing compounds
7. Remove temporary utilities, fencing, barricades, planking, sanitary facilities and similar temporary facilities from Site.
8. Remove temporary film that remains on any hardware, doors or other surfaces.
9. Seal the bottom and tops of all doors
10. Special Clean-Up.
11. In addition to the general cleaning, the following special cleaning shall be done at the Final Completion of the Work in accordance with the specifications including, but not limited to:
 - a. Remove putty stains from glazing, then wash and polish glazing.

- b. Remove marks, stains, fingerprints and other soil or dirt from painted, stained or decorated work.
- c. Remove temporary protection and clean and polish floors and waxed surfaces.
- d. Clean and polish hardware and plumbing trim; remove stains, dust, dirt, plaster and paint
- e. Wipe surfaces of mechanical and electrical equipment.
- f. Remove spots, soil, plaster and paint from tile work, and wash tile.
- g. Clean all fixtures and equipment, remove excess lubrication, clean light fixtures and lamps, polish metal surfaces.
- h. Vacuum-clean carpeted surfaces.
- i. Remove debris from roofs, down spout and drainage system.

34.3 Failure to Cleanup. If the Contractor fails to clean up as provided in the Contract Documents, the District may do so, and the cost thereof shall be the responsibility of the Contractor pursuant to Article 12.2 and seek a Deductive Change Order.

35. INSURANCE AND BONDS

35.1 Insurance. The District will centralize the purchase of insurance for the activities of the Contractor and Subcontractors of every tier for Work performed for the Project. This consolidated purchase of insurance shall be known as Owner Controlled Insurance Program (“OCIP”). Contractor shall comply with the insurance requirements of the Facilities Lease and the terms of the OCIP, attached as Exhibit K to the Facilities Lease, which include the scopes of insurance that are NOT within the OCIP.

35.2 Earthquake and Flood Coverage. The District may require the Contractor to include coverage for “earthquake(s)” and/or “flood” and Contractor shall provide the price for those additional coverages for the District’s consideration prior to including or charging the District for those coverages.

35.3 Contractor OCIP Obligations.

35.3.1 Compliance with OCIP Requirements. Contractor agrees to comply with any and all terms and conditions of the policies of insurance provided by the District and to comply with any and all claims handling procedures, loss prevention programs and other programs required by or related to the District’s OCIP as set forth herein. Contractor shall require Subcontractors and Sub-Subcontractor and all others covered by the District’s OCIP insurance policies to so comply.

35.3.2 Contractor Furnishing of Information. Contractor, its Subcontractor and Sub-Subcontractors shall furnish to the District, the Architect, the OCIP Administrator, its designees or the insurers under the OCIP policies, all information and documentation that such entity may require from time to time in connection with the issuance of policies under this Contract or the administration of the OCIP in such form and substance as such entity may prescribe and promptly comply with the recommendations of the OCIP insurers.

- 35.3.3 No Violation of OCIP Insurance Policy Conditions. Contractor shall not violate, or knowingly permit to be violated; any conditions of the policies of insurance provided by the District hereunder and shall at all times satisfy the requirements of the insurers issuing them. Contractor shall assure that all OCIP requirements imposed upon, assumed and performed by each Subcontractor and Sub-Subcontractor.
- 35.3.4 District Rights. If the Contractor, Subcontractors, Sub-Subcontractors, or Excluded Parties should fail to comply with the Non-OCIP Insurance requirements, the District may withhold payment due to the Contractor or suspend the Work at the Contractors' sole expense and without adjustment of the Contract Price or Contract Time until such time as the Contractor, its Subcontractor, Sub-Subcontractors, and/or Excluded Parties have performed such obligations to the reasonable satisfaction of the District.
- 35.3.5 Withholding of Progress Payments/Final Payment. In addition to the rights of the District to withhold all or portions of Progress Payments or the Final Payment set forth elsewhere in the Contract Documents, the District may withhold Progress Payments or the Final Payment for the failure or refusal of the Contractor to comply with OCIP requirements, including without limitation, the reporting requirements set forth in the OCIP Program description or the OCIP insurance policies. Amounts withheld by the District pursuant to the preceding will be released only after the Contractor and/or Subcontractors' compliance with OCIP requirements, less costs and expenses incurred by the District in securing such compliance.
- 35.4 Contractor/Subcontractor Provided Insurance Requirements. The Contractor and Subcontractors shall obtain and maintain for the duration of the Work each of the Contractor/Subcontractor Provided insurance policies as set forth in the OCIP. Prior to the Contractor or Subcontractor performance of Work at the Site, the Contractor shall deliver Certificates of Insurance to the District evidencing that the Contractor and applicable Subcontractor(s) have obtained the Contractor/Subcontractor Provided insurance policies required by the OCIP.
- 35.5 No Waiver Created through Payments. The making of Progress Payments of the GMP to the Contractor shall not be construed as creating an insurable risk interest by or for the District or be construed as relieving the Contractor or his subcontractors of responsibility for loss from any direct physical loss, damage, or destruction occurring prior to completion of the work by the District.
- 35.6 Performance and Payment Bonds
- 35.6.1 Bond Requirements. Unless otherwise specified in any applicable supplemental conditions, prior to commencing any portion of the Work, the Contractor shall furnish separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California as sureties.

To the extent, if any, that the Contract Price is increased in accordance with the Contract Documents, the Contractor shall, upon request of the District, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the District. To the extent available, the bonds shall further provide that no change or alteration of the Contract Documents (including, without limitation, an increase in the Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to

the Contractor will release the surety. If the Contractor fails to furnish the required bonds, the District may terminate the Contract for cause.

- 35.6.2 *Surety Qualification.* Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure § 995.120 shall be accepted. Surety must be a California-admitted surety and listed by the U.S. Treasury with a bonding capacity in excess of the Project cost.
- 35.6.3 *Alternate Surety Qualifications.* If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with § 995.660 of the California Code of Civil Procedure and proof of such is provided to the District.
- 35.6.4 Contractor is hereby authorized to obtain a Performance and Payment Bond from any subcontractors selected by Contractor at its discretion and cost. Any bonds required by this subsection shall comply with the requirements set forth above.

36. HOLD HARMLESS AND INDEMNITY

Contractor shall defend, indemnify and hold harmless District, Architect, Construction Manager, Project Inspector, the State of California and their officers, employees, agents and independent contractors from all liabilities, claims, actions, liens, judgments, demands, damages, losses, costs or expenses of any kind arising from death, personal injury, property damage or other cause based or asserted upon any act, omission, or breach connected with or arising from the progress of Work or performance of service under the Contract Documents. As part of this indemnity, Contractor shall protect and defend, at its own expense, District, Architect, Project Inspector, the State of California and their officers, employees, agents and independent contractors from any legal action including attorney's fees or other proceeding based upon such act, omission, breach or as otherwise required by this Article 36.

Furthermore, Contractor agrees to and does hereby defend, indemnify and hold harmless District, Architect, Project Inspector, the State of California and their officers, employees, agents and independent contractors from every claim or demand made, and every liability, loss, damage, expense or attorney's fees of any nature whatsoever, which may be incurred by reason of:

- 36.1 Liability for 1) death or bodily injury to persons; 2) damage or injury to, loss (including theft), or loss of use of, any property; 3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or 4) any other loss, damage or expense, sustained by any person, firm or corporation or in connection with the Work called for in the Contract Documents, except for liability resulting from the sole or active negligence, or the willful misconduct of the District.
- 36.2 Any bodily injury to or death of persons or damage to property caused by any act, omission or breach of Contractor or any person, firm or corporation employed by Contractor, either directly or by independent contract, including all damages or injury to, loss (including theft), or loss of use of, any property, sustained by any person, firm or corporation, including District, arising out of or in any way connected with Work covered by the Contract Documents, whether said injury or damage occurs either on or off District property, but not for any loss, injury, death or damages caused by the sole or active negligence or willful misconduct of the District.
- 36.3 Any dispute between Contractor and Contractor's subcontractors/supplies/sureties, including, but not limited to, any failure or alleged failure of the Contractor (or any person hired or employed directly or indirectly by the Contractor) to pay any Subcontractor or Materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic's lien claims.

Contractor, at its own expense, cost, and risk, shall defend any and all claims, actions, suits, or other proceedings that may be brought or instituted against the District, its officers, agents, Architect or CM, or employees, on account of or founded upon any cause, damage, or injury identified herein and shall pay or satisfy any judgment that may be rendered against the District, its officers, agents or employees in any action, suit or other proceedings as a result thereof.

Contractor shall ensure that its contract with each of its subcontractors contains provisions requiring the subcontractors to defend, indemnify and hold harmless the District, Architect, Project Inspector, the State of California to a minimum level as set forth in this Article 36 and consistent with the language of this Article 36.

The Contractor's and Subcontractors' obligation to defend, indemnify and hold harmless the District, Architect, Project Inspector, the State of California and their officers, employees, agents and independent contractors hereunder shall include, without limitation, any and all claims, damages, and costs for the following: 1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; 2) breach of any warranty, express or implied; 3) failure of the Contractor or Subcontractors to comply with any applicable governmental law, rule, regulation, or other requirement; 4) products installed in or used in connection with the Work; and 5) any claims of violation of the Americans with Disabilities Act ("ADA")

37. SUBSTITUTION OF SECURITY

In accordance with Public Contract Code section 22300, the District will permit the substitution of securities for any moneys withheld by the District to ensure performance under the Contract Documents. At the request and expense of the Contractors, securities equivalent to the amount withheld shall be deposited with the District, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the Contractor. Upon satisfactory Final Completion of the Project, the securities shall be returned to the Contractor.

38. TITLE TO WORK

Title to all work completed and in the course of construction paid for by District and title to all materials on account of which payment has been made by District to Contractor shall vest in District pursuant to the applicable provisions of the Lease Agreement(s).

39. COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION

39.1 Application. A Storm Water Pollution Prevent Plan (SWPPP) has been developed for the Project. This SWPPP addresses the implementation and monitoring of a Storm Water Pollution Prevention Plan (SWPPP) & Water Pollution Control Drawings (Erosion Control Plan) for the purpose of preventing the discharge of pollutants from the construction site into the receiving waters per the new Statewide Construction General Permit (CGP) Order No. 2009-0009-DWQ, as amended by 2010-0014-DWQ (CGP) and Order No.2012-0006-DWQ becomes effective July 17, 2012, NPDES No. CAS000002 and this document and all attachments within the CGP & SWPPP for this Project.

39.1.1 It is the sole responsibility of the Contractor to comply with all aspects of the New Statewide Construction General Permit (CGP). The Contractor is responsible for providing and installing the implementation, maintenance, inspection, reporting, and monitoring the SWPPP for the Project, for the purpose of preventing and eliminating the discharge of pollutants from the construction site throughout the duration of this project work. Implementation and maintenance of SWPPP to include all materials/equipment identified in the SWPPP binder and drawings. The Contractor shall include all costs of compliance with specified requirements in the Contract Price.

- 39.1.2 It is highly recommended that the Contractor read the CGP to understand their contractual responsibility and familiar with the 2009 CASQA Construction BMPs in Attached in the SWPPP. The QSP is responsible for the daily, weekly and quarterly inspections and reporting per the CGP.
- 39.1.3 The Contractor shall have a Qualified SWPPP Practitioner to oversee implementation of the BMPs required to comply with the CGP.
- 39.1.4 Contractor is responsible for Annual Reports and the Notice of Termination “NOT” via SMARTS system and copy to District upon completion of the Project. The NOT is not complete until the SWCRB has accepted and clears application of any further requirements. The Contractor is responsible for maintaining the project site until final completion/acceptance of the NOT by the SWCRB.
- 39.1.5 Failure to comply with the Permit is in violation of federal and state law. The Contractor hereby agrees to indemnify and hold harmless the 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 the 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 sole negligence, willful misconduct or active negligence of the District, its Board members, officers, agents, employees or authorized volunteers. District may seek damages from the Contractor for delay in completing the Project caused by the Contractor's failure to comply with the Permit. The Contractor shall be solely responsible and liable for any and all costs, fines and/or delays arising from any failure of the Contractor to comply with any of the requirements described in this Section 13.12.
- 39.1.6 Project SWPPP to be turned over to the District after SWCRB acceptance of the NOT.
- 39.2 Implementation. The Contractor shall implement the Storm Water Pollution Prevention Plan by doing the following:
 - 39.2.1 Obtain a Waste Discharger Identification (WDID) number from the SWRCB before beginning construction.
 - 39.2.2 Keep the SWPPP, REAPs, monitoring data on the construction site.
 - 39.2.3 Employ a Qualified SWPPP Practitioner (QSP) to implement the SWPPP during construction and develop Rain Event Action Plans (REAPs).
 - 39.2.4 Install, inspect, maintain and monitor BMPs required by the General Permit.
 - 39.2.5 Install perimeter controls prior to starting other construction work at the site.
 - 39.2.6 Contain on-site storm water at the jobsite. Do not drain on-site water directly into the storm drain.
 - 39.2.7 Implement the SWPPP.
 - 39.2.8 Provide SWPPP and BMP implementation training for those responsible for implementing the SWPPP.
 - 39.2.9 Designate trained personnel for the proper implementation of the SWPPP.

- 39.2.10 Conduct monitoring, as required, and assess compliance with the Numeric Action Levels (NALs) or Numeric Effluent Limitations (NELs) appropriate to your project.
- 39.2.11 Report monitoring data:
- a. Maintain a paper or electronic copy of all required records for three years from the date generated or date submitted, whichever is last. These records must be available at the construction site until construction is completed.
 - b. Revise the SWPPP map as needed to reflect the phases of construction and to suit changing site conditions and instances when properly installed systems are ineffective.
 - c. Assist the District with entering any necessary data or information into the Stormwater Multi-Application and Reporting System (SMARTS) system
- 39.2.12 At the end of Construction Contract:
- a. Submit Notice of Termination (NOT) into the SMARTS when construction is complete and conditions of termination listed in the NOT have been satisfied.
 - b. Leave in place storm water pollution prevention controls needed for post-construction storm water management and remove those that are not needed as determined by the District. Thereafter, left-in-place controls will be maintained by the District.
 - c. Provide Site Monitoring Reports, SWPPP revisions, Compliance Certifications and related documents to the District. Post-construction storm water operation and management plan as mentioned in the compliance certifications are considered to be in place at the end of the Construction Contract.
- 39.2.13 Monitoring. The Contractor shall conduct examination of storm water pollution prevention controls as required by the State Water Resources Control Board (2009). Order 2009-0009-DWQ, NPDES General Permit No. CAS000002: Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbing Activities. This includes properly qualified personnel performing all required monitoring, testing, inspections and monitoring. The Contractor shall also conduct examination of storm water pollution prevention controls, as well as before and after each storm event in compliance with the State Water Resources Control Board Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000002, Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction and Land Disturbance Activities (General Permit) (SWRCB, 2009) and at least once each 24-hour period during extended storm events to identify BMP effectiveness and implement repairs or BMP changes as soon as feasible. All maintenance related to a storm event should be completed within 48 hours of the storm event. The Contactor shall also prepare and maintain, at the jobsite, a log of each inspection using Site Monitoring Report forms.
- 39.2.14 Liabilities and Penalties
- a. Review of the SWPPP and inspection logs by the District shall not relieve the Contractor from liabilities arising from non-compliance with storm water pollution regulations.

- b. Payment of penalties for non-compliance by the Contractor shall be the sole responsibility of the Contractor and will not be reimbursed by the District.
- c. Compliance with the Clean Water Act pertaining to construction activity is the sole responsibility of the Contractor. For any fine(s) levied against the District due to non-compliance by the Contractor, the District will deduct from the final payment due the Contractor the total amount of the fine(s) levied on the District, plus legal and associated costs.
- d. The Contractor shall submit to the District a completed NOI for change of information (Construction Site Information and Material Handling/ Management Practices).

40. EQUAL OPPORTUNITY CLAUSE

The Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age or physical handicap in the performance of the Lease Agreements and to comply with the provisions of the following laws:

- 40.1 California Fair Employment and Housing Act (Gov. Code 12900 et seq., prohibiting discrimination in employment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex, and prohibiting harassment of an employee or applicant because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, or age);
- 40.2 Federal Civil Rights Act of 1964 (42 USC ‘2000e et seq., prohibiting discrimination in employment on the basis of race, color, national origin, religion, or sex); Title I of the Americans With Disabilities Act of 1990 (42 USC 12101 et seq., prohibiting discrimination against qualified individuals with a disability in hiring and employment practices);
- 40.3 The Age Discrimination in Employment Act (29 USC 621 et seq., prohibiting age discrimination in employment against individuals who are at least forty years of age);
- 40.4 California Labor Code section 1102.1 (prohibiting discrimination in any aspect of employment or opportunity for employment based on actual or perceived sexual orientation);
- 40.5 Sexual Orientation;
- 40.6 American with Disabilities Act (ADA) (See Article 41); and
- 40.7 Any other laws or regulations prohibiting discrimination as may be applicable to Contractor.

41. SPECIAL NOTICE OF AMERICAN’S WITH DISABILITIES ACT

- 41.1 Some of the requirements in the plans and specifications are meant to comply with the American’s with Disabilities Act (“ADA”). The requirements of the ADA are technical in nature and may appear to be minor in nature (i.e. whether a walkway or ramp has a 2% cross-slope). Contractor is warned that even the slightest deviation from the specific requirements from the ADA is considered a Civil Rights Violation and subjects the District to fines of three times actual damages sustained by a handicap individual or up to \$4,000 per violation and attorney’s fees required to enforce the ADA violation. As a result of the significant liability and exposure associated with ADA aspects of the Contract, Contractor

shall take special care to meet all ADA requirements detailed in the plans and specifications. Failure to comply with ADA rules that results in a Notice of Non-Compliance shall be repaired to meet ADA requirements promptly. In addition, any ADA violations that are not identified by Project Inspector or Architect that are later identified shall be repaired and charged back to the Contractor through a Deductive Change Order.

- 41.2 Indemnification of ADA Claims. ADA claims arising from failure to comply with plans and specifications shall be indemnified, held harmless and defended by Contractor. Further, any withholdings for ADA violations in Article 29.3 shall include potential redesign costs and an accelerated repair costs due to the potential for ADA claims arising from DSA posting of ADA violations on the Project. This provision shall survive termination or cancellation of the Contract Documents.

42. 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 the Lease Agreements, including its use by the District, except to the extent a method or means was specifically required by the Contract Documents.

43. EXCISE TAX

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 the GMP.

44. 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 Project, shall be or become directly or indirectly interested financially in the Lease Agreements or 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 Project, shall become directly or indirectly interested financially in the Lease Agreements or in any part thereof.

45. COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOIL/SOILS INSPECTION

- 45.1 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 the Contract Documents, and all applicable California law, including 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 applicable Regional Water Quality Control Board Resolution and when applicable, with the guidelines of the Department of Toxic Substances Control (DTSC).
- 45.2 With respect to any District-provided 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 Documents, unless otherwise specifically provided. No representation is made by District that information provided is completely representative of all conditions and materials which may be encountered. Further, no representation is made by District that information provided is solely adequate for purposes of construction. Contractor shall determine means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Lease Agreements to be materially different from those reported and which are not customarily encountered in the geographic area of the Project shall be governed by provisions of the Lease Agreements for unforeseen conditions.

46. HAZARDOUS WASTE AND UNKNOWN PHYSICAL CONDITIONS

Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:

1. Material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
2. Subsurface or latent physical conditions at the Site differing from those indicated, including geological, soils, and or water table issues which impede construction or increase Construction Costs.
3. Unknown physical conditions at the Site (not including structures or improvements) of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Lease Agreements.

- 46.1 District shall promptly investigate the conditions, and if it finds that the conditions materially so differ, and the materials that are not on reports or documents supplied or reviewed as part of Contractor's Due Diligence shall be submitted as a Change Order under Article 17. There shall be no work stoppage after written notice is provided of the hazardous substances encountered that were not documented in the Due Diligence documents reviewed by Contractor.
- 46.2 In the event that a dispute arises between District and Contractor whether the conditions materially differ from Due Diligence documents reviewed for hazardous substances, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled Substantial Completion Date or Final Completion Date provided for by Contract Documents but shall proceed with all work to be performed under the Contract Documents.

47. NO ASBESTOS CERTIFICATION

- 47.1 Asbestos Free Installation Certification: Contractor shall execute and submit an "Asbestos Free Materials Certification," and further, is aware of the following
 - 47.1.1 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.

47.1.2 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.

47.1.3 Hold Harmless: Interface of work for the Project with work containing asbestos shall be executed by the Contractor at his/her risk and at his/her 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 Lease Agreements the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Board and each member of the Board, its officers, 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 employees with respect to the above mentioned standards, hazards, risk and liabilities.

48. LAWS AND REGULATIONS

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, it shall promptly notify Architect in writing and any necessary changes shall be adjusted as provided in the Lease Agreements 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 the District's Architect, it shall bear all costs arising therefrom.

49. AGREEMENT MODIFICATIONS

No waiver, alteration or modification of any of the provisions of the Contract Documents shall be binding upon either District or Contractor unless the same shall be in writing and signed by both District and Contractor.

50. NOTICES

All communications in writing between District and Contractor, including without limitation, applications for payment, shall be deemed to have been received by the addressee if delivered to the person for whom they are intended or if sent by registered mail, return receipt requested, or by telex, telegram, or fax followed by regular mail, addressed pursuant to the Facilities Lease Agreement.

51. THIRD-PARTY CLAIMS

Pursuant to Public Contract Code section 9201(b) and (c), District shall provide Contractor with timely notification of the receipt of any third-party claim, relating to the Contract. District is entitled to recover its reasonable costs incurred in providing such notification.

52. ASSIGNMENT

Except Contractor's responsibility to assign subcontractors and material suppliers to District upon Final Completion and the running of the Warranty Period, Contractor shall not assign or sublet the Site Lease, Facilities Lease or any of the Contract Documents, nor shall Contractor assign any monies due or to become due to it hereunder. Contractor has unique abilities and understanding of the Project from negotiations and the Due Diligence that has been undertaken and, thus, any assignment will not transfer to the assignee the specific understanding associated with Contractor on this Project.

53. HEADINGS

The headings herein contained are inserted only as a matter of convenience and reference and are not meant to define, limit or describe the scope or intent of the Contract Documents or in any way to affect the terms and provisions set forth herein.

54. INTEGRATION/MODIFICATION

The Lease Agreements represent the entire understanding of District and Contractor as to those matters contained herein, and supersedes and cancels any prior oral or written understanding, promises or representations with respect to those matters covered herein, and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.

55. APPLICABLE LAW/ PROVISIONS REQUIRED BY LAW DEEMED INSERTED

The terms and provisions of the Lease Agreements shall be construed in accordance with the laws of the State of California. If any action is brought in a court of law to enforce any term of the Lease Agreements the action shall be brought in a state court situated in the County of Orange, State of California, unless a court finds jurisdiction or venue is only proper in a federal court, or a court outside this county. In the event of any such litigation between the parties, the parties shall pay for their respective costs incurred, including attorneys' fees.

Each and every provision of law and clause required by law to be inserted in the Lease Agreements shall be deemed to be inserted herein and the Lease Agreements 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 Lease Agreements shall forthwith be physically amended to make such insertion or correction.

56. SUCCESSION OF RIGHTS AND OBLIGATIONS

All rights and obligations under the Lease Agreements shall inure to and be binding upon the successors and assigns of the parties hereto.

EXHIBIT E
TO
FACILITIES LEASE

MEMORANDUM OF COMMENCEMENT DATE

**[TO BE ENTERED INTO AFTER CONSTRUCTION IS
SUBSTANTIALLY COMPLETE OR DISTRICT OCCUPIES THE
FACILITY TO COMMENCE THE LEASE TERM]**

This MEMORANDUM OF COMMENCEMENT DATE is dated _____, 20____, and is made by and between **[Contractor Name]** ("Contractor"), as Lessor, and the **Rancho Santiago Community College District** ("District"), as Lessee.

1. Contractor and District have previously entered into a Facilities Lease dated as of _____, **20__**, (the "Lease") for the leasing by Contractor to District of the Project Site(s) and Project in _____, CA, referenced in the Lease.

2. District hereby confirms the following:

A. That all construction of the Project required to be performed pursuant to the Facilities Lease has been substantially completed by Contractor in all respects;

B. That District has accepted and entered into possession of the Project and now occupies same; and

C. That the term of the Facilities Lease commenced on _____, 20____, and will expire at 11:59 P.M. on _____, 20____.

THIS MEMORANDUM OF COMMENCEMENT DATE IS ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 20_____

Dated: _____, 20_____

Rancho Santiago Community College District

[Contractor Name]

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

**EXHIBIT F
TO
FACILITIES LEASE**

**CONSTRUCTION SCHEDULE
FOR
[NAME] SITE(S)**

Construction Schedule. The Construction Schedule is as follows:

- A. It is hereby understood and agreed that assuming the District issues a Notice to Proceed for the Project on or before **[Date]**, then:
1. The Contractor shall provide District with:
 - a) Submittal Schedule, for the District’s consideration and approval, within **thirty (30) calendar days from NTP.**
 - b) Schedule of Values, for the District’s consideration and approval, within **thirty (30) calendar days from NTP.** Once approved by the District, this Construction Schedule shall be the baseline Construction Schedule (or “Baseline Schedule”) that the Contractor shall follow for the Project and which can only be changed by the written approval of the District as indicated in the Contract Documents.
 - c) Construction Schedule, for the District’s consideration and approval, within **thirty (30) calendar days from NTP.**
 - d) Fully burdened labor rates for each trade within **thirty (30) calendar days from NTP.** See Contract Documents for acceptable format.
 2. The Substantial Completion Date of the Project shall be on or before **[Date]** (**_____ calendar days from NTP.**)
 3. The Final Completion Date (or “Completion Date”) shall be on or before **[Date]** (**_____ calendar days from NTP.**)
- B. It is hereby understood that the Contract Time is **[]** calendar days
- C. Attached is the Contractor’s Milestone Construction Schedule indicating a duration no longer than the Contract Time and conformance with specific milestones as indicated in the Contract Documents. Subsequent board approval, a fully detailed schedule will be submitted by the Contractor in accordance with the Contract Documents for District review and approval.

[INSERT MILESTONE SCHEDULE]

**EXHIBIT G
TO
FACILITIES LEASE**

SCHEDULE OF VALUES FOR SCIENCE CENTER AT SANTA ANA COLLEGE SITE(S)

Subsequent board approval, a detailed Schedule of Values that complies with the requirements of the Contract Documents will be submitted to the District for review and approval.

**EXHIBIT H
TO FACILITIES LEASE**

{RESERVED}

**EXHIBIT I
TO
FACILITIES LEASE**

FORMS, CERTIFICATES AND BONDS TO LEASE-LEASEBACK DOCUMENTS

Rancho Santiago Community College District

and

[Contractor Name]

Science Center Project

PERFORMANCE BOND (100% of Contract Price)

(Note: Contractor must use this form, NOT a surety company form.)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: RFP#1718-173, Science Center Project at Santa Ana College (hereinafter referred to as the "Public Work"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated _____, (hereinafter referred to as the "Contract"), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we, _____, the undersigned Contractor, as Principal, and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Rancho Santiago Community College District in the sum of _____ Dollars (\$ _____), said sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which amount 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, if the bounded Contractor, his or her heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in said Contract and any alteration thereof made as therein provided, on his or her part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill guarantees of all materials and workmanship; and indemnify, defend and save harmless the Obligee, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Obligee that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by the Obligee to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly take over and complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligee 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 warranties, guarantees and the payment of liquidated damages; or, at Obligee's sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligee

of the lowest responsible bidder, arrange for a contract between such bidder and the Obligee and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Obligee under the Contract and any modifications thereto, less the amount previously paid by the Obligee to the Principal, less any withholdings by the Obligee allowed under the Contract. Obligee shall not be required or obligated to accept a tender of a completion contractor from the Surety.

Surety expressly agrees that the Obligee may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Obligee, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal. No final settlement between the Obligee and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair, replace, and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of the Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District's rights or the Contractor's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Contractor and Surety agree that if the Obligee is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Obligee's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including reasonable attorneys' fees to be fixed by the Court.

As used herein, "complete" or "completion" shall mean Final Completion of the Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this ____ day of _____, 2017.

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

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

The total amount of premium charged: \$_____ (This must be filled in by a corporate surety).

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

) ss.

COUNTY OF)

On _____, before me, _____, personally appeared _____, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of _____ (Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)

Commission expires: _____

Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

PAYMENT BOND -- Contractor's Labor & Material Bond (100% of Contract Price)

(Note: Contractor must use this form, NOT a surety company form.)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT (sometimes referred to hereinafter as "Obligee") has awarded to _____ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: RFP#1718-173, Science Center Project at Santa Ana College (hereinafter referred to as the "Public Work"); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code Section 9550;

NOW, THEREFORE, We, _____, the undersigned Contractor, as Principal; and _____, a corporation organized and existing under the laws of the State of _____, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Rancho Santiago Community College District and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code Section 9100, or any person, company, or corporation entitled to make a claim on this bond, in the sum of _____ Dollars (\$ _____), such sum being not less than one hundred percent (100%) of the total amount payable by said Obligee under the terms of said Contract, for which payment will and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code Section 9100; or fail to pay for any materials, provisions, or other supplies, used in, upon, for, or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code Section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Section 9550 et seq.

This bond shall inure to the benefit of any person named in Civil Code Section 9100 giving such person or his/her assigns a right of action in any suit brought upon this bond.

It is further stipulated and agreed that the Surety of this bond shall not be exonerated or released from the obligation of the bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, Plans, or specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described; or pertaining or relating to the furnishing of labor, materials, or equipment therefor; nor by any change or modification of any terms of payment or extension of time for payment pertaining or relating to any scheme or work of improvement herein above described; nor by any rescission or attempted rescission of the contract, agreement or bond; nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond; nor by any fraud practiced by any person other than the claimant seeking to recover on the bond; and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given; and under no circumstances shall the Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the Obligee and the Contractor or on the part of any obligee named in such bond; that the sole condition of recovery shall be that the claimant is a person described in California Civil Code Section 9100, and who has not been paid the full amount

of his or her claim; and that the Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF this instrument has been duly executed by the Principal and Surety above named, on the _____ day of _____, 2017.

(SEAL)

PRINCIPAL/CONTRACTOR:

By: _____

SURETY:

By: _____

Attorney-in-Fact

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

The total amount of premium charged: \$ _____ (This must be filled in by a corporate surety).

IMPORTANT: THIS IS A REQUIRED FORM.

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

Telephone: _____

Telephone: _____

A notary public or other office completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____, before me, _____, personally appeared _____, who proved on the basis of satisfactory evidence to be the

person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of _____ (Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)

Commission expires: _____

Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

CRIMINAL BACKGROUND INVESTIGATION / FINGERPRINTING CERTIFICATION

Project _____ between Rancho Santiago Community College District (the District or the Owner) and _____ (Contractor) (the Contract or the Project). This Project may involve work around or in the vicinity of minor students, pupils, or children (Minor Pupils), and therefore Contractor is required to submit this form to the District in compliance with Education Code section 45125.1 and other applicable law.

The undersigned does hereby certify to the Board of Trustees of the District that: (1) He/she is a representative of the Contractor, (2) He/she is familiar with the facts herein certified, (3) He/she is authorized and qualified to execute this certificate on behalf of the Contractor; and (4) That the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. Education Code. The Contractor has taken at least one of the following actions with respect to the Project (check all that apply):

The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of their subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice (DOJ) has determined (per the DOJ process for Applicant Agencies described more fully on their website, located at: <http://oag.ca.gov/fingerprints/agencies>) that none of those employees have been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of the Contractor's employees and of all of their Subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

Pursuant to Education Code section 45125.2, the Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between the Contractor's employees and the District pupils at all times; and/or

Pursuant to Education Code section 45125.2, the Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and their subcontractors' employees is:

Name: _____ Title: _____

The Work on the Contract is at an unoccupied school site and no employee and/or Subcontractor or supplier of any tier of Contract shall come in contact with District pupils.

2. Megan's Law (Sex Offenders). I have verified and will continue to verify that the employees of the Contractor that will be on the Project site and the employees of the Subcontractor(s) that will be on the Project site are not listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

The Contractor's responsibility for background clearance extends to all of their employees, Subcontractors, and employees of Subcontractors coming into contact with District pupils regardless of whether they are designated as employees or acting as independent contractors of the Contractor.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____ Title _____

END OF DOCUMENT

IMPORTED MATERIALS CERTIFICATION

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

To the furthest extent permitted by California law, the indemnification provisions in the Contract Documents apply to, without limitation, any claim(s) connected with providing, delivering, and/or supplying Fill.

Certification of: Delivery Firm/Transporter Supplier Manufacturer
 Wholesaler Broker Retailer
 Distributor Other _____

Type of Entity: Corporation General Partnership
 Limited Partnership Limited Liability Company
 Sole Proprietorship Other _____

Name of firm ("Firm"): _____

Mailing address: _____

Addresses of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

In addition to the requirement to provide this certification, Contractor agrees that it shall provide all documentation requested by the District to confirm compliance with the requirements herein.

END OF DOCUMENT

ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION (Public Contract Code § 3006)

I, _____, _____
Name Name of Contractor

certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roof project contract or subcontract on the Project. As used in this certification, "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I _____, _____
Name Name of Contractor

certify that I do not have, and throughout the duration of the Contract, I will not have, any financial relationship in connection with the performance of the Contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, _____, _____
Name Name of Contractor

have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm ("Firm"): _____

Mailing address: _____

Address of branch office used for this Project: _____

If subsidiary, name and address of parent company: _____

For Projects without substantive roofing components, check the following box and execute this certification:

The Work on the Contract (1) does not include the replacement or repair of a roof or (2) is a repair of twenty five percent (25%) or less of the roof, (3) or is a repair project that has a total cost of twenty one thousand dollars (\$21,000) or less. I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION CLOSEOUT STATEMENT

The Contractor shall complete this form, as a condition to Final Payment, for purposes of reporting participation by DVBE's in the Contract for the project.

Company Name and Address/Phone	Category of Work*	\$ Amount of Contract	Percent of the Contract

The undersigned, on behalf of the Contractor, certifies that DVBE participation on the Contract for Bid No. _____ equaled _____ dollars (\$ _____), which represents approximately ____ percent (____%) of the total Contract price including change orders for the Project.

* **Categories of work** include:

1. Construction services (specify services that DVBE will provide);
2. Architectural and engineering services;
3. Procurement of materials, supplies and equipment; and
4. Information technology.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

END OF DOCUMENT

**EXHIBIT J
TO FACILITIES LEASE**

PLANS, SPECIFICATIONS, AND OTHER RELATED CONTRACT DOCUMENTS

[PROVIDE A COMPLETE LIST OF ALL PLANS AND SPECS, AND OTHER CONTRACT DOCUMENTS]

**EXHIBIT K
TO FACILITIES LEASE**

OWNER CONTROLLED INSURANCE PROGRAM (“OCIP”)

(FOR SCIENCE CENTER PROJECT)

1. Overview. California Education Code §81330 permits the governing board of a school district, without advertising for bids, to lease to any person, firm, or corporation any real property owned by the school district if the instrument by which such property is leased requires the lessee to construct on the leased premises, or provide for the construction thereon, of a building for the use of the school district, during the term of the lease, and provides that title to that building shall vest in the school district prior to or at the expiration of the lease. In conjunction with the approval of this Construction Services Agreement, (the “District”) will enter into a site lease with Contractor, under which it will lease to the Contractor a portion of the District School site, and improvements thereon, in order for Contractor to construct improvements to this existing school site.

The District is a participant in an Owner Controlled Insurance Program (the “OCIP”) that has been established by the Alliance of Schools for Cooperative Insurance Programs (“ASCIP”). In accordance with the provisions of Government Code §4420.5, Labor Code §§6300, et seq. and Title 8 of the California Code of Regulations, the District has elected to include the Project in the OCIP. This means that the District will provide some of the insurance policies that would normally be provided by the Contractor and its Subcontractors and Sub-Subcontractors for construction of the Project. In accordance with the District’s OCIP, the District shall purchase, provide and maintain for the benefit of the Contractor, its Subcontractors and Sub-Subcontractors certain insurance as more particularly set forth in this Exhibit, and subject to the terms and conditions of this Exhibit, the Contract Documents and any addenda to the Contract Documents, for claims which arise out of the Insured Work performed by the Contractor, its Subcontractors and Sub-Subcontractors for which the Contractor, its Subcontractors and Sub-Subcontractors may be legally liable. Because the District will provide certain insurance coverage through an OCIP, the Contractor’s Guaranteed Maximum Price (“GMP”), and its Subcontractors’ base bids must be calculated to exclude all insurance costs for coverage provided by the OCIP, as described in Section 4.1 and summarized in Section 4.2 herein. Additionally, the Contractor and its Subcontractors’ must meet certain insurance-related qualification criteria in order to qualify for coverage under the OCIP. The Contractor and its Subcontractors and Sub-Subcontractors must comply with all safety programs established and/or adopted by the District in connection with the OCIP must and comply with all other requirements related to the OCIP.

The OCIP is more fully described in the “Insurance Manual”, and the policies and endorsements (“OCIP Coverages”). The OCIP Coverages have precedence and supersede any conflicting provisions contained in the Contract Documents or in the Insurance Manual. In addition, District has arranged for Builder’s Risk insurance. By submitting its GMP, the Contractor is deemed to have agreed and acknowledged that it has reviewed the Insurance Manual, the OCIP Coverages, and the Builder’s Risk insurance. The OCIP will provide to the Enrolled Contractors/Subcontractors, as defined below, in connection with performance of the Insured Work, the OCIP Coverages. Enrolled Contractors/Subcontractors are responsible for maintaining the insurance coverage described in Section 4.3 below and in the Insurance Manual. The OCIP does not cover Excluded Parties, defined below. Excluded Parties and parties no longer covered by the OCIP shall maintain, and shall require each of their Subcontractors and Sub-Subcontractors to obtain and maintain, the insurance coverage described in Section 4.4 below and in the Insurance Manual.

2. Definitions. Capitalized terms not otherwise defined herein shall have the meanings set forth in this Agreement,

2.1 Excluded Work. The term “Excluded Work” as used herein means Project-related work that is not conducted at the Project Site is excluded from coverage under the OCIP and the OCIP Insurance. The District is not providing general liability or workers compensation insurance for Project-related, off-Site operations and the District is not providing automobile insurance; Enrolled Contractors/Subcontractors must purchase this insurance and must provide the District with an ACORD 25-S Certificate of Insurance indicating evidence of (a) primary automobile insurance coverage, and (b) proof of general liability and workers compensation insurance for off-Site operations. Refer to Sections 16.12 through 16.19 below.

2.2 Excluded Parties. The term “Excluded Parties” as used herein means (1) vendors; (2) suppliers; (3) contract haulers; (4) equipment owners/operators; (5) those performing surveying services; (6) those performing soil testing; and (7) those solely loading, transporting or unloading materials, personnel, parts or equipment or any other items to, from or within the Site.

2.3 Enrolled Contractors/Subcontractors: The term “Enrolled Contractors/Subcontractors” as used herein means those Contractors, Subcontractors and Sub-Subcontractors who have submitted enrollment forms and have been accepted into the District’s OCIP as evidenced by a Certificate of Insurance for OCIP policies.

2.4 Insured Parties: The term “Insured Parties” as used herein means the District and Enrolled Contractors/Subcontractors named in one or more of the District’s OCIP policies or named in one or more Certificate of Insurance signed by a duly authorized representative of an OCIP insurer.

2.5 Insured Work: The term “Insured Work” as used herein means Work performed on the Site. Any type or description, surveying, soil testing, and solely loading, transporting or unloading of materials, personnel, parts or equipment or any other items to, from or within the Site is excluded.

2.6 OCIP Administrator: The term “OCIP Administrator” means Arthur J. Gallagher & Co. or such other company or entity as may be designated by the District. The OCIP Administrator is an independent contractor retained by the joint powers authority ASCIP, of which the District is a Member, to administer the District’s OCIP. The OCIP Administrator is authorized and empowered to act on behalf of the District to the extent set forth herein and in the Contract Documents. The removal or replacement of the designated OCIP Administrator shall not result in adjustment of the Contract Price or Contract Time or otherwise affect, limit or restrict Contractor’s obligations under the Contract Documents.

3. Guaranteed Maximum Price, Base Bid Insurance Costs:

3.1 Contractor and Subcontractors Must Exclude Certain Insurance Costs. The Contractor’s GMP, and all Subcontractors’ base bids, must exclude all insurance costs for Workers’ Compensation, Employers Liability, General Liability, and Excess Liability OCIP Coverages and Builder’s Risk insurance for operations conducted on-Site for all eligible Contractors, Subcontractors and Sub-Subcontractors who will perform Insured Work on the Project Site as summarized in Section 4.2 below and more fully described in the OCIP Coverages. No Subcontractor will be permitted to change the pricing included in its base bid.

4. Insurance:

4.1 OCIP Insurance Policies Establish OCIP Coverages. The OCIP Coverages and exclusions from coverage are summarized in this Section, in the Insurance Manual, and other Contract Documents and are set forth in full in their respective insurance policy forms. The summary descriptions of the OCIP Coverages in this **Exhibit** and in the Insurance Manual are not intended to be complete or alter or amend any provision of the actual OCIP insurance policies. Enrolled Contractors/Subcontractors must review the insurance policies for actual terms and conditions. In the event any provision of this Exhibit, the Insurance Manual, or the Contract Documents, conflicts with the any of the OCIP insurance policies, the OCIP insurance policies shall govern. Enrolled Contractors/Subcontractors shall be deemed to have reviewed, understood and agreed to all terms and conditions of the OCIP insurance policies, including exclusions from coverage. The OCIP insurance policies are available for inspection upon request.

4.2 Summary of OCIP Coverages Provided by District. The following summary of OCIP Coverages will be provided only to eligible and Enrolled Contractors/Subcontractors during the term of initial construction. Coverage is provided for warranty or correction work after completion of the Project:

4.2.1	Workers Compensation Insurance In accordance with limits established by law.	Statutory Limits
4.2.2	Employers Liability Insurance:	\$1,000,000

4.2.3	Commercial General Liability Insurance (excluding Automobile Liability)	
	Per Occurrence	\$2,000,000
	Aggregate	\$4,000,000
	Products/Completed Operations Aggregate*	\$4,000,000

* 10 years Extended Products/Completed Operations Coverage commences upon Substantial Completion of the Project.

4.2.4	Excess Liability Insurance	
	Per Occurrence	\$15,000,000
	Aggregate	\$15,000,000

4.2.5 **Builder's Risk Insurance** Project Limits

4.2.6 **Contractors Pollution Liability** \$5,000,000

4.3 Insurance Provided by Contractors/Subcontractors: The Contractor, all Subcontractors and Sub-Subcontractors (except Excluded Parties covered under Section **16.19**) shall provide and maintain the following insurance coverages for off-Site operations, with minimum coverage amounts as set forth below:

4.3.1	Workers Compensation Insurance	
	In accordance with limits established by law.	Statutory Limits
4.3.2	Employers Liability Insurance	\$1,000,000
4.3.3	Commercial General Liability Insurance	
	Per Occurrence	\$2,000,000
	Aggregate	\$4,000,000
4.3.4	Automobile Liability Insurance	
	Bodily Injury/Property Damage per Occurrence	\$1,000,000

4.4 Insurance Provided by Excluded Parties.

Pursuant to Section **16.19** the Excluded Parties shall provide and maintain the following insurance coverages, with minimum coverage amounts as set forth below:

4.4.1	Workers Compensation Insurance	
	In accordance with limits established by law.	Statutory Limits
4.4.2	Employers Liability Insurance	\$1,000,000
4.4.3	Commercial General Liability Insurance	
	Per Occurrence	\$1,000,000
	Aggregate	\$2,000,000
4.4.4	Automobile Liability Insurance	
	Bodily Injury/Property Damage per Occurrence	\$1,000,000
4.4.5	Aircraft Liability Insurance (if applicable)	
	Per Occurrence	\$5,000,000
	Aggregate	\$5,000,000

4.5 Pollution Legal Liability Insurance.

Pursuant to Section **16.22**, the Excluded Parties shall provide and maintain the following insurance coverages, with minimum coverage amounts as set forth below:

Per Occurrence	\$5,000,000
Aggregate	\$5,000,000

4.6 Duration and Extent of Insurance Coverage Provided by OCIP.

4.6.1 Term and Extent of Coverage for Contractor or Prime Contractor. Upon the District's acceptance of Substantial Completion of the Agreement and of the work required of the Contractor under the Agreement, all coverage afforded to the Contractor under the OCIP will be automatically terminated without further notice or action, with the exception of a ten (10) year extension of coverage for Products and Completed Operations which commences upon Substantial Completion of the Project. Corrective work, performed after Substantial Completion of the Work pursuant to continuing warranty obligations, is covered by the OCIP. Evidence of Contractor's Non-OCIP Insurance, as described in Section **16.13** must be in place before Contractor commences corrective work during the warranty period.

4.6.2 Term and Extent of Coverage for Subcontractors. When a Subcontractor or Sub-Subcontractor completes its punch list work, submits Form 6 as described in the Insurance Manual and the District accepts as complete the performance of the Subcontractor or Sub-subcontractor on the Project, all coverage afforded to that Subcontractor or Sub-Subcontractor under the OCIP will be terminated without further notice or action, with the exception of a ten (10) year extension of coverage for Products and Completed Operations which commences upon Substantial Completion of the Project. Corrective work, performed after Substantial Completion of the Work pursuant to continuing warranty obligations, is covered by the OCIP. Evidence of Subcontractors and Sub-Subcontractors Non-OCIP Insurance, as described in Section **16.14** must be in place before Subcontractors and Sub-Subcontractors commence corrective work during the warranty period.

5. Minimum Safety Requirements

5.1 Minimum qualifications for Contractor/Subcontractor OCIP enrollment these safety requirements cannot be modified.

- Drug Program – Pre Assignment (Oratect or similar) within three days of assignment
- 6' Fall Protection, harnesses and lanyards required in lieu of other protective means. Exceptions: ladders, scissor lifts, aerial baskets or scaffolding
- OSHA "Serious" Violations - No more than 5 serious violations within 5 years with no more than 2 serious repeats in 5 years
- OSHA "Willful" Violations – NONE
- Hardhats & Safety Glasses are required at all times & other Personal Protective Equipment (PPE) required by work being conducted

5.2 Contractor's and Listed Subcontractors' Minimum Safety Requirements.

The Contractor must meet the Minimum Safety Requirements. In addition, in order to be considered a responsive Bid, the Bidder must establish that Listed Subcontractors, who, in the aggregate, will perform at least sixty-five percent (65%) of the Work of the total Bid Amount, inclusive of all additive alternates but exclusive of hazardous materials abatement costs, meet or exceed the Minimum Safety Requirements.

6. Safety Program and Industrial Safety Record Requirements. Bidders must submit all of the following information to the District within 48 hours after the District's request. The District reserves the right to reject a Bid if any of that information discloses that a Bidder is not eligible for OCIP Insurance pursuant to criteria established by the District, OCIP Administrator, ASCIP or the OCIP's underwriter, Liberty Mutual Insurance Company ("**Insurance Carrier**").

6.1 A copy of a written Injury and Illness Prevention Program (“IIPP”), or, if a Bidder does not have a written IIPP, a detailed narrative statement of the IIPP that the Bidder intends to use in connection with the Work on the Project Site.

6.2 A written statement identifying any and all instances during the last five (5) years in which the Bidder was convicted in a state or federal court or administrative action of a “serious violation” and/or “willful violation” of health and safety statutes, regulations, ordinances, orders or other laws. As to each such conviction, the Bidder must include a detailed description of the facts upon which such conviction was based. A Bidder will be ineligible to receive OCIP Insurance (and will therefore be ineligible to be awarded the contract for the Project) if, within the last five (5) years, you have had (a) more than five (5) “serious” violations, (b) more than two occurrences of the same type of “serious” violation (*i.e.* more than two “serious repeat” violations) or (c) any “willful” violation.

6.3 Bidder’s latest Worker’s Compensation “Experience Modification Factor” or “Experience Modification Rate” as defined by the State of California Workers’ Compensation Insurance Rating Bureau (WCIRB). A Bidder will be ineligible to receive OCIP Insurance (and will therefore be ineligible to be awarded the contract for the Project) if its Experience Modification Factor or Experience Modification Rate, including the rates of listed Subcontractors and Sub-Subcontractors exceeds 1.25.

6.4 The Bidder must meet the Minimum Safety Requirements. In addition, in order to be considered a responsive Bid Proposal, the Bidder must establish that Listed Subcontractors and Sub-Subcontractors totaling at least sixty-five percent (65%) of the Bidder’s total Bid Amount, exclusive of hazardous materials abatement costs, meet or exceed the Minimum Safety Requirements.

7. Additional Information. The District may request additional information from any Bidder to the extent such information is reasonably necessary to allow the District to determine whether Contractor, Subcontractor or Sub-Subcontractor qualifies to receive OCIP Insurance under the OCIP. If any Bidder cannot or will not provide such information within the time requested by the District, the District may reject that Bid as non-responsive.

8. District’s Election to Substitute, Modify or Discontinue OCIP Coverages. District reserves the right, at its option and without obligation to do so, to modify the OCIP Coverages, however ASCIP and Arthur J. Gallagher must be notified prior to any changes. Or any portion thereof, to procure alternative coverages (provided such coverage is not less than that specified in the Contract Documents), or to request Contractor or any of its Subcontractors or Sub-Subcontractors to withdraw from the OCIP. Upon District’s thirty (30) day prior written notice, Contractor, Subcontractors and Sub-Subcontractors, as specified by District in such notice, shall obtain and thereafter maintain during the performance of the Work, Workers Compensation, Employer’s Liability and General Liability OCIP Coverages and Builder’s Risk Insurance with limits as summarized in Subsections **4.2.1, 4.2.2, 4.2.3** and **4.2.5**, and with the scope summarized in Subsection **16.12.2** below all as more fully described in the OCIP Coverages. In such event, District shall select the additive Alternate Bid Item for the price stated in the Bid form at the time of award (provided such premium prices are substantiated by Bidder), or if the District makes this election after award, the District shall increase the Contract Price by change order by the pro rata amount of the substantiated premium price attributable to the remaining Work to be performed by Contractor and any designated Subcontractors and Sub-Subcontractors. All insurance secured by the Contractor, Subcontractors or Sub-Subcontractors pursuant to this Article shall be in policies subject to the prior written approval of the District as to form, content, limits of liability, cost and issuing company.

9. The Contractor is required to provide documentation of the following insurance coverages and limits.

The apparent lowest Bidder must do all of the following within **48 hours** of the District’s request and as a condition to award of the Contract. Failure to comply with the requirements of this section may result in rejection of the Bid.

9.1 Complete and deliver to the OCIP administrator an insurance application in the form of “Form 2 – Insurance Application” (found in the sample manual), which will be provided upon Notice of Award, providing information pertaining to you (that is, the corporation, partnership, limited liability company, individual, or other entity submitting the Bid as the prospective Contractor). That information includes, without limitation, the Bidder’s

industry classification code(s) for work on the Project Site, the Bidder's projected payroll for the Project, and the Bidder's experience modification factor.

9.2 Cause each of the Subcontractors and Sub-Subcontractors who will perform work or provide materials or services to you in connection with the Project to complete an insurance application in that same form with respect to those subcontractors upon Notice of Award;

9.3 Provide a certificate (or certificates) of insurance evidencing that you have obtained the insurance required for Enrolled Contractors/Subcontractors.

9.4 Provide a certificate (or certificates) of insurance evidencing that you have the current ability to obtain insurance required for Excluded Parties.

10. Audit of Contractor's Project Payroll. The OCIP Administrator or the Insurance Carrier will conduct an audit of Contractor's Project payroll and that of its Subcontractors of every tier. This service will be provided as part of the OCIP as a means in which to segregate the portion of payroll attributable to the Project and covered by the OCIP Insurance ("OCIP Payroll") from that of other operations not covered by the OCIP. There are two reasons for this audit. First, the Insurance Carrier is required to report this information to the Workers' Compensation Insurance Rating Bureau (WCIRB) for calculation of the "Experience Modifier" of Contractor and Subcontractors. Second, and more importantly, it provides Contractor with the necessary documentation to ensure that it will not be charged by its regular Workers' Compensation carrier for payroll generated under the OCIP.

11. Do Not Report OCIP Payroll to Regular Carriers. If you are awarded the contract and enrolled in the OCIP, you should not report your OCIP Payroll to your regular Workers' Compensation and General Liability insurance carriers. You do not have to (and should not) report this, because the Project-Site insurance premiums, relative to the OCIP Insurance will be paid for by the District under the OCIP. You should not be charged premiums for the Project by your insurance carrier(s). Thus, insurance is a breakeven line item for you on this Project.

12. Monthly Payroll Report Forms. The Contractor all Subcontractors of every tier must, on a monthly basis not later than the tenth (10th) calendar day of each month, complete and deliver to the District and OCIP Administrator a Monthly Payroll Report Form for the preceding calendar month to be provided by the OCIP Administrator upon Contractor enrollment in the OCIP.

13. Notice of Work Completion. Not later than ten (10) calendar days after the Contractor's completion of its Work (as defined in the Project Documents) on the Project, the Contractor shall prepare and deliver to the District and OCIP Administrator a "Form 4 – Notice of Work Completion" to be provided by OCIP Administrator upon Contractor enrollment in the OCIP. The Contractor shall cause each of its subcontractors on the Project to prepare and deliver that form to the District and OCIP Administrator within ten (10) calendar days following the completion of the subcontractor's Work on the Project.

14. Drug Screening Program. The Contractor shall submit to any drug-testing and/or drug-free workplace program instituted by the District and/or OCIP Administrator in connection with the OCIP relative to the Project. (See Sample Insurance Manual for a copy of the drug screening policy)

15. Professional Safety Consultant/Compliance with Safety Requirements. The OCIP Administrator will provide a professional safety consultant to oversee safety procedures on the Project. The Contractor must comply, and must cause its Subcontractors to comply, with the recommendations of that safety consultant and any state or federal OSHA requirements. The safety consultant's recommendations may exceed state or federal OSHA standards.

16. Insurance

16.1 Evidence of OCIP Coverage.

16.1.1 Evidence of Contractor's OCIP Insurance: Provided that the Contractor has supplied to the District its completed OCIP Enrollment Form within 5-days of the Notice of Award, the District shall deliver to the Contractor Certificates of Insurance evidencing the insurance coverages provided under Section 4.2

for only the Contractor prior to issuance of the Contractor's Notice to Proceed. Failure or refusal of the Contractor to timely and properly deliver its OCIP Enrollment Form may be deemed by the District to be a default of a material obligation of the Contractor, and thereupon the District may proceed to exercise any right or remedy provided for under the Contract Documents or at law.

16.1.2 Evidence of Subcontractors' OCIP Insurance: At least five (5) working days prior to any Subcontractor's or Sub-Subcontractor's commencing Work on the Site, the Contractor shall provide the District with an OCIP Enrollment Form completed and executed by such Subcontractor or Sub-Subcontractor. Provided that the Contractor has timely provided such OCIP Enrollment Form, the District shall deliver to the Contractor a Certificate of Insurance evidencing the insurance coverages provided under Section 4.1 for such Subcontractor or Sub-Subcontractor prior to commencement of such Subcontractor's or Sub-Subcontractor's Work at the Site.

16.1.3 No Work at the Site without OCIP Insurance: Under no circumstances shall any Contractor, Subcontractor or Sub-Subcontractor eligible for coverage under the District's OCIP commence Work at the Site without having submitted to the District a completed and executed OCIP Enrollment Form and without having an OCIP Certificate of Insurance issued in the name of such Contractor, Subcontractor or Sub-Subcontractor. It is the sole responsibility of the Contractor to ensure that all Insured Contractors/Subcontractors performing Insured Work of the Project are properly and timely enrolled in the District's OCIP program. Contractor's failure or refusal concerning Contractor's obligations in this regard may be deemed by the District to be a default of a material obligation. Under no circumstances shall Contractor's failure or refusal to ensure that all Insured Contractors/Subcontractors are properly and timely enrolled in the District's OCIP result in any adjustment of the Contract Price or Contract Time.

16.2 Maintenance of Insurance: The District shall maintain insurance as set forth in Subsections 4.2.1 through 4.2.5, inclusive, without interruption for the date of commencement of the work until the time set forth in Subsections 4.6.1 and 4.6.2. The District shall maintain Completed Operations coverage for a period of ten (10) years after completion.

16.3 Substitute Insurance: In the event the District is unable to furnish, or after commencement of the Work elects not to furnish or to continue to furnish the insurance coverage described in Section 4.2, or any portion thereof, and upon thirty (30) days' written notice from the District to the Insured Contractors / Subcontractors, the District may, in its sole discretion (a) procure and provide to Insured Contractors/Subcontractors at the District's expense substantially similar insurance reasonably available at such time; or (b) require the Contractor to secure and maintain all or as much of the insurance herein described as the District designates at the District's cost as provided in Section 8 above. All insurance secured by the Contractor, Subcontractors or Sub-Subcontractors pursuant to this Section shall be in policies subject to the prior written approval of the District as to form, content, limits of liability, cost and issuing company.

16.4 No Waiver of Contract Obligations: Nothing contained in this Section shall be construed to relieve or limit the Contractor, Subcontractors, Sub-Subcontractors or Excluded Parties of responsibility or obligations imposed by the Contract Documents or in equity or at law, including but not limited to the extent to which the Contractor may be held legally liable for damages to persons or property. Nothing contained in this Section shall be construed as the District's assumption of any responsibility for construction means, methods, techniques, sequences, procedures, safety precautions or programs for the Project, all of which remain the sole responsibility of Contractor, or for acts or omissions of the Contractor, Subcontractors, Sub-Subcontractors, Excluded Parties, or their respective agents or employees, or of any other persons performing portions of the Work.

16.5 Waivers of Subrogation: Contractor hereby waives, and shall require all Subcontractors and Sub-Subcontractors to waive, all rights against the District, its officers, agents, employees, representatives and consultants, Project Manager, Architect, CM, IOR and OCIP Administrator, and their respective agents, officers, employees and representatives, for recovery of damages to the extent those damages are covered by policies of insurance obtained pursuant to Section 4.2.

16.6 District's Right to Audit: The Contractor warrants to the District the accuracy of the information provided in connection with its participation in the District's OCIP and agrees that the District, its officers, agents, representatives, insurance carriers and OCIP Administrator may audit the records, including but not limited to payroll records and insurance records of the Contractor, Subcontractors and Sub-Subcontractors to confirm the accuracy of information provided and to evaluate the effect, if any, on insurance resulting from changes in the Work. Any such audits will be conducted during the Contractor's normal business hours at the office of the Contractor or at another mutually agreeable location. The Contractor shall maintain or cause to be maintained sufficient records as may be necessary to audit its compliance and that of Subcontractors and Sub-Subcontractors with the requirements of the OCIP.

16.7 Assignment of OCIP Refunds and Dividends: Contractor, its Subcontractors and Sub-Subcontractors, in consideration of the agreement of District to arrange insurance and pay premiums as provided by Section 4.2 for the Contractor, Subcontractors and Sub-Subcontractors, and for other good and valuable consideration, assigns to District all return premiums, premium refunds, dividends, and any monies due or to become due under the OCIP policies. Contractor shall require all Subcontractors and Sub-Subcontractors to assign to District all return premiums, premium refunds, dividends, and any monies due or to become due under the OCIP policies.

16.8 Deductible for Builder's Risk Insurance: Contractor shall be responsible for the amount required by the District for each loss or damage covered by the Builder's Risk Insurance provided by the District which is caused by the Contractor or any Subcontractor or Sub-Subcontractor or for which the Contractor, Subcontractor or Sub-Subcontractor is liable, and for all uninsured losses. No loss or damage, if any, incurred hereunder shall excuse Contractor's complete and satisfactory performance of the provisions of the Contract Documents.

16.9 Contractor Responsibility to Repair Damaged Work: Notwithstanding the provisions of this Insurance Requirements Exhibit, and until Final Acceptance of the Work by the District, the Contractor shall have full and complete charge and care of and shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (including District furnished supplies, material, equipment or other items to be utilized with or incorporated in the Work) to the fullest extent of the law. The Contractor shall rebuild, repair, restore and make good losses of, and injuries or damages to, the Work or any portion thereof (including District furnished supplies, material, equipment or other items to be utilized with or incorporated in the Work) before Final Acceptance of the Work. Such rebuilding, repair or restoration shall be at the Contractor's sole cost and expense; provided, however, that District will make available applicable proceeds from the Builder's Risk policy provided under the District's OCIP

16.10 Adjustment of OCIP Claims: The Contractor, Subcontractors, Sub-Subcontractors and Excluded Parties shall assist the District, its agents and the OCIP Administrator and provide the utmost cooperation in the adjustment of claims arising out of the operations conducted under, or in connection with, the Project and shall cooperate with the District's Insurers in claims and demands that arise out of the work and that the Insurers are called upon to adjust or resist.

16.11 OCIP Coverages; No District Warranty: The District does not warrant or represent that the OCIP coverages constitute an insurance portfolio that adequately addresses the risks of the Contractor, Subcontractors or Sub-Subcontractors. The Contractor, Subcontractors and Sub-Subcontractors shall satisfy themselves as to the existence, extent and adequacy of the OCIP coverages prior to the commencement of work under the Contract.

16.12 Insurance Provided by Contractor / Subcontractors: The Contractor shall, for the duration of the Contract, provide and maintain insurance and shall require each Subcontractor and Sub-Subcontractor (except Excluded Parties covered under Section 16.19) to provide and maintain insurance of the type and in the limits as set forth below and in Section 4.3. Except as otherwise provided by Builder's Risk Policy, the Non-OCIP Insurance is intended to cover employee injury, personal injury, bodily injury and property damage liability for work performed away from the Project Site and for Work of the Project performed after the warranty period expires. Such insurance may be provided in single policy or multiple policies (primary and excess), including an umbrella form and is subject to the following:

16.12.1 In the event one of the insureds incurs liability to any other of the Insureds, these policies shall provide protection for each insured against which claim is or may be made, including claims by other insureds in the same manner as if separate policies had been issued to each insured.

16.12.2 Notice of occurrences or claims under the policies shall be made to the District's Representative.

(a) Workers' Compensation/Employer's Liability Insurance: The Contractor shall provide and shall require each Subcontractor and Sub-Subcontractor (except Excluded Parties covered under Section 16.19) to provide Workers' Compensation/Employer's Liability insurance in the statutory limits of the workers' compensation laws of the State of California, including Coverage B – Employers Liability, in an amount not less than that specified in the Supplemental Conditions and Subsections 4.3.1 and 4.3.2, for Project-related operations occurring away from the Project Site and for Work of the Project after Substantial Completion.

(b) Commercial General Liability Insurance: The Contractor shall provide and shall require each Subcontractor and Sub-Subcontractor (except Excluded Parties covered under Section 16.19) to provide Commercial General Liability insurance in a form providing coverage not less than that of an ISO Commercial General Liability coverage form (occurrence form) 1998 edition or later for all operations of the party required to furnish same, including hazards of operations (including explosion, collapse and underground coverage), elevators, independent contractors, employees as additional insureds, completed operations, with contractual liability coverage (for contracts related to the Work), personal injury liability and excess Employer's Liability, for personal injury, bodily injury and property damage arising out of the Work, for operations away from the Project Site and after Substantial Completion in policies of insurance with limits in an amount not less than that specified in the Supplemental Conditions and Subsection 4.3.3

(c) Automobile Liability Insurance: The Contractor shall provide and shall require each Subcontractor and Sub-Subcontractor (except Excluded Parties covered under Section 16.19) to provide Automobile Liability insurance covering all owned, non-owned and hired automobiles, trucks, and trailers of the Contractor, Subcontractors and Sub-Subcontractors. Such insurance shall provide coverage not less than that of the Standard Comprehensive Automobile Liability policy with limits not less than that specified in the Supplemental Conditions and Subsection 4.3.4 for occurrences both at and away from the Project Site.

(d) Aircraft Liability Insurance: If aircraft are used by the Contractor, Subcontractors, Sub-Subcontractors or anyone else on their behalf, such Contractor, Subcontractor, Sub-Subcontractor or other entity shall maintain or cause the operator of the aircraft to maintain aircraft public liability insurance insuring passengers and the general public against personal injury, bodily injury or property damage arising from aircraft owned, used, operated or hired in connection with the work of the Contractor, Subcontractor, Sub-Subcontractor or anyone else, with limits in an amount not less than that specified in the Supplemental Conditions and Subsection 4.3.5.

16.13 Evidence of Contractor's Non-OCIP Insurance: Concurrently with delivery of the executed Contract, Contractor shall deliver to the District Certificates of Insurance evidencing the Contractor's Non-OCIP Insurance coverage required by Sections 4.3 and 16.1.1. Failure or refusal of the Contractor to so deliver Certificates of Insurance may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents, and thereupon the District may proceed to exercise any right or remedy provided for under the Contract Documents or at law. Under no circumstances shall Contractor commence Work at the Site without having submitted to the District Certificates of Insurance for all Non-OCIP Insurance provided by the Contractor. Contractor's failure to timely provide the District with all Non-OCIP Certificates of Insurance shall not result in any adjustment of the Contract Price or Contract Time. The Certificates of Insurance and the insurance policies required by Sections 4.3 and 16.1.1 shall contain a provision that coverage afforded under such policies will not be canceled or allowed to expire without at least thirty (30) days' prior written notice to: District, District Service Center, attn:

Contracts Administrator. Should any policy of insurance required under Section 4.3 be canceled and the Contractor fails to immediately procure replacement insurance as required, the District reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by the District in connection therewith from any sum then or thereafter due the Contractor under the Contract Documents. Upon District's request, the Contractor shall furnish satisfactory proof of coverage of each type of Non-OCIP Insurance required by the Contract Documents, including copies of the insurance policies or renewals or replacements in form and content acceptable to the District; failure of the Contractor to comply with the District's request may be deemed to be a default of a material obligation of the Contract Documents.

16.14 Evidence of Subcontractors' Non-OCIP Insurance: Contractor shall require that every Subcontractor or Sub-Subcontractor (except Excluded Parties covered under Section 16.19) obtain and maintain the policies of insurance set forth in Section 4.3 herein. The limits of liability of such policies shall be as set forth in Section 4.3. Each of the policies of insurance obtained and maintained by a Subcontractor or Sub-Subcontractor hereunder shall conform to the requirements of Section 16.1.2. Upon request of the District, Contractor shall promptly deliver Certificates of Insurance evidencing that the Subcontractors and Sub-Subcontractors have obtained and maintained policies of insurance in conformity with the requirements of Section 16.1.2. Failure or refusal of the Contractor to provide the District with such Certificates of Insurance may be deemed to be a material default of Contractor under the Contract Documents.

16.15 No Work at the Site without Non-OCIP Insurance: Under no circumstances shall any Contractor, Subcontractor or Sub-Subcontractor (except Excluded Parties) commence Work at the Site without having all Non-OCIP Insurance issued and in effect in accordance with the provisions of Section 16.12. Contractor's failure or refusal concerning Contractor's obligations in this regard may be deemed by the District to be a default of a material obligation. Under no circumstances shall Contractor's failure or refusal in this regard result in any adjustment of the Contract Price or Contract Time.

16.16 Contractor Insolvency: In the event that a General Contractor or a Prime Contractor defaults on their financial obligation to the District, it is the responsibility of the District to notify the ASCIP OCIP of the default. Before a new contractor is selected by the surety, the contractor must meet the ASCIP OCIP safety requirements before they can be considered for replacement.

16.17 Additional Insurance: Pursuant to the provisions of Government Code §4420(b) (5), nothing contained in the Contract Documents or otherwise shall prohibit the Contractor, its Subcontractors, any Sub-Subcontractor or any other entity providing or performing Work of the Project from purchasing any additional insurance or coverage which he, she or it believes is necessary to protect such person or entity from any liability arising under the Contract Documents, the Project or the Work. Any such additional insurance procured by such person or entity shall be at the procuring party's sole expense.

16.18 Waivers of Subrogation: Contractor hereby waives, and shall require all Subcontractors and Sub-Subcontractors to waive, all rights against the District, its officers, agents, employees, representatives and consultants, Project Manager, Architect, CM, IOR and OCIP Administrator, and their respective agents, officers, employees and representatives, for recovery of damages to the extent those damages are covered by policies of insurance obtained pursuant to Sections 4.3 and 4.4.

16.19 Insurance Provided by Excluded Parties: The Contractor shall require all Excluded Parties to provide and maintain insurance of the type and limits set forth below and in the Section 4.4. Such insurance shall name the parties required to secure same as insureds and shall be in a form and through issuing companies acceptable to the District. Such insurance may be provided in single policy or multiple policies (primary and excess), including an umbrella form. Such insurance shall contain a defense of suits provision and shall provide the coverages set forth in Section 4.4 under the following conditions:

- (a) Notwithstanding any inconsistent statement in the policies obtained by Contractor and/or Excluded Parties, or any endorsement or certificate attached thereto, it is agreed that the District, its officers, agents, employees and representatives, Project Manager, Architect, IOR and OCIP Administrator, and their

respective officers, agents, employees and representatives, are additional insureds (for all coverages except Workers' Compensation/Employer's Liability), and that coverage is provided for all operations, uses, occupation, acts and activities of such insureds under the Contract Documents, as may be amended or adjusted, regardless of whether liability is attributable to the insured or a combination of the insured and one or more additional insureds. The Contractor shall name, and shall require the Excluded Parties to name, the District, its officers, agents, employees and representatives, the Project Manager, Architect, IOR and OCIP Administrator, and their respective officers, agents, employees and representatives, as additional insureds under the policies required pursuant to Section 4.4. As to the insurance required by Section 16.19.2, such additional insured status shall be provided and maintained using ISO additional insured endorsement CG 20 10 (11/85 edition), or a substitute providing equivalent coverage. The additional insured status required herein as to Section 16.19.2 shall be maintained on behalf of all specified parties for a period of ten (10) years after Final Acceptance of the Work. Upon the District's request, the Contractor and/or Excluded Party shall provide copies of all additional insured endorsements procured pursuant to this Section.

(b) The coverage provided by the policies obtained by Contractor and/or Excluded Parties is primary coverage and non-contributing with insurance, if any, carried by the District, its officers, agents, employees and representatives, the Project Manager, Architect, IOR or OCIP Administrator, and their respective officers, agents, employees and representatives. All such additional insured endorsements issued thereon shall be so endorsed.

(c) In the event one of the insureds incurs liability to any other of the insureds, these policies shall provide protection for each insured against which claim is or may be made, including claims by other insureds in the same manner as if separate policies had been issued to each insured.

(d) Notice of occurrences or claims under the policies shall be made to the District's Representative.

16.19.1 **Workers' Compensation/Employer's Liability Insurance:** The Contractor shall require all Excluded Parties to provide Workers' Compensation/Employer's Liability insurance in the statutory limits of the workers' compensation laws of the State of California, including Coverage B – Employer's Liability, in an amount not less than that specified in the Supplemental Conditions and Subsections 4.4.1 and 4.4.2, covering operations of the party in connection with the work both at and away from the Project Site.

16.19.2 **Commercial General Liability Insurance:** The Contractor shall require all Excluded Parties to provide Commercial General Liability Insurance in a form providing coverage not less than that of an ISO Commercial General Liability coverage form (occurrence form) 1998 edition or later for all operations of the party required to furnish same, including hazards of operations (including explosion, collapse and underground coverage), elevators, independent contractors, employees as additional insureds, products and completed operations (for ten (10) years after Final Acceptance of the Work), with contractual liability coverage (for contracts related to the Work), personal injury liability and excess Employer's Liability, for personal injury, bodily injury and property damage arising out of the Work in policies of insurance with limits in an amount not less than that specified in the Supplemental Conditions and Subsection 4.4.3.

16.19.3 **Automobile Liability Insurance:** The Contractor shall require all Excluded Parties to provide Automobile Liability Insurance covering all owned, non-owned and hired automobiles, trucks and trailers of the Excluded Parties. Such insurance shall provide coverage not less than that of the Standard Comprehensive Automobile Liability policy with limits in an amount not less than that specified in the Supplemental Conditions and Subsection 4.4.4 for occurrences both at and away from the Project Site.

16.19.4 **Aircraft Liability Insurance:** If aircraft are used by an Excluded Party or anyone else on their behalf, such Excluded Party or other entity shall maintain or cause the operator of the aircraft to maintain aircraft public liability insurance insuring passengers and the general public against personal injury, bodily injury or property damage arising from aircraft owned, used, operated or hired in connection with the work

of the Excluded Party or anyone else, with limits in an amount not less than that specified in the Supplemental Conditions and Subsection 4.4.5.

16.20 Evidence of Excluded Parties' Insurance: Contractor shall require that every Excluded Party obtain and maintain the policies of insurance set forth in Sections 4.4 and 16.19.1 through 16.19.4 herein. The limits of liability of such policies shall be as set forth in Section 4.4. Each of the policies of insurance obtained and maintained by an Excluded Party hereunder shall conform to the requirements of Section 16.19. Upon request of the District, Contractor shall promptly deliver Certificates of Insurance evidencing that the Excluded Parties have obtained and maintained policies of insurance in conformity with the requirements of Section 16.18. Failure or refusal of the Contractor to provide the District with such Certificates of Insurance may be deemed to be a material default of Contractor under the Contract Documents.

16.21 No Work at the Site without Excluded Parties' Insurance: Under no circumstances shall any Excluded Party commence Work at the Site without having all insurance issued and in effect in accordance with the provisions of Section 16.19. Contractor's failure or refusal concerning Contractor's obligations in this regard may be deemed by the District to be a default of a material obligation. Under no circumstances shall Contractor's failure or refusal in this regard result in any adjustment of the Contract Price or Contract Time.

16.22 Pollution Legal Liability Insurance: Contractor (if performing or providing any hazardous waste services, abatement or otherwise, of any type or description for the Project) shall provide and maintain, and shall require any other person or entity performing such services to provide and maintain (hereinafter collectively referred to as "Hazardous Waste Contractor"), insurance covering losses caused by pollution conditions that arise from the operations, including the completed operations, of such Hazardous Waste Contractor. Such insurance shall apply to bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured, cleanup costs and defense, including costs and expenses incurred in the investigation, defense or settlement of claims. The policies of insurance affording these coverages shall be written with limits in an amount not less than that set forth in the Supplemental Conditions. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants. The policies of insurance issued hereunder shall be written by an insurer acceptable to the District and shall be endorsed to include as insureds the District, its officers, agents, employees and representatives, Project Manager, Architect, CM, IOR and OCIP Administrator, and their respective officers, agents, employees and representatives. If coverage is written on a claims-made basis, the Hazardous Waste Contractor shall warrant that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract and that continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of ten (10) years from Final Acceptance of the Work. If coverage is written on an occurrence basis, the District, its officers, agents, employees and representatives, Project Manager, Architect, CM, IOR and OCIP Administrator, and their respective officers, agents, employees and representatives, shall be named as insureds on the Hazardous Waste Contractor's pollution legal liability policies for operations, including completed operations, relating to, or arising out of, work for the Project for a period of ten (10) years after Final Acceptance of the Work. At least five (5) working days' prior to any Hazardous Waste Contractor's commencing Work on the Site; Contractor shall provide the District with Certificates of Insurance evidencing the coverage required hereunder.

16.23 Contractor Obligations: Contractor agrees to comply with any and all terms and conditions of the policies of insurance provided by District and to comply with any and all claims handling procedures, loss prevention programs and other programs required by or related to the District's OCIP as set forth herein. Contractor shall require Subcontractors, Sub-Subcontractors and all others covered by the District's OCIP insurance policies to so comply. Contractor, its Subcontractors and Sub-Subcontractors shall furnish to the District, its OCIP Administrator, its designee or the insurers under the OCIP policies all information and documentation that such entity may require from time to time in connection with the issuance of policies under this Contract or the administration of the OCIP in such form and substance as such entity may prescribe and promptly comply with the recommendations of the OCIP insurers. Contractor shall not violate, or knowingly permit to be violated; any conditions of the policies of insurance provided by the District hereunder and shall at all times satisfy the requirements of the insurers issuing them. Contractor shall assure that all OCIP requirements imposed upon and to be performed by the Contractor shall

likewise be imposed upon, assumed and performed by each Subcontractor and Sub-Subcontractor. If the Contractor, Subcontractors, Sub-Subcontractors or Excluded Parties should fail to comply with the requirements of this Section, the District may withhold payment due to the Contractor or suspend the work at the Contractor's sole expense and without adjustment of the Contract Price or Contract Time until such time as the Contractor, its Subcontractors, Sub-Subcontractors and/or Excluded Parties have performed such obligations to the reasonable satisfaction of the District.

16.24 Minimum safety requirements cannot be changed by the district and or by the district representatives.

Disclaimer

It is recommended that these documents be reviewed by counsel before insertion into the bid specifications. Any changes to these documents must be reviewed by our office before including in any bid specifications. No changes can be made to any of the safety requirements listed herein.

Please send a copy of your final Bid Language regarding OCIP Insurance provision to Arthur J. Gallagher & Co.

How do I remove the insurance cost relating to the OCIP from my Bid? You will need to determine what you will pay for insurance for this particular project if your regular insurance carrier(s) were to provide the coverage for your work.

PROJECTED WORKER'S COMPENSATION INSURANCE COST

STEPS 1 - Determine the on-Site payroll for the job by multiplying the total estimated job hours and the prevailing wage rate.

Labor Description	Worker's Comp Class Code	Total Estimated Job Hours	Multiply by Wage Rate	Total Estimated Payroll
Masonry > \$19 hr	5028	300	\$23.05	\$6,915

STEP 2 – Multiply the Estimated Payroll by your regular Workers' Compensation Rate and Divide by 100.

Worker's Comp Class Code	Total Estimated Payroll	Rate per \$100 payroll	WC Premium	
5028	6,915	20.91	a)	1,445.92
<p>STEP 3 – If you have Employer Liability on regular Work Comp policy, multiply this amount by your EL Increased Limit rate (For this example use 3.30) and divide by 100.</p> <p>$\\$1,445.92 \times 3.30 = \\$4,771.53$ $\\$4,771.53 \div 100 = \\47.71</p>			b)	47.71
Article 6 SUBTOTAL				1,493.63
<p>STEP 4 – Take the Experience Modifier Rate shown on your Work Comp policy and multiply it by the subtotal above. (For this example use 1.25) $\\$1,493.63 \times 1.25 = \\$1,867.03$</p>			Modified Premium	1,867.03
<p>NOTE – In addition to the above basic calculation, your existing work comp carrier may apply various credits (which reduce your Modified Premium) or debits (which increase your Modified Premium). Please contact your agent or call the OCIP Administrator (949) 349-9859 if you require assistance.</p>				

BEFORE YOU BEGIN...

If you do not already have a copy of your own Workers' Compensation & General Liability Policy, you should contact your Workers' Compensation and General Liability broker and obtain the rates and credits that apply on your existing policies.

PROJECTED GENERAL LIABILITY INSURANCE COST

STEP 5 – To determine the cost associated with General Liability coverage, you must know the rate and premium basis that your insurance carrier uses. General Liability premiums can be based on payroll, contract value, or receipts and the premium rates can be applied per 100 or per 1,000.

Class Code	Premium Basis	Rate per \$100 or per \$1000	GL Premium
97447	Estimated Payroll: \$6,915	2.98 Per 100	\$206.06
$\$6,915 \times 2.98 = \$20,606.70$ $\$20,606.70 \div 100 = \206.06			
NOTE – In addition to the above basic calculation, your existing General Liability carrier may apply various credits (which reduce your Modified Premium) or debits (which increase your Modified Premium). Please contact your agent or call the OCIP Administrator (949) 349-9859 if you require assistance.			

STEP 6 – Combine Project Workers’ Compensation Insurance Cost and General Liability Insurance Cost.

Workers’ Compensation Insurance Cost	1,867.03
General Liability Insurance Cost	206.06
TOTAL INSURANCE COST FOR OCIP PROJECT	2,073.09

STEP 7 – Estimate your costs for the job and subtract insurance cost for coverage provided by the OCIP.

Original Bid Amount	\$24,000.00
Projected Insurance Cost	-2,073.09
Adjusted Bid Amount **	\$21,926.91

If you have any question regarding the above calculations please determine the total work hours for this project and contact your insurance broker for assistance in determining your Bid deductions. If you leave your insurance cost in the Bid and your competitor removes it he/she should be the lower Bidder with all factors being equal.

Form Completion Instructions - Insurance Cost Worksheet

These costs should NOT be included in your bid. The purpose of this worksheet is to identify the cost that you have or will exclude from your bid.

COMPLETION INSTRUCTIONS

1. **Contractor/Subcontractor Information:**
 - Fill in your company's complete legal name and d.b.a. including names of partners, sole proprietor's name, or joint venture partners.
 - Enter your appropriate Federal Employers Identification (if you are a sole proprietor, this may be your social security number)
2. **Bid Information:**
 - Contract Amount = your gross contract value before you subtract the amount you will subcontract.
 - Self Performed = the dollar amount or percentage of the Contract Amount that you will retain.
 - Subcontracted = the dollar amount or percentage of the Contract Amount that you will subcontract. If you enter an amount here, please be sure to complete Section 7 so that we can get the appropriate enrollment forms to your subcontractors.
3. **Your Contact Information:**
 - If you enter an email address for one of your contacts, we will attempt to send future correspondence to you at that email address. If you do not have an email account, or prefer to be contacted via fax, please leave the email address blank.
4. **Workers' Compensation Insurance Information:**
 - You will need to enter each WC Class Code that will apply to your work related to this contract. Enter the estimated payroll for this contract for each Class Code.
 - In general, to calculate your Worker's Compensation Premium you will need to make the following calculations:
 - i. $(\text{Rate per } \$100 \text{ of Payroll} \times \text{Estimated Payroll}/100) = \text{WC Premium.}$
 - ii. $\text{WC Premium} \times \text{Increased Limits Factor} = \text{Limits Premium}$
 - iii. $\text{Subtotal of WC Premium} + \text{Limits Premium} \times \text{Experience Modifier} = \text{Modified Premium}$
 - iv. Profit & overhead = the amount of profit & overhead charged to this job.

- In addition to the above basic calculations, your insurance company may apply various credits (which reduce your Modified Premium) or debits (which increase your Modified Premium).
 - Include the Profit & Overhead charge you would include if your insurance costs were included in your bid.
 - You may want to have your insurance agent help you fill out this section as each insurance company calculates premium in a slightly different manner.
 - If you do not have an insurance agent or just want to have help filling this section out, please contact us.
 - Please attach a photocopy of your Worker's Compensation policy's declarations page.
 - Please include as much information as you can about the work you intend to subcontract so that we can get the appropriate enrollment forms to your subcontractors.
5. **Subcontracted Work associated with this Contract:**

An authorized representative of your company must sign and date this worksheet.



**ALLIANCE OF SCHOOLS FOR COOPERATIVE INSURANCE PROGRAMS
(ASCIP)**

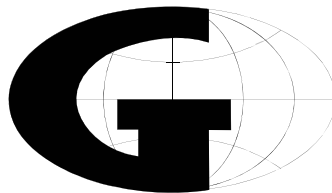
**SAMPLE OWNER CONTROLLED INSURANCE PROGRAM
(OCIP) MANUAL**

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT

Site Code: TBD

PREPARED BY:

**ARTHUR J. GALLAGHER & CO. – ORANGE COUNTY
18201 Von Karman Ave., Suite 200
Irvine, CA 92612**



CONTRACTOR INSURANCE MANUAL

ASCIP - OCIP

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I. INTRODUCTION

The District has implemented an Owner Controlled Insurance Program (OCIP) for the construction of this project. This manual was prepared by Arthur J. Gallagher & Co., who is the insurance broker and OCIP administrator for this project. The manual is designed to identify, define and assign responsibilities for the administration of the OCIP.

What this Manual Does:

- Generally describes the OCIP
- Identifies responsibilities of the various parties involved in the OCIP
- Describes some audit and administrative procedures
- Provides answers to basic questions about the OCIP

What this Manual Does Not Do:

- Provide coverage interpretations. The actual terms and conditions of the OCIP policy will determine coverage.
- Provide complete information about coverages
- Provide answers to specific claims questions.

Certain insurance coverages are being provided for the term of your contract at no cost to you. This manual details the coverages provided the steps necessary to enroll, and the procedures in the event of a claim. Since the District will pay the insurance premiums for the OCIP coverages described in this manual, you should notify your insurer(s) to delete from your insurance program charges and coverage for the on-site activities of this Project that are covered under the OCIP.

Note: Insurance coverage and limits provided by the OCIP are specific to this project. Your insurance representative should review this information. Any additional coverage you may wish to purchase will be at your option and expense.

The District reserves the right to terminate or modify the OCIP or any portion thereof. If the District exercises this right, Enrolled Contractors and Subcontractors of any tier will be provided notice as required by the terms of their individual Contracts. At its option, the District may procure alternate coverage or may require Contractors and Subcontractors of any tier to procure and maintain alternate insurance coverage.

To enroll in the program, the "Request for Insurance" Form 2, included in this manual, must be completely filled out and returned to Arthur J. Gallagher & Co. along with the insurance.

Certificate described in Section IV, Enrollment Procedures. Coverage under the OCIP is mandatory but not automatic for all eligible Contractors. Your participation in the OCIP is not complete until you receive confirmation from the OCIP Administrator at Arthur J. Gallagher & Co.

Since your subcontractors will also be covered by the OCIP while performing work at the project site, it is important that you provide a list of all subcontractors to the Construction Manager and Arthur J. Gallagher & Co. Once identified, your subcontractors will receive a copy of this manual.

Should you have any questions regarding the OCIP, please contact:

Heather Lawson
(800) 877-8218 ext. 2205
(866) 741-2481 Fax
Arthur J. Gallagher & Co.
National Wrap up Administration
12444 Powerscourt Drive
St. Louis, Mo. 63131

Arthur J. Gallagher & Co.
18201 Von Karman, Suite 200
Irvine, CA 92612
(949) 349-9800

Ryan Jacques	(949) 349-9831
John G. Chino	(949) 349-9827
Marco Guardi	(949) 349-9884

ASCIP, the District and Arthur J. Gallagher & Co. are committed to safety on the job site, and expect all contractors to share in this commitment.

II. COVERAGE SUMMARY

This section outlines the coverages provided for you by the OCIP. The District makes no warranty or representation that the OCIP coverages constitute an insurance portfolio, which adequately addresses all the risks faced by the contractor. Permission is granted by the District should you desire to supplement coverages provided by the OCIP at your expense.

Disclaimer: The information in this manual is intended to outline the OCIP. IF any conflict exists between this manual and the OCIP insurance policies or Contracts between the District and Contractor, the policies or Contracts will govern.

WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

Insurance Carrier: Liberty Insurance Corporation

Policy Term: Date of Contract until project completion

*Named Insured: ASCIP (Alliance of Schools for Cooperative Insurance Programs and any tier of contractor, subcontractor and sub-subcontractors thereof, or other entity or person while performing work at an ASCIP project and for whom the Owner has agreed by contract to provide an Owner Controlled Insurance Program).

Interest: Covering only on-site operations related to the ASCIP project.

Limits of Liability: Workers' Compensation
Statutory Benefits - Applicable States

Employers Liability: Bodily Injury by Accident \$1,000,000 Each Accident
Bodily Injury by Disease \$1,000,000 Each Employee
Bodily Injury by Disease \$1,000,000 Policy Limit

Coverage Exclusions:

Contractual liability
Punitive or exemplary damages
Injury to illegally employed persons (under certain circumstances)
Injuries covered by the workers' compensation statute or similar laws
Intentional injury
Injuries sustained outside the United States, its territories or possessions, or Canada, except with respect to citizens of the United States or Canada who are temporarily outside of these countries
Employment-related practices
Fines or penalties imposed for a violation of a federal or state law
Injuries covered under a federal compensation act
Designated Workplaces Exclusion Endorsement
Employee Insured by General Employer Excluded

* There will be a separate policy issued to each contractor or subcontractor as individual Named Insured. You will receive your policy after all the necessary forms have been completed and your enrollment has been confirmed. The OCIP Insurance Carrier will track Worker's Compensation losses associated with this project along with your payroll and will submit this information for inclusion in the calculation of your Experience Modifier.

NOTE: This policy applies only to operations related to the project conducted at the location designated below and operations necessary or incidental thereto:

District: Rancho Santiago Community College District Project: Science Center Project Address: 1530 W. 17th Street, Santa Ana, CA 92706-3398

Coverage Extensions:

- Voluntary Compensation
- USL&H Coverage - If Any
- Other States Coverage
- Voluntary Compensation
- Broad Named Insured
- Knowledge of Occurrence
- Unintentional Failure to Disclose Hazards
- Maritime Exclusion
- Notice of Occurrence
- Joint Ventures as Insureds

COMMERCIAL GENERAL LIABILITY

Insurance Carrier: Liberty Mutual Fire Insurance Company

Policy Term: From start of project until substantial completion plus 10 years completed operations.

Named Insured: (1) Alliance of Schools for Cooperative Insurance Programs (ASCIP) and
(2) All tiers of contractors, subcontractors and sub-subcontractors as their interests may appear, who work on the project and for whom ASCIP Member as agreed by contract to provide coverage under the Owner Controlled Insurance Program.

Interest: This policy applies only to operations related to the project conducted at the location designated below and operations necessary or incidental thereto:

District: Rancho Santiago Community College District
Project: Science Center
Project Address: 1530 W. 17th Street, Santa Ana, CA 92706-3398

Limits of Liability: Primary:
\$4,000,000 General Aggregate, per project
\$4,000,000 Products/Completed Operations Aggregate
\$2,000,000 Personal Injury and Advertising Injury
\$2,000,000 Each Occurrence
\$ 100,000 Damages to Premises Rented to You Limit (any one premises and subject to occurrence limit)
\$ 5,000 Medical Expense Limit (any one person and subject to occurrence limit)

Coverage: Products/Completed Operations - coverage to be extended for 120 months after completion of all work at project site.
Broad Form Named Insured
Bodily Injury Redefined
Advertisement Redefined
Unintentional Failure to Disclose Hazards
Notice of Occurrence (see Coverage Glossary) Knowledge of Occurrence (see Coverage Glossary) Reasonable Force
Broaden Damage to Premise Rented to You Coverage
Professional Health Care Srvs by Employees Coverage
Bodily Injury to Co-Employees Coverage
Non-Cumulation of Liability
Designated unmanned aircraft
Liability arising from warranty period work

Limitations:

This policy **does not** apply to any of the following as Insureds:

- (1) Any person or organization while fabricating or manufacturing materials away from the designated locations,
- (2) Any contractor, subcontractor, supplier, vendor, or common carrier who will have employees engaged in work at the project location who are not provided Workers' Compensation and Employer's Liability coverage under the Owner Controlled Insurance Program,
- (3) Any architect, engineer, or surveyor and their consultant, relating to professional liability,
- (4) Any other person or organization while transporting equipment to or from the designated location,
- (5) ***Any person or organization that has not completed enrollment in the OCIP.***

Key Exclusions:

Aircraft, Auto or Watercraft (drones covered under endorsement)
Employment Related Practices
Broad Form Nuclear
Engineers, Architects or Surveyors Professional Liability
Asbestos
Discrimination
Total Pollution
Exclusion of Certified Acts of Terrorism
Alaska Exclusion of Certified Acts of Terrorism
Nuclear Energy Liability Exclusion
Fungi, Bacteria or Mold
Abuse or Molestation
Rip & Tear
Professional Liability
Recording and Distribution of Material or Information in Violation of Law

COVERAGE GLOSSARY

Notice of Occurrence

The rights of the Named Insured shall not be prejudiced under this policy, if there is a failure to give notice of an occurrence solely due to the Insured's reasonable belief that bodily injury or property damage is not covered under this policy.

Knowledge of Occurrence

Coverage is to be modified so that it is understood and agreed that knowledge of an occurrence by the agent, servant or employee of the insured shall not in itself constitute knowledge to the insured unless the Insured's corporate insurance department shall have received first notice from its agent, service or employee.

Unintentional Non-Disclosure of Hazards

The unintentional failure of the Named Insured to disclose all hazards existing as of the effective date of this policy shall not prejudice any insured with respect to the insurance afforded by the policy.

EXCESS LIABILITY

Insurance Carrier:	Westchester Surplus Specialty Lines Insurance Company
Policy Term:	From date bound until project substantial completion plus 10 years completed operations
Named Insured:	Alliance of Schools for Cooperative Insurance Programs (ASCIP) and all tiers of enrolled contractors and subcontractors
Interest:	Coverage in respect of the Insured's on-site operations, solely with respect to the construction of the specified ASCIP projects.
Limits of Liability:	\$15,000,000 per Occurrence \$15,000,000 in the Aggregate
Conditions:	Terms and conditions per policy on file with ASCIP and the District
Exclusions:	Asbestos CCC (R&P) Discrimination Aircraft products Employment related practices Total pollution Nuclear Professional liability Violation of communication laws

CONTRACTORS POLLUTION LIABILITY

Insurance Carrier: Navigators Specialty Insurance Co

Policy Term: August 1, 2016 to July 1, 2020

Named Insured: (1) Alliance of Schools for Cooperative Insurance Programs (ASCIP)
and
(2) All tiers of contractors, subcontractors and sub-subcontractors as their interests may appear, who work on the project and for whom ASCIP Member as agreed by contract to provide coverage under the Owner Controlled Insurance Program.

Limit of Liability \$5,000,000 Each Claim
\$5,000,000 Policy Aggregate

Notable Endorsements & Exclusions:

Contractual Liability Exclusion
Damage to Your Product and Your Work Exclusion
Employers Liability Exclusion
Insured vs. Insured Exclusion
Intentional and Illegal Acts Exclusion
Known Circumstances and Non Disclosure Exclusion
Non Compliance Exclusion
Owned Property Exclusion
Products Liability Exclusion
Professional Services Exclusion
Radioactive Matter Exclusion
Related or Affiliated Entities Exclusion
Vehicle Exclusion
Transported Materials Exclusion
Workers' Compensation Exclusion
Certified Acts of Terrorism Exclusion
Terrorism Exclusion
U.S. Economic and Trade Sanctions Endorsement
Biological Contamination Coverage Extension
Bodily Injury – Amendment of Definition Endorsement
Service of Suit Clause Endorsement

BUILDER'S RISK INSURANCE

ASCIP has arranged necessary Builder's Risk insurance for the project during the entire construction phase for ASCIP Member District*. The coverage protects the interest of all involved parties including the District, ASCIP and all contractors and subcontractors. This insurance does not protect certain property of contractors used at the construction site, including contractors' tools and equipment (including office trailers, tool sheds and any other temporary structures) not intended to become a permanent part of the project. The following are details of the coverage:

Named Insured:	Alliance of Schools for Cooperative Insurance Programs (ASCIP)
Contractor's Interest:	Contractor's Interest in property covered to the extent of the Insured's liability by law or assumed by contract whether written or oral.
Property Insured:	Real and Personal Property including construction materials intended to become a permanent part of the project.
Location Insured:	Specified project site.
Property Not Insured:	Including, but not limited to, all property of contractors and subcontractors which is not incorporated into the project. Examples of this are contractors' tools, scaffolds, machinery, cranes, earthmoving equipment, consumables, office trailers, tool sheds and any other temporary structures not intended to become a permanent part of the project. Property in transit, including while at contractors' shops during fabrication and/or at temporary storage locations, is not insured, unless property is stored in a certified bonding warehouse.
Valuation:	Repair or replacement coverage on all insured property.
Limit of Protection:	\$50,000,000 per occurrence blanket real and personal property damage caused by "All Risk" perils per policy form.
Deductible:	TBD

*** The Builders Risk coverage shall only apply for those ASCIP Member Districts participating in the ASCIP Core Property Program.**

III. COVERAGES NOT INCLUDED IN THE OCIP

1. Automobile Insurance

The OCIP does not include Automobile Liability and Physical Damage Insurance for licensed vehicles.

2. Off-Site Workers' Compensation

The OCIP only covers work-related injuries occurring at the work site. It does not cover Workers' Compensation risks associated with your other jobs or activities.

3. Off-Site General Liability

The OCIP only covers third-party liability claims arising from activities at the work site. It does not cover liability risks associated with your other jobs or activities.

4. Tools, Equipment and Machinery

The OCIP does not cover loss of, or damage to, your tools and equipment at the job site. Nor does it cover your employee's tools or equipment. Other property such as scaffolds, machinery, crane, earth-moving equipment, consumables, office trailers, tool sheds and any other temporary structures not intended to become a permanent part of the project is not covered under this OCIP.

Property in transit, including while at contractor's shops during fabrication and/or at temporary storage locations, is not insured.

IV. ENROLLMENT PROCEDURES

1. Complete attached application (Request for Insurance Form 2) and fax or (e) mail to:

Heather Lawson

Arthur J. Gallagher & Co.
National Wrap up Unit
12444 Powerscourt Drive
St. Louis, Mo. 63131
(800) 877-8218 ext. 2205
(866) 741-2481 Fax
heather_lawson@ajg.com

2. Attach a certificate of insurance in accordance with the OCIP enrollment provisions in this Agreement evidencing primary Auto Liability and Workers' Compensation, and General Liability for Project-Related Operations performed away from the OCIP Project Site. *Contact your Insurance Agent for this certificate (a sample is included). It is your responsibility to notify your Insurance Agent to exclude all work to be done at this Project Site from your regular GL and WC policies.*
3. Arthur J. Gallagher will send a Certificate of Insurance evidencing your coverage under the ASCIP/OCIP program. This certificate is required by the District to obtain access to the job site. You should keep this certificate as evidence of your participation in the OCIP. It may be required by your regular insurance company to avoid duplication of insurance charges.

Form Completion Instructions
(a) Insurance Application

It will be the responsibility of each contractor to see that each of its subcontractors complete the required forms. Failure of a subcontractor to complete these forms could result (at Owner's discretion) in payments to contractor and/or subcontractor being withheld.

The forms are used to determine a firm's eligibility for coverage under the OCIP. Completion of the forms does not guarantee enrollment into the program.

FORM 2: OCIP Insurance Application

This form must be submitted to AJGCo. For each contract issued by the successful Contractor and/or Subcontractor prior to site mobilization. AJGCo. Will determine eligibility and issue a certificate of insurance showing the insurance coverage being provided under the CIP.

COMPLETION INSTRUCTIONS

1. **Contractor/Subcontractor Information:**
 - Fill in your company's complete legal name and d.b.a. including names of partners, sole proprietor's name, or joint venture partners.
 - Fill in your company's complete address.
 - Fill in name of field, payroll and insurance contact information: name, telephone, fax number and email address.
 - Fill in your federal identification number and SIC code.
 - Input your experience mod effective date
 - Input your Bureau (NCCI) ID number
 - Input your workers compensation policy period
 - "Circle the appropriate field describing status
2. **Bid Information:**
 - Fill in type of services your firm will be doing at the project site.
 - Fill in the Bid Pack number
 - Fill in any contract or specification number under which your contract falls.
 - Fill in the estimated start date of your work.
 - Fill in the estimated completion date of your work.
 - Fill in the dollar amount of your contract.
 - Fill in the dollar amount of your contract that you will be subcontracting to others.
 - Fill in the dollar amount of your payroll for work performed by your own labor.
3. **Workers' Compensation Insurance Information:**
 - Identify the Workers' Compensation Labor Descriptions - Can be obtained from your Workers' Compensation policy.
4. **WC Class Code Number:**
 - Fill in appropriate class code - Can be obtained from your Workers' Compensation policy or from your insurance agent.
5. **On Site Job Hours:**
 - Fill in the estimated on-site man-hours by workers' compensation classification

6. **Wage Rate:**
 - Fill in the applicable wage rate by workers' compensation classification.
7. **Payroll Estimate:**
 - Fill in the estimated payroll at the job site per workers' compensation class code.
8. **Total On Site Hours:**
 - Fill the total on site hours
9. **Total Payroll:**
 - Fill in the total payroll
10. **Subcontractor Information:**
 - List the name of all subcontractors associated with your work at the project site
 - List the subcontractors contact name and telephone number
 - List the subcontractor's contract number and contract amount.

Form 2 – Insurance Application

WC Policy No. Assigned:

Your Company Name: _____ FEIN# _____ (Tax ID #)
 Address: _____ City: _____ State: _____ Zip code _____
 Your WC Experience Mod. Rating Factor: _____ Your Exp. Mod Effective Date: _____ (usually your WC effective date)
 Bureau ID # (NCCI): _____ Policy Period: From _____ to _____
 Status: Construction Manager General Contractor Subcontractor of (name) _____

Name	Phone#	Fax#	Email Address
Proj.Mgr.			
Payroll			
Insurance			
Safety			

Scope of Work to be performed: _____ Bid Pack #: _____ Contract #:

Estimated Start date: _____ Estimated Completion Date: _____
 Total Contract Amount: \$ _____ Amount Subcontracted to Others: \$ _____
 Amount Self Performed: \$ _____ Payroll For Self Performed Work: \$ _____

a) WORKERS' COMPENSATION & EMPLOYER'S LIABILITY – For Self Performed Work at the Project Site

Labor Classification	WC Code	On-site Job Hours	Wage Rate	Payroll Estimate
Total Onsite Hours			Total Payroll	

List the Subcontractors and corresponding contract numbers and values associated with your work.

Name of Subcontractor	Contact Name	Phone No	Contract Number	Contract Amount

CONTRACTOR'S INSURANCE INFORMATION

Each contractor must attach a certificate of insurance evidencing off-site coverage for Workers' Compensation, General Liability and Auto Liability coverage and indicate that your GL and WC coverages exclude your work on the Port of Elizabeth-Zurich. Contact your insurance agent for this certificate. It is your responsibility to notify your insurance agent to exclude all work to be done from your regular WC and GL policies. This certificate *must* also name Sponsor as an additional insured. A sample certificate of insurance is included with this package.

ASSIGNMENT BY CONTRACTOR OR SUBCONTRACTOR FOR SPONSOR CONTROLLED INSURANCE PROGRAM

The undersigned, a contractor or subcontractor under construction contract with **Sponsor** in consideration of the agreement of **Sponsor** to arrange insurance and pay premiums as provided by said contractor for the contractor and for each subcontractor for any tier thereunder, and for other good and valuable consideration hereby assigns to sponsor all return premiums, premium refunds, dividends, and any monies due or to become due to the undersigned in connection with said insurance.

**Authorized Contractor
Representative**_____

Date_____

This insurance application – Form 2, along with the off-site certificate of insurance must be sent to:

**Heather Lawson
Arthur J. Gallagher & Co.
National Wrap Up Unit
12444 Powerscourt Dr.
St Louis, Mo. 63131
800-877-8218 X2205
866-741-2481 Fax**

Approved By

Date

ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 01/01/1001
PRODUCER Your Insurance Agent	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Your Company Name	INSURERS AFFORDING COVERAGE	NAIC #
	INSURER A: Your Insurance Company	
	INSURER B: Your Insurance Company	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES
 THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR (ADD'L LTR)	INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJ. <input type="checkbox"/> LOC	123456789	01/01/1001	01/01/1001	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMVOP AGG \$ 1,000,000
A		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	THIS IS A SAMPLE DOCUMENT ONLY Certificate of Insurance must be issued by your primary insurance agent and include the specific wording shown at the bottom of this sample. Mail or fax to Arthur J. Gallagher & Co., OCIP Dept.			COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ 0 BODILY INJURY (Per accident) \$ 0 PROPERTY DAMAGE (Per accident) \$ 0
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
A		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	123456789	01/01/1001	01/01/1001	EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	123456789	01/01/1001	01/01/1001	WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 District - Project - Endorsements required: Additional Insured for off site general liability and both on and off site auto liability, waiver of subrogation for off site workers' compensation in favor of District, CG, and Arthur J. Gallagher Risk Management Services, Inc.; additional endorsement required - primary and non-contributory. Please note, it is your responsibility to notify your insurance agent to exclude all on site work for this job site from your regular WC and GL policies once you receive a CIP certificate from AJG.

CERTIFICATE HOLDER Alliance of Schools For Cooperative Insurance Program C/O: Arthur J. Gallagher & Company 12444 Powerscourt Drive Suite 500 St. Louis, MO 63131	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
---	--

V. MONTHLY PAYROLL REPORTING AND FINAL AUDIT

The ASCIP/ District require that all contractors submit a monthly report of man-hours and payroll to Arthur J. Gallagher & Co. as per the following form.

"WE DON'T AND WON'T ACCEPT CERTIFIED PAYROLL REPORTS"

It is the Prime Contractor's responsibility to insure that this information is provided monthly by all subs.

THE CONTRACTORS AND ALL TIERS OF SUBCONTRACTORS WILL MAKE THEIR PAYROLL RECORDS AVAILABLE TO THE INSURANCE COMPANY AUDITOR AT ANY TIME DURING THE POLICY PERIOD AND UP TO THREE YEARS AFTER COMPLETION OF THE PROJECT.

Payroll: Payroll shall include the total remuneration and hours worked for all employees working on the Project Site, including the cost of board and lodging where it is considered part of an employee's earnings.

Payroll Records: All payroll records on ASCIP projects should be kept separate from all other work. This will make the audit process easier and will permit your regular insurance company to exclude this payroll from your off-site insurance charges.

Payroll Reports: Payroll reports should be sent to Arthur J. Gallagher within two weeks following end of prior month. You should use the same workers' compensation codes and classifications as shown on your current workers' compensation policy. Show only total hours and total payroll for each classification of employees. The report can be handwritten and faxed, hold the original copy in your file. If you have more than one contract and/or work order, please either 1) complete a Form for each awarding contractor or, 2) show which payroll applies to which contract.

Overtime: Earnings for overtime should be included only at the normal hourly rate. Overtime means those hours in excess of 8 hours worked each day, 40 hours in any week or on Saturdays, Sundays, or holidays, but only when there is an increase in the hourly rate to work such hours. If you do not wish to make this conversion, include overtime and double time in the boxes provided on the form and we will calculate straight time for you. Job Hours reports should include overtime hours.

This form must be completed monthly by all contractors and subcontractors for **each** contract awarded. The completed form is to be faxed or mailed to us within two weeks following the end of the payroll-reporting period. The Contractor will be responsible to enforce the submission of this form by their subcontractors. Computer generated payroll reports are acceptable if similar information is provided. We will forward your company a supply of these forms.

COMPLETION INSTRUCTIONS

- 1. Month Ending:** Indicate the month for which you are reporting payroll. If payroll is not reported monthly, indicate payroll duration.
- 2. Contractor Name:** Your firm's name.
- 3. Your Contract With:** Insert whom your contract is with.
- 4. Contract #:** Contract or Specification number under which your work may fall.
- 5. Workers' Comp. Classification Code:** Can be obtained from your Workers' Compensation policy, your insurance agent or the information you supplied on the enrollment form you completed (Form 2).
- 6. Man-hours and Payroll:** List man-hours and Gross Payroll including overtime, indicating the amount that is overtime or double time for each class code. List one cumulative monthly figure for all employees who fall under each class code. There is no need to breakout figure on a per employee basis.
- 7. Sign and Date Form.**

RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT

(Complete a Separate Form for Each Contract)

CONTRACTOR OR SUBCONTRACTOR WILL NOT BE PAID IF THIS REPORT IS NOT SUBMITTED WITHIN THE ALLOTTED TIME FRAME

MONTH: _____ -OR- FROM: _____ to: _____

MONTHLY ON-SITE PAYROLL REPORT

WRAP-UP INSURANCE PROGRAM

CONTRACTOR NAME: _____

WORKING UNDER CONTRACT WITH: _____

CONTRACT #: _____

WORKERS' COMPENSATION CLASSIFICATION CODES	GROSS RAW LABOR UNBURDENED PAYROLL	OVERTIME	DOUBLE TIME	Section 1.02 HOURS
	\$	\$	\$	

* You do not need to list out individual employee payroll information. Summarize employee payrolls by class code and only report one payroll amount per code.

I CERTIFY THAT THE DATA SHOWN ABOVE IS CORRECT.

Signed _____

Title _____

Date _____

Return Form to:

Heather Lawson
Arthur J. Gallagher & Co.
National Wrap up Unit
12444 Powerscourt Drive
St. Louis, MO 63131
(800) 877-8218 x2205
(866) 741-2481 Fax
heather_lawson@ajg.com

Note: Payroll reports are due to AJGCo. Prior to the 15th of every month. If you choose to fax your monthly payroll reports you will not need to mail a copy.



NOTICE OF WORK COMPLETION INSTRUCTIONS
Form 6

FORM 6: Notice of Work Completion

Contractor needs to complete this form when submitting final payroll report for verification that all requirements of the Wrap-Up have been met.

1. **Contract #:** The Contract or Specification number(s) relating to the work at the Job Site(s).
2. **Contractor:** Construction Manager, Contractor, Subcontractor, Sub-subcontractor.
3. **Job Site:** The description of Project Site.
4. **Work Performed:** Type of work performed. (Example: Concrete, Excavation, Supervisory, etc.)
5. **Work Completed By:** Display names of Construction Manager, Contractor, Subcontractor or Sub-subcontractor as completing work.
6. **Date Contract Completed:** Fill in appropriate date the work on this contract was completed.
7. **Date Total Work Completed:** Fill in appropriate date that all work at the Site was completed. NOTE: If only one contract, these dates are the same. If more than one contract, this is the date **ALL** work at the Site is complete.
8. **Subcontractors or Sub-Subcontractors included in the work:** Names of all Subcontractors of all tiers and associated with the terminating Construction Manager, Contractor or Subcontractor of all tiers.
9. **Location of Payroll:** Location of payroll records for Construction Manager, Contractor, and Subcontractors of all tiers.
10. **Sign Form:** Signature of Project Manager.
11. **Return Completed Form:** Return the completed form to AJGCo. For our verification that Contractor or Subcontractor has complied with the Wrap-Up document requirements.



**NOTICE OF WORK COMPLETION
Form 6**

-
1. Contract #: _____
 2. Contractor: _____
 3. Job site: District
 4. Work Performed: _____
 5. The following Contractor or Subcontractor has completed his Work at the Project Site and is being processed for final payment: (Indicate whether Contractor or Subcontractor)

_____ Contractor

_____ Subcontractor (Tier)

6. Date this contract completed: _____
7. Date total work completed: _____ Final Payroll Amount: _____
8. Final Contract Value: _____

Subcontractors of all tiers, which are included in this Work
(Add attachment if more space is needed)

Name _____

Name _____

Name _____

9. Final Insurance Audits may be made from payroll and other records located at:

Contractor: _____

Subcontractor: _____

10. (Signed By) _____

Authorized Representative

11. Return completed form to:

**Heather Lawson
(Arthur J. Gallagher & Co.
National Wrap up Unit
12444 Powerscourt Drive
St. Louis, MO 63131
(800) 877-8218 ext. 2205
866-741-2481 Fax**

VII. CONTRACTORS' SAFETY REQUIREMENTS

Minimum Safety Requirements:

Minimum qualifications for contractor enrollment are subject to the following:

- EMR- 1.25 as defined and reported by the WCIRB
- Drug Program Pre-Assignment to job site
- 6' Fall Protection, harnesses and lanyards required if other protective means are not used
- No more than 5 serious violations within 5 years
- No more than 2 serious repeat in 5 years
- No willful violations
- Hardhats & Safety Glasses are required at all times & other Personal Protective Eyewear (PPE) as required by work being conducted

Medical Provider Network:

California's workers' compensation law, specifically SB 899, allows insurers and self-insured employers to direct injured employees to a medical provider network (MPN) for medical treatment if they receive state approval for the network.

The OCIP program has chosen the Liberty Mutual Group MPN. For all work-related injury or illness, the physicians and providers in the Liberty Mutual Group MPN will provide you with medical treatment and services.

A summary of the Liberty Mutual Group MPN and your responsibilities in the MPN program can be found at the end of this exhibit.

EMPLOYEE NOTIFICATION CONFIRMATION:

Upon employee injury, notification of the MPN program must be made to the injured employee. This can be facilitated using Form B on the following pages.

PROVIDER PREDESIGNATION:

Your employees may have already predesignated physicians to provide care. This predesignation is still in effect under the MPN program.

WORK-RELATED INJURY OR ILLNESS:

If emergency care is needed, send injured employees to the posted medical center then report the incident to (800) 641-1723 as soon as possible but no later than forty-eight hours after emergency treatment. For non-emergency situations, send injured employees to the identified clinic or the employee's pre-designated physician. For initial treatment, the MPN physician will schedule an appointment for you within 3 business days from the date you request treatment within the MPN. If additional care is needed beyond the initial visit, the MPN will arrange for the employee to use any provider, appropriate to the injury, within the MPN.

For any questions relating to the MPN, Compensability, Benefits, Continuity of Care Plan or Transfer of Care Plan please contact your supervisor or your Claims Case Manager.

To report a workers' compensation injury or illness, please immediately contact your employer or the Claims Case Manager at the above listed telephone number.

Safety Programs:

Each contractor will have a written safety program on the job site.

- Each prime contractor is completely responsible for compliance of all its sub-contractors safety requirements.
- District Project Construction Manager will be provided with a copy of all programs.
- Each contractor will maintain on-site a written Hazard Communication/Employer Right-to-Know Program. A copy will be provided for District's Construction Manager.
- Each contractor's safety activities will be audited based on requirements of its own safety program. Certain minimum standards will apply.

- Subcontractors or sub-subcontractors, which may not now have a written program, may elect to fall under their prime's safety program.
- Should that option be used, each sub or sub-sub is required to submit a letter to the District's Construction Manager indicating it will use that option, that he has a copy of the program and is familiar with the safety requirements under that program and intends to comply with it. Those subs and sub-subs will be held to the same standard as the prime whose program they elect to use.
- Should a prime or subcontractor not currently have a written safety and hazard communication program, Arthur J. Gallagher & Co. will provide an outline of a generic program for use by the contractor in structuring its own version, should it chose.
- Straight adoption of these programs will not be an acceptable option. Each contractor's safety program must be tailored by that contractor to reflect the specific exposures encountered by its tradesmen. Arthur J. Gallagher & Co. and Liberty Mutual Insurance Company will offer assistance in this area if requested.
- All contractors should submit their safety programs to the District's Construction Manager before they begin work.

Safety Committee:

Each prime and those major subcontractors selected by the ASCIP's Construction Manager will appoint a Safety Coordinator.

- Safety Coordinators will be required to attend a Safety Training Session by Arthur J. Gallagher & Co. and Liberty Mutual Insurance at the time of the pre-construction conference.
- The Safety Coordinators will form the Safety Committee.
- Safety Committee Meetings will be held as called by the District's Construction Manager. These meetings will usually occur once each month. Attendance by Safety Coordinators is mandatory.
- Safety Coordinators will be required to accompany Arthur J. Gallagher and Liberty Mutual on tours of the job site for the purpose of training in hazard recognition.
- Superintendents/supervisors will be permitted to act as Safety Coordinators.

Accident Investigations:

Each contractor and subcontractor is required to submit written accident investigations.

- Liberty Mutual Insurance Company and/or Arthur J. Gallagher representatives will make accident investigation forms available for any contractor who does not currently have them.
- Arthur J. Gallagher and/or Liberty Mutual Insurance Company representatives will review all accident investigation reports for quality.

Safety Meetings:

Each contractor, subcontractor and sub-subcontractor is required to conduct safety meetings on the job site as directed by its established safety program.

- Minimum standards for number and quality of these meetings will be established for the job.
- A notebook of safety talk topics will be maintained the Construction Office for those companies who wish access to additional topics.
- Joint safety meetings may be conducted by or with the prime and/or other subs.
- The resulting safety meeting report must clearly identify each employee listed - by contractor, subcontractor or sub-sub.
- All safety-meeting reports may be reviewed by safety representatives from Arthur J. Gallagher & Co. and/or Liberty Mutual Insurance for quality and timeliness. The results of those reviews will be submitted to ASCIP's Construction Manager for his actions.

Self-Inspections:

Each prime and subcontractor must conduct job-site inspections on a regular basis. While these inspections may conform to the requirements of the contractor's own safety program, they are subject to minimum standards established for the job.

- Joint inspections or inspections conducted by a prime contractor for a sub must be identified as such. Documentation of these inspections must clearly identify the name of the person who did the inspection and each of the contractors, subcontractors, and sub-sub for whom the inspection was made.
- Inspection follow-up will be performed by each contractor to ensure corrections have been accomplished.
- The quality of inspections will be audited by Arthur J. Gallagher & Co. and Liberty Mutual Insurance Company loss control personnel and results of those audits provided to the ASCIP Member's Construction Manager for his action.

Job Surveys:

- Liberty Mutual Insurance and/or Arthur J. Gallagher & Co.'s representatives will conduct job-site surveys monthly, in the company of the members of the Safety Committee for the purpose of training these individuals in hazard recognition.
- Suggestions and recommendations resulting from those surveys will be discussed with contractor representatives at the time of the survey where appropriate. Recommendations and suggestions will be discussed during the regular monthly Safety Committee Meetings.
- Findings will be submitted in the loss prevention report directed to the ASCIP Member's Construction Manager for his action.

Record Keeping and Files:

IF IT IS NOT RECORDED IN THE PROJECT'S CONSTRUCTION OFFICE, IT HAS NOT BEEN COMPLETED!

The following required documentation must be in the contractor's safety file in the ASCIP Member's Construction Office. Representatives of Liberty Mutual and Arthur J. Gallagher will review safety program documentation. It is very important that any contractor with questions regarding record keeping contact ASCIP's Construction Manager, Arthur J. Gallagher & Co. or Liberty Mutual Insurance Company's loss control representative for clarification. The following documentation is required:

- A written safety program
- A written hazard/employee right-to-know program
- Material safety data sheets conforming to the above hazard communication program
- Job-site safety meeting reports
- Accident investigations
- Job-site inspections

File Audits:

- Safety files may be reviewed by Liberty Mutual and/or Arthur J. Gallagher & Co.'s loss control representatives monthly.
- Comments as to the quantity and quality of contractor's documentation will be addressed to ASCIP Member's Construction Manager for his action.
- Contractors are encouraged to discuss safety record-keeping problems with the representatives of Arthur J. Gallagher & Co. and Liberty Mutual Insurance Company.

Arthur J. Gallagher & Co. and/or Liberty Mutual Insurance Company representatives will make a decision each month as to the contractor with the best quality records for the previous month. That information will be made known to ASCIP Member's Construction Manager for appropriate action relative to the job's safety incentive activities.

DISTRICT
PRE-ASSIGNMENT SCREENING and POST ACCIDENT DRUG TESTING PROGRAM

Purpose:

The Sponsor of the **Owner Controlled Insurance Program (OCIP)** is committed to protecting people and property and providing a safe working environment. The purpose of this policy is to establish a drug-free, alcohol-free, safe and healthy work environment for each employee working at the project premises.

Policy:

The **OCIP Sponsor** prohibits the use, possession, distribution, or sale on the project premises, facilities, or work places of any of the following: alcoholic beverages, intoxicants, drugs and related drug paraphernalia.

Employees must not report for duty or perform work while under the influence of any drug, alcoholic beverage, or intoxicant. Employees on the project premises may be subject to search as provided herein. Applicants and employees will be required to consent to drug and alcohol screening or an oral fluid drug screen as provided herein.

Definitions:

When used herein, the following terms will have the meanings given below:

- a. Company – **General Contractor and/or Prime Contractor** Company and sponsored joint ventures.
- b. OCIP- Owner Controlled Insurance Program
- c. OCIP Sponsor - Alliance of Schools for Cooperative Insurance Programs with its representative and OCIP Administrator, Arthur J. Gallagher & Co.
- d. Alcohol - Ethyl (Ethanol). References to use or possession of alcohol include the use of any beverage, mixture, or preparation containing alcohol.
- e. Drug - Any substance (other than alcohol) including prescription drugs which may impair mental or motor function; including, but not limited to, any psychoactive substance, controlled substance, marijuana, or designer or simulated drugs. This definition does not apply to prescription drugs which have been disclosed to the Company and the Controlling Employer by the employee and are approved for use within prescription limits.
- f. Employee - Any individual, salaried or hourly, who actually performs work for a Controlling Employer on the project premises.
- g. Controlling Employer - Any individual or firm that provides employees to perform work on the project premises and is responsible for their hiring, advancement, payment, discipline, and termination. This shall include all contractors, all subcontractors, and all sub-tier subcontractors who are enrolled in the OCIP Program.
- h. Applicant - Any individual who is referred or makes application for employment on the project premises.
- i. Project Premises - All parts of any office, work site, or other work location, including parking lots under the control of the **General Contractor and/or Prime Contractor Company**.
- j. Testing Facilities - A NIDA certified laboratory where a specimen can be tested for drugs and alcohol within threshold limits according to standards established by the U. S. Department of Transportation or oral fluid drug test which meets or exceeds the D.O.T. threshold.
- k. Contraband - Considered to include but not limited to the following: drugs, alcohol, and drug paraphernalia.
- l. Drug Paraphernalia - Any article for the use, storage, or sale of drugs.
- m. Accident - Any event resulting in injury to a person or property to which the Company believes an employee contributed as a direct or indirect cause.
- n. Incident - Any event which the Company determines has all the attributes of an accident, except that no harm was caused to personnel or property.

Right to Search:

The OCIP has the right to search any personal effects, vehicles, lockers, baggage, lunch boxes, toolboxes, etc., for contraband. An individual who has notice of this rule and enters the project premises is deemed to consent to this safety procedure. Searches will be conducted on an "as needed" basis as determined after consultation with the OCIP and Company regional and corporate management. There will be an employee representative and/or other witnesses, which may include law enforcement officers, to all searches conducted by the OCIP or the Company.

An employee who refuses to submit to a search as described in this policy is subject to disciplinary action, up to and including immediate discharge by the Controlling Employer. Contractors and/or employees who refuse to submit to a search are subject to removal and denial of future access to the project premises.

An employee on the project premises, facility, or work place in possession of contraband is subject to disciplinary action, up to and including immediate termination by the Controlling Employer. Contractors and/or employees who are in possession of contraband are subject to removal and denial of future access to the project premises.

Prescription Drugs:

Any employee using a prescription drug which may impair mental or motor function shall, as soon as possible, complete Section 3 of the Consent for Alcohol and Drug Test and Pre-Hire Form. For the safety of all employees, the Company may direct the Controlling Employer to not permit the employee on the project premises until released as fit for duty by the prescribing physician. The Company reserves the right to obtain a confirming medical opinion before allowing the employee to return to duty.

Post-Accident Employee Testing:

After an accident or incident, the OCIP will ask the Controlling Employer to test all those involved. The OCIP will also ask the Controlling Employer to test employees when a reasonable suspicion exists that the employee has been using drugs or alcohol, or is in possession of contraband. Procedure for reasonable cause will consist of one supervisor observing employee demonstrating signs and symptoms of impairment. A second observation will be made by another supervisor independently of the first supervisor. Both supervisors must agree that the employee is exhibiting signs of impairment before the employee will be required to be tested. This test must be conducted in an approved clinic.

Pre-Assignment Screening:

The OCIP requires evidence of negative screening results from employees using the *Oratect*® or similar method for drug screening within 72 hours prior to assignment to the project's premises. Controlling employers are expected to arrange for screening its employees and provide screening results to Company as part of the employee assignment process. Employees without evidence of negative screening prior to assignment are not permitted on the project premises. Employees that have received negative results arising from their controlling employers' random or pre-employment drug screening programs within six months prior to assignment are exempt from this requirement. Again, evidence of such results is required to be provided as part of the assignment process.

Discipline and Rehabilitation:

All employees who refuse to submit to a drug and alcohol test, or who fail to pass a drug and alcohol test will be removed from the project premises by the Controlling Employer and will be referred to their personnel management for disciplinary action.

Confidentiality:

The OCIP and the Company will take steps to maintain the confidentiality of information generated by the implementation and enforcement of this policy and these procedures. Disclosure will be made only in appropriate circumstances. The Controlling Employer shall be responsible for maintaining the confidentiality of all information generated by the implementation and enforcement of this policy and these procedures for their own employees. The Company shall have the right to audit compliance with this policy and these procedures by the Controlling Employer, which shall include access to this confidential information.

Subcontractors and Suppliers:

The Company and all Contractors will include the provisions of this policy and these procedures, or another acceptable program, in their contracts with subcontractors, suppliers, consultants, agents, and others involved in providing goods or services on the project premises, and will require that they do the same with respect to their lower-tier subcontractors, suppliers, etc.

Posting and Distribution:

Significant sections of this policy and these procedures are available to each employee. The OCIP may revise and amend this policy and these procedures as required.

Procedures for Examination:

Post-Accident Screening When Required by the Company (Personal injury or vehicle/equipment accident)

1. A **General Contractor and/or Prime Contractor** Company supervisor is to accompany injured **General Contractor and/or Prime Contractor** employee(s) or those involved in the accident or incident to the clinic or medical facility. A Controlling Employer's supervisor will be required to accompany their injured employee(s) to the medical facility. Controlling Employers shall certify any employee(s) involved in an accident or incident tested negative for drugs and alcohol prior to allowing them to return to the project Premises. The procedures, which follow, outline the steps necessary to assure proper handling of Company post-accident testing.
2. The **General Contractor and/or Prime Contractor** Company supervisor will take the employee to the industrial clinic.
3. If the injured employee refuses to give a specimen of body fluid, the supervisor is to call the Project Manager and/or Project Superintendent. The Project Superintendent and/or Project Manager are to advise the employee again that the refusal to submit to drug screening is a violation of the Project Safety Plan's drug, alcohol and other prohibited articles safety policy and that refusal will result in termination.
4. If the injured employee continues to refuse to submit to drug screening, the doctor or clinic shall be advised to treat the employee for his/her injuries.
5. The supervisor should return to the project, meet with the Project Superintendent and Project Manager and prepare appropriate termination forms. Cause for termination should state - "Employee refuses to comply with written Project Safety Plan."
6. A copy of this termination form should be attached to the employee's First Report of Injury Form.
7. The doctor will sign all "chain of custody" documents and ship the specimen to the designated laboratory system.
8. The laboratory will run a confirmation test on the sample if the first test indicates a chemical in the system.
9. The employee will be contacted by the Medical Review Officer if there is a positive indication from the drug test. If there is need for additional contact, it will be by the Corporate Human Resources.
10. Results of all drug screenings and analyses must remain strictly confidential.
11. Employees must report all injuries immediately to their supervisor, whether the injury requires medical treatment or first aid only. Late reporting may result in denial of a claim.

Employee Agreement with Policy and Consent for Alcohol and Drug Tests:

The following form is to be completed for all **General Contractor and/or Prime Contractor** employees. All Controlling Employers shall obtain and submit to **General Contractor** a completed consent form from each employee who will be working on the project premises. This form can be attached to the employee's safety pledge

CONSENT FOR ALCOHOL AND DRUG TESTS POST ACCIDENT AND PRE-ASSIGNMENT

To:
Name of General Contractor and/or Prime Contractor Company

From: Employee Name: _____

Occupation: _____

Social Security # _____

Company Badge # _____

Home Address _____

Phone (____) _____

1. As an Employee, I hereby consent and agree to give specimens of my urine or oral fluid (saliva) to any medical facility, laboratory, medical person, or certified personnel designated by **the OCIP**. These specimens shall be used to detect the presence of alcohol (post-accident only), marijuana and/or other drugs in my body. I further consent and agree that the results will be furnished to my employer by the testing facility, and my employer may inform the Union hiring hall (if applicable) which referred me of my pass/fail results.

2. If APPROVED for ASSIGNMENT or PRESENTLY EMPLOYED and in the event that I am directly or indirectly involved in a work-related accident or incident, or the OCIP/company has reasonable suspicion of a drug or alcohol problem involving me, I consent and agree to screening for the presence of alcohol and drugs in my body. The screening facility is authorized to release the results of such screens to my employer. I, further acknowledge that I have received a copy of a summary of the **OCIP's** policy on drugs, alcohol and other prohibited articles and agree to screening in accordance with this policy. If any screens and confirming results are positive, **the OCIP and the General Contractor** may refuse to permit me access to the project premises. My signature below acknowledges that I have read and understand the foregoing statements and the consent given herein.

3. Are you, at the present time, taking any medicine, tranquilizers, sedatives, pills, capsules, tablets, or liquids that may impair your ability to safely work on the project premises?

YES __. NO __.

Medication	Prescribing Doctor
_____	_____
_____	_____
_____	_____

READ BEFORE SIGNING
IF YOU DON'T UNDERSTAND, ASK FOR AN EXPLANATION.

4. Signature: _____ Date: _____

_____ Date: _____

Employer's Authorized Company Representative

Medical Provider Network:

Recent changes in California's workers' compensation law, specifically SB 899, now allow insurers and self-insured employers to direct injured employees to a medical provider network (MPN) for medical treatment if they receive state approval for the network.

In response to these changes, your employer has implemented a MPN, effective February 3, 2005 for any workers' compensation claims. Your employer has chosen the Liberty Mutual Group MPN that has been approved by the state. For all work-related injury or illness the physicians and providers in the Liberty Mutual Group MPN will provide you with medical treatment and services.

Below is a summary of the Liberty Mutual Group MPN and your responsibilities if you have a work-related injury or illness. You have also received more detailed information regarding the MPN with this letter.

PROVIDER PREDESIGNATION - You may pre-designate your physician(s) prior to injury if you have previously received care with the physician(s). The attached form (Form A) must be signed you and the physician(s) must agree to be your primary treating physician. If the physician(s) does not agree to continue as your primary treating physician then you will be required to seek medical care with a physician in the MPN.

IF YOU HAVE A WORK-RELATED INJURY OR ILLNESS - If you need emergency care go to the nearest medical center and contact the number above as soon as possible but no later than forty-eight hours after emergency treatment. For non-emergency situations, you may use either your pre-designated physician or contact your supervisor to find out which initial treating MPN provider is available. The MPN has primary treating physicians and providers that are available within 15 miles or 30 minutes or specialty care within 30 miles or 60 minutes from your work or residence. For initial treatment the MPN physician will schedule an appointment for you within 3 business days from the date you request treatment within the MPN. If you require additional services beyond your initial visit, you may use any provider, appropriate to your injury, within the MPN. If you have difficulty in getting an appointment or need any assistance in locating a provider contact your supervisor or the Claims Case Manager.

IF YOU ALREADY HAVE A WC CLAIM AT THE TIME YOU RECEIVE THIS NOTICE - Contact your supervisor. You may qualify to continue treatment with your current provider under the Liberty Mutual Group MPN Transfer of Care Plan if your condition is acute, serious or chronic, if treatment is for remission, is to prevent deterioration, is a terminal illness or for a scheduled surgery or procedure that will occur within 180 days. Contact your supervisor or Claims Case Manager for questions or advice on your options.

OBTAINING AUTHORIZATION PRIOR TO TREATMENT - Your treating physician must obtain prior authorization for medical treatment and services. The following requests should be directed through Liberty Mutual's Utilization Management department by calling the toll-free number of 1-800-664-CARE (2273): Diagnostic tests, in-patient hospitalization, occupational therapy, out-patient surgery & procedures and pain management including; IDET and nucleoplasty procedures, injections, acupuncture, morphine pumps and spinal cord stimulators, physical therapy, psychiatric treatment and work conditioning and work hardening. The Liberty Mutual Utilization Review Unit will review your physician's treatment or service request to determine the medical necessity and will render a certified (approval) or non-certified (non-approval) decision. You and your physician will receive a utilization review determination notification letter. Non-utilization review treatment areas that the Liberty Mutual Claims Case Manager or Nurse Case Manager may review include: Durable Medical Equipment, Home Nursing Care, Medications, Office Visits, except psychiatric treatment, routine laboratory tests and treatment evaluations other than physical therapy, occupational therapy and chiropractic evaluations. For these non-utilization review treatment areas you will be notified as to the authorization or non-authorization of your physician's request by the Claims Case Manager or Nurse Case Manager.

APPEAL PROCESS FOR NON-CERTIFICATIONS - If your medical treatment or service request is non-certified you may request an appeal by following the Appeal instructions in the utilization review determination notification letter.

PHYSICIAN CHANGE AND REQUESTS FOR A SECOND OR THIRD OPINION - You may change physicians within the MPN at any time as long as the provider is appropriate to treat your injury. If you dispute the

diagnosis or treatment prescribed by your treating physician, you may request two additional opinions from other MPN physicians. To file a dispute, you must inform your employer or the Claims Case manager that you dispute your treating physician's opinion and request a second or third opinion. You must select a physician or specialist from the list that your employer has of the available MPN providers and make an appointment with the second or third opinion physician within 60 days. You must notify the Claims Case Manager of your appointment date. If the appointment is not scheduled within 60 days of receipt of the list of the available MPN providers, then you will have waived your rights to the second and third opinion process with regard to this disputed diagnosis or treatment of this treating physician. During this process, you must continue your treatment with your current treating physician or with another physician of your choice within the MPN. At the time of selection of the third opinion physician, if you dispute the second physician's opinion, the Claims Case Manager will notify you about the Independent Medical Review process and provide you with an "Application for Independent Review" form. If you need assistance contact your supervisor or your Claims Case Manager.

TERMINATED MPN PROVIDERS AND CONTINUITY OF CARE - If your physician terminates from the MPN, we will advise you on your options for continued treatment as approved under the Liberty Mutual Group MPN Continuity of Care Plan. In some instances, the terminated physician may continue to treat you through the Continuity of Care plan. Copies of the plan are available upon request. Contact your supervisor or Claims Case Manager if you have questions or need advice on your options.

CONFIRMATION OF RECEIPT OF NOTIFICATION INFORMATION - In order to confirm that you have received appropriate notification regarding the Liberty Mutual Group MPN please complete and sign the attached form (Form B). Form B must be returned to your supervisor or Claims Case Manager at the time you first receive employee notification information about the MPN. This may occur at the time your employer distributes information about the MPN, at the time of hire, at the time of your report of injury or at the time you transfer into the MPN.

For any questions relating to the MPN, Compensability, Benefits, Continuity of Care Plan or Transfer of Care Plan please contact your supervisor or your Claims Case Manager.

To report a workers' compensation injury or illness, please immediately contact your employer or the Claims Case Manager at the above listed telephone number.

**Liberty Mutual Group MPN
Form B - Employee Notification Confirmation**

In order to confirm that you have received appropriate notification regarding the Liberty Mutual Group Medical Provider Network (MPN) please complete and sign the attached form. This form **must** be returned to your employer at the time you first receive employee notification information about the MPN. This may occur at the time of your employer's MPN presentation, at the time of hire, at the time of your report of injury or at the time you transfer into the MPN.

(Employee Signature) _____
(Date)

(Print Employee Full Name)

(Name of Employer)

Any person who makes or causes to be made any knowingly false, or fraudulent material statement or material representation for the purposes of obtaining or denying workers' compensation benefits or payments is guilty of a felony.



Con el fin de confirmar que usted ha recibido la notificación adecuada acerca de la Red de Profesionales de Servicios Medicos del Grupo Liberty Mutual (MPN) (Liberty Mutual Group Medical Provider Network (MPN)) por favor llene y firme la forma adjunta. Esta forma **debe** ser entregada a su empleador al momento en que reciba informacion de la notificación para empleados acerca de la MPN. Esto puede ocurrir al momento de la presentación de la MPN de su empleador, al momento de la contratación, al momento de su reporte de lesión o al momento de su traslado a la MPN.

(Firma del empleado) _____
(Fecha)

(Nombre firma completo)

(Nombre del empleador)

Cualquier persona que hace o provoca conscientemente cualquier declaración o representación material falsa o fraudulenta para propósitos de obtener o de negar los beneficios de compensación o pagos de los trabajadores es culpable de un delito grave.

Fax Completed Form to 949-349-9900.

**EXHIBIT L
TO FACILITIES LEASE**

COMMUNITY AND STUDENT WORKFORCE PROJECT AGREEMENT (“CSWPA”)

(FOR SCIENCE CENTER PROJECT)

REFER TO THE FOLLOWING ATTACHMENT

**RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT
COMMUNITY AND STUDENT WORKFORCE PROJECT AGREEMENT
FOR CONSTRUCTION AND MAJOR REHABILITATION
FUNDED BY MEASURE Q**

Effective Date: _____

**RANCHO SANTIAGO COMMUNITY COLLEGE DISTRICT
COMMUNITY AND STUDENT WORKFORCE PROJECT AGREEMENT
FOR CONSTRUCTION AND MAJOR REHABILITATION
FUNDED BY MEASURE Q**

This Community and Student Workforce Project Agreement (hereinafter, "CSWPA") is entered into by and between the Rancho Santiago Community College District, its successors or assigns, (hereinafter "District") and the Los Angeles/Orange Counties Building and Construction Trades Council (hereinafter "Council"), affiliated with the Building and Construction Trades Department ("AFL/CIO") and the signatory Craft Councils and Unions signing this CSWPA, (hereinafter, together with the Council, collectively, the "Union" or Unions"). The District, Council and Unions are herein collectively referred to as the "Parties" and individually as a "Party."

**ARTICLE 1
RECITALS**

WHEREAS, the District undertakes and anticipates undertaking large expenditures of Measure Q Funds for the demolition, construction, alteration, repair and maintenance of District properties; and

WHEREAS, the District desires of assuring the completion of the construction projects and the related facilities in a professional, confident, and economical manner, without undue delay or work stoppage; and

WHEREAS, the successful completion of the District's Measure Q Projects is of the utmost importance to the general public and the District; and

WHEREAS, the Parties have pledged their full good faith and trust to work towards a mutually satisfactory completion of the Measure Q Projects; and

WHEREAS large numbers of workers of various skills will be required in the performance of the construction work on the Measure Q Projects, including workers affiliated with and/or represented by the Unions; and

WHEREAS, it is recognized that on construction projects with multiple Contractors and bargaining units on the job site, at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

WHEREAS, the Parties agree that by establishing and stabilizing wages, hours and working conditions for the workers employed on Measure Q Projects, a satisfactory, continuous and harmonious relationship will exist among labor and management that will lead to the efficient and economical completion of said Measure Q Projects; and

WHEREAS, the Parties believe that this CSWPA provides the District with the opportunity to establish a partnership with the local construction labor community respecting the District's Measure Q Projects, the benefits of which are expected to be: project cost containment,

the efficient and economical completion of projects to secure optimum productivity, a boost to the economy by generating local construction jobs and related jobs, partnering with responsible companies and contractors, and providing for the peaceful settlement of labor disputes and grievances without work interruptions such as strikes, slowdowns or lockouts, thereby promoting the public interest in assuring the timely and economical completion of projects contracted under the CSWPA; and

WHEREAS, the Parties believe it is desirable that this CSWPA apply to contracts for capital improvement work respecting Measure Q Projects awarded after the Effective Date in Section 2.2, and are paid for, in whole or in part, with Measure Q Funds (hereinafter, "Covered Contracts");

WHEREAS, it is understood by the Parties to this CSWPA that if this CSWPA is acceptable to the District, it will become the policy of the District for the Project Work to be contracted exclusively to Contractors who agree to execute and be bound by the terms of this CSWPA, directly or through the Letter of Assent ("Attachment A"), and to require each of its Subcontractors, of whatever tier, to become bound. The District shall include, directly or by incorporation by reference, the requirements of this CSWPA in the advertisement of and/or specifications for each and every contract for Project Work to be awarded by the District; and

WHEREAS, it is further understood that the District shall actively administer and enforce the obligations of this CSWPA to ensure that the benefits envisioned from it flow to all signatory Parties, the Contractors and craft persons working under it, and the ratepayers, residents and students of the District. The District shall, therefore, designate a "Project Labor Coordinator," either from its own staff or an independent contractor acting on behalf of the District, to monitor compliance with this CSWPA; assist, as the authorized representative of the District, in the development and implementation of the programs referenced herein, all of which are critical to fulfilling the intent and purposes of the Parties and this CSWPA; and to otherwise implement and administer the CSWPA.

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES AS FOLLOWS:

The above Recitals are a part of the terms of the CSWPA and are incorporated herein by reference.

ARTICLE 2 DEFINITIONS

Capitalized terms utilized in this CSWPA which are not otherwise defined herein shall have the meanings ascribed to said terms below. To the extent of any conflict between the definition of a term in this Article and the meaning ascribed to said term in the Recital paragraphs hereof, the definition of said term in this Article shall prevail.

Section 2.1 The term "Apprentice" as used in this CSWPA shall mean those employees registered and participating in Joint Labor/Management Apprenticeship Programs approved by the California Apprenticeship Council and the Department of Industrial Relations of the State of California.

Section 2.2 The term "Contractor" as used in this CSWPA includes any Contractor to whom the District awards a construction contract for Project Work, and also to Subcontractors of whatever tier utilized by such Contractors for Project Work. The term "Contractor" includes any individual, firm, partnership, or corporation, or combination thereof, including joint ventures, which as an independent Contractor has entered into a contract with the District with respect to the Project Work, or with another Contractor as a Subcontractor for Project Work.

Section 2.3 "Covered Contract" means a contract (and related subcontracts) for capital improvement work respecting a Measure Q Project awarded during the term of this CSWPA, as listed on Appendix A, and is paid for, in whole or in part, with Measure Q Funds.

Section 2.4 "Covered Project or Project Work" means a Project that is the subject of a Covered Contract.

Section 2.5 "District Residents" for purposes of this Agreement are defined as those residents living within the zip codes within the jurisdictional boundary of the District, as well as any veterans of the U.S. Armed Forces, apprentices currently enrolled and participating in their Joint Labor Management Apprenticeship Committee classroom training through the District or graduates of the District's construction Joint Labor Management Apprenticeship Committees, regardless of their residence.

Section 2.6 The term "Joint Labor/Management Apprenticeship Program" as used in this CSWPA means a joint Union and Contractor administered apprenticeship program certified by the Division of Apprenticeship Standards, Department of Industrial Relations of the State of California.

Section 2.7 The term "Responsible Contractor" as used in this CSWPA shall be defined as one that has a record of complying with federal, state and local government requirements for the determination of workplace wages, hours and conditions, including prevailing wages, apprenticeship, safety, workers' compensation, and Contractor licensing.

Section 2.8 The term "Schedule A Agreements" as used in this CSWPA means the local Master Labor Agreements of the signatory Unions having jurisdiction over the Project Work and which have signed this Agreement.

Section 2.9 "Signatory Contractors" as used in this CSWPA means contractors independently obligated to one or more collective bargaining agreements with the Unions.

Section 2.10 The term "Small Business Enterprise" as used in this CSWPA shall be defined in the same manner as a small business enterprise under California state guidelines and has its primary place of business in Orange County.

Section 2.11 The term "Subscription Agreement" means the contract between a Contractor and a Union's Labor/Management Trust Fund(s) that allows the Contractor to make the appropriate fringe benefit contributions in accordance with the terms of Schedule A Agreements.

Section 2.12 "Union" or "Unions" means any labor organization signatory to this CSWPA acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have, through their officers, executed this Agreement.

ARTICLE 3 INTENT AND PURPOSE

Section 3.1 Background. The District's construction and major rehabilitation projects funded by Measure Q will affect school buildings and offices that are owned, leased or controlled by the District. The goal is to provide construction and major rehabilitation of the District's facilities so as to provide sufficient facilities and technologies to properly educate the students. The District, therefore, wishing to utilize the most modern, efficient and effective procedures for construction, including assurances of a sufficient supply of skilled craft persons, and the elimination of disruptions or interference with Project Work, adopts this CSWPA in the best interests of the students, parents, District staff, and the taxpayers of the District to meet the District's goal that the Project Work be completed on time and within budget.

Section 3.2 Identification and Retention of Skilled Labor and Employment of District Residents. The vast amount of school construction, substantial rehabilitation, and capital improvement work scheduled to be performed pursuant to Measure Q will require large numbers of craft personnel and other supporting workers. It is therefore the explicit understanding and intention of the Parties to this CSWPA to use the opportunities provided by the extensive amount of work to be covered by this CSWPA to identify and promote, through cooperative efforts, programs and procedures (which may include, for example, employment of District's students enrolled in District's approved Apprenticeship Programs, to assist persons for entrance into formal apprenticeship programs, or outreach programs to the community describing opportunities available as a result of the CSWPA), the interest and involvement of District residents and students in the construction industry, such as assisting residents in entering the construction trades, and through utilization of District's Apprenticeship Programs, providing training opportunities for those residents and students wishing to pursue a career in construction. Further, with assistance of the Project Labor Coordinator, the District, the Contractors, the Unions and their affiliated regional and national organizations, will work jointly to promptly develop and implement procedures for the identification of craft needs, the scheduling of work to facilitate the utilization of available craft workers, and the securing of services of craft workers in sufficient numbers to meet the high demands of the Project Work to be undertaken.

Section 3.3 Encouragement of Small Business Enterprise. The Project Work will provide many opportunities for Small Business Enterprises to participate as Contractors or suppliers, and the Parties therefore agree that they will cooperate with all efforts of the District, the Project Labor Coordinator, and other organizations retained by the District for this purpose, to encourage and assist the participation of Small Business Enterprises in Project Work. Specifically, all Parties understand that the District has established and quantified goals which place a strong emphasis on the utilization of local small businesses on the Project. Each Party agrees that it shall employ demonstrable efforts to encourage utilization in an effort to achieve such goals. This may include, for example, participation in outreach programs, education and assistance to businesses not familiar with working on projects of this scope, and the encouragement of local residents to participate in Project Work through programs and

procedures jointly developed to prepare and encourage such local residents for apprenticeship programs and formal employment on the Project Work through the referral programs sponsored and/or supported by the Parties to this CSWPA. Further, the Parties shall ensure that the provisions of this CSWPA do not inadvertently establish impediments to participation of such Small Business Enterprises and residents of the District.

Section 3.4 Project Cooperation. The Parties recognize that the construction to take place under this CSWPA involves unique and special circumstances which dictate the need for the Parties to develop specific procedures to promote high quality, rapid and uninterrupted construction methods and practices. The smooth operation and successful and timely completion of the work is vitally important to the District and the students of the District. The Parties therefore agree that maximum cooperation among all Parties involved is required; and that with construction work of this magnitude, with multiple Contractors and crafts performing work on multiple sites over an extended period of time, it is essential that all Parties work in a spirit of harmony and cooperation, and with an overriding commitment to maintain the continuity of Project Work.

Section 3.5 Peaceful Resolution of All Disputes. In recognition of the special needs of the Project and to maintain a spirit of harmony, labor-management, peace and stability during the term of this CSWPA, the Parties agree to establish effective and binding methods for the settlement of all misunderstandings, disputes and grievances; and in recognition of such methods and procedures, the Unions agree not to engage in any strike, slowdowns or interruptions or disruption of Project Work, and the Contractors agree not to engage in any lockout.

Section 3.6 Binding CSWPA on Parties and Inclusion of District Residents and Businesses. By executing this CSWPA, the District, Council, Unions and Contractors agree to be bound by each and all of the provisions of this CSWPA, and pledge that they will work together to adopt, develop and implement processes and procedures which are inclusive of the residents and businesses of the District.

ARTICLE 4 SCOPE OF THE AGREEMENT

Section 4.1 General. This CSWPA shall apply to all construction, rehabilitation and capital improvement work as described in Section 4.2 of this Article, performed by those Contractor(s) of whatever tier, where such work is funded in whole or in part by Measure Q Funds. Notwithstanding the foregoing: (i) each Covered Contract shall be awarded in accordance with the applicable provisions of California's Public Contract Code, (ii) the District has the absolute right to award Covered Contracts to the lowest responsible and responsive bidder, and (iii) the District has the absolute right to combine, consolidate or cancel contract(s) or portions of contract(s) for work on Measure Q Projects.

Section 4.2 Specific. The Covered Projects are defined and limited to:

(a) All construction, major rehabilitation and renovation work related to the Projects described in Appendix A are covered by the terms and conditions of this CSWPA.

(b) It is understood by the Parties that the District may at any time, and at its sole discretion, determine to build segments of the Project under this CSWPA which were not currently proposed, or to modify or not to build any one or more particular segments proposed to be covered.

Section 4.3 Exclusions. Items specifically excluded from the Scope of this CSWPA include the following:

(a) The CSWPA shall be limited to Covered Work, undertaken pursuant to Covered Contracts which are awarded by the District on or after the Effective Date, and is not intended to, and shall not govern, any construction contracts entered into prior to the Effective Date of this CSWPA, or after the expiration or termination of the CSWPA.

(b) This CSWPA is not intended to, and shall not affect or govern the award of contracts by the District, which are outside the approved scope of a Covered Project. Determination by the District respecting the intended scope of a Covered Project shall be final and binding on all Parties; and

(c) Work of non-manual employees, including but not limited to: superintendents, supervisors, staff engineers, quality control and quality assurance personnel except as to those covered by a Schedule A agreement, time keepers, mail carriers, clerks, office workers, messengers, guards, safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, supervisory and management employees; and

(d) Equipment and machinery owned or controlled and operated by the District; and

(e) All off-site manufacture and handling of materials, equipment or machinery; provided, however, that lay down or storage areas for equipment or material and manufacturing (prefabrication) sites, dedicated solely to the Project, and the movement of materials or goods between locations on a Project site are within the scope of this CSWPA; and

(f) All employees of the District, Project Labor Coordinator, design teams (including, but not limited to architects, engineers and master planners), or any other consultants for the District (including, but not limited to, project managers and construction managers and their employees where not engaged in Project Work) and their sub-consultants, and other employees of professional service organizations, not performing manual labor within the scope of this CSWPA; provided, however, that it is understood and agreed that Building/Construction Inspector and Field Soils and Material Testers (Inspectors) are a covered craft under the CSWPA (This inclusion applies to the scope of work defined in the State of California Wage Determination for said craft). Every Inspector performing under the Wage classification of Building/Construction Inspector and Filed Soils Material Testers under a professional services agreement of a construction contract shall be bound to all applicable requirements of the CSWPA). Covered Work as defined by this Agreement shall be performed pursuant to the terms and conditions of this Agreement regardless of the manner in which the work was awarded. Nothing in this section will be construed to include Department of State Architects-certified inspectors employed by the District as included under the scope of this CSWPA; and

(g) Any work performed on or near or leading to or into a site of work covered by this CSWPA and undertaken by state, county, city or other governmental bodies, or their contractors; or by public utilities, or their contractors, and/or by the District or its contractors (for work for which is not within the scope of this CSWPA); and

(h) Off-site maintenance of leased equipment and on-site supervision of such work; and

(i) Warranty and service work;

(j) Non-construction support services contracted by the District, Project Labor Coordinator, or Contractor in connection with this Project; and

(k) Laboratory work for testing.

Section 4.4 Awarding of Contracts.

(a) The District has the absolute right to award contracts or subcontracts on this Project to any Contractor notwithstanding the existence or non-existence of any agreements between such Contractor and any Union Parties, provided only that such Contractor is willing, ready and able to execute and comply with this CSWPA should such Contractor be awarded work covered by this CSWPA.

(b) It is agreed that all Contractors and Subcontractors of whatever tier, who have been awarded contracts for Covered Work by this CSWPA, shall be required to accept and be bound by the terms and conditions of this CSWPA, and shall evidence their acceptance by the execution of the Letter of Assent as set forth in Attachment A hereto, prior to the commencement of work. At the time that any Contractor enters into a subcontract with any subcontractor of any tier providing for the performance on the construction contract, the Contractor shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor, as a part of accepting the award of a construction subcontract, to agree in writing in the form of a Letter of Assent to be bound by each and every provision of this Agreement prior to the commencement of work on the Project. No Contractor or Subcontractor shall commence Project Work without first providing a Letter of Assent as executed by it to the Project Labor Coordinator and to the Council forty-eight (48) hours before the commencement of Project Work, or within forty-eight (48) hours after the award of Project Work to that Contractor (or Subcontractor), whichever occurs later.

(c) The District agrees that to the extent permitted by law and consistent with the economy and efficiency of construction and operation, it will use its best efforts to purchase materials, equipment and supplies which will not create labor strife. Under all circumstances, however, the District shall retain the absolute right to select the lowest responsive and responsible bidder for the award of contracts on all Covered Projects.

Section 4.5 Coverage Exception. The Parties agree and understand that this CSWPA shall not apply to any work that would otherwise be covered Project Work except when a governmental agency or granting authority partially or fully funding such work determines that it will not fund if such Project Work is covered by this CSWPA; or a law regulation, proposition or

measure prohibits such coverage or the use by the District, or for its benefit, of particular funds if such coverage exists. The District agrees that it will make every effort to establish the enforcement of this CSWPA with any governmental agency or granting authority.

Section 4.6 Schedule A's.

(a) The provisions of this CSWPA, including the Schedule A's, (which are the local Master Labor Agreements of the signatory Unions having jurisdiction over the work on the Project, as such may be changed from time-to-time consistent with Section 21.3, and which are incorporated herein by reference) shall apply to the work covered by this CSWPA, notwithstanding the provisions of any other local, area and/or national agreement which may conflict with or differ from the terms of this CSWPA. However, such does not apply to work performed under the National Cooling Tower Agreement, the National Stack Agreement, the National Transit Division Agreement (NTD), work within the jurisdiction of the International Union of Elevator Constructors, and all instrument calibration and loop checking work performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians except that Articles dealing with Work Stoppages and Lock-Outs, Work Assignments and Jurisdictional Disputes, and Settlement of Grievances and Disputes shall apply to such work. It is specifically agreed that no later agreement shall be deemed to have precedence over this Agreement unless signed by all Parties signatory hereto who are then currently employed or represented at the Project. Where a subject covered by the provisions of this CSWPA is also covered by a Schedule A, the provisions of this CSWPA shall apply. Where a subject is covered by a provision of a Schedule A and not covered by this CSWPA, the provisions of the Schedule A shall prevail. Any dispute as to the applicable source between this CSWPA and any Schedule A for determining the wages, hours of working conditions of employees on this Project shall be resolved under the procedures established in Article 11.

(b) It is understood that this CSWPA, together with the referenced Schedule A's, constitutes a self-contained, stand-alone agreement and by virtue of having become bound to this CSWPA, the Contractor will not be obligated to sign any other local, area or national collective bargaining agreement as a condition of performing work within the scope of this CSWPA (provided, however, that the Contractor may be required to sign an uniformly applied non-discriminatory Participation or Subscription Agreement at the request of the trustees or administrator of a trust fund established pursuant to Section 302 of the Labor Management Relations Act, and to which such Contractor may be bound to make contributions under this CSWPA, provided that such Participation or Subscription Agreement does not purport to bind the Contractor beyond the terms and conditions of this CSWPA and/or expand its obligation to make contributions pursuant thereto). It shall be the responsibility of the prime Contractor to have each of its Subcontractors sign the documents with the appropriate Union prior to the Subcontractor beginning Project Work.

Section 4.7 The Parties agree that this CSWPA will be made available to, and will fully apply to, any successful bidder for Project Work, without regard to whether that successful bidder performs work at other sites on either a union or non-union basis. This CSWPA shall not apply to any work of any Contractor other than that on Project Work specifically covered by this CSWPA.

Section 4.8 Binding Signatories Only. This CSWPA and Letter of Assent shall only be binding on the signatory Parties hereto, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party.

Section 4.9 Other District Work. This CSWPA shall be limited to the construction work within the Scope of this CSWPA including, specifically, site preparation and related demolition work, and new construction and major rehabilitation work for new or existing facilities referenced in Section 4.2 above. Nothing contained herein shall be interpreted to prohibit, restrict, or interfere with the performance of any other operation, work or function not covered by this CSWPA, which may be performed by District employees or contracted for by the District for its own account, on its property or in and around a Project site.

Section 4.10 Separate Liability. It is understood that the liability of the Contractor(s) and the liability of the separate Unions under this CSWPA shall be several and not joint. The Unions agree that this CSWPA does not have the effect of creating any joint employment status between or among the District or Project Labor Coordinator and/or any Contractor.

Section 4.11 Completed Project Work. As areas of Covered Work are accepted by the District, this CSWPA shall have no further force or effect on such items or areas except where the Contractor is directed by the District or its representatives to engage in repairs, modification, check-out and/or warranties functions required by its contract(s) with the District.

ARTICLE 5 UNION RECOGNITION AND EMPLOYMENT

Section 5.1 Recognition. The Contractor recognizes the Unions as the exclusive bargaining representative for the employees engaged in Project Work. Such recognition does not extend beyond the period when the employee is engaged in Project Work.

Section 5.2 Contractor Selection of Employees. The Contractor shall have the right to determine the competency of all employees, the number of employees required, the duties of such employees within their craft jurisdiction, and shall have the sole responsibility for selecting employees to be laid off, consistent with Section 5.6 and 6.3, below. The Contractor shall also have the right to reject any applicant referred by a Union for any reason, subject to any reporting time requirements of the applicable Schedule A; provided, however, that such right is exercised in good faith and not for the purpose of avoiding the Contractor's commitment to employ qualified workers through the procedures endorsed in this CSWPA.

Section 5.3 Referral Procedures.

(a) For signatory Unions having a job referral system contained in a Schedule A, the Contractor agrees to comply with such system and it shall be used exclusively by such Contractor, except as modified by this CSWPA. Such job referral system will be operated in a nondiscriminatory manner and in full compliance with federal, state, and local laws and regulations which require equal employment opportunities and non-discrimination. All of the foregoing hiring procedures, including related practices affecting apprenticeship, shall be operated so as to consider the goals of the District to encourage employment of District residents

and utilization of Small Business Enterprises on the Project, and to facilitate the ability of all Contractors to meet their employment needs.

(b) The local Unions will exert their best efforts to recruit and refer sufficient numbers of skilled craft workers to fulfill the labor requirements of the Contractor, including specific employment obligations to which the Contractor may be legally and/or contractually obligated; and to refer apprentices as requested to develop a larger, skilled workforce. The Unions will work with the Project Labor Coordinator and others designated by the District, to identify and refer competent craft persons as needed for Project Work, and to identify individuals, particularly residents of the District, for entrance into apprenticeship programs, or to participation in other identified programs and procedures to assist individuals in qualifying and becoming eligible for such apprenticeship programs, all maintained to increase the available supply of skilled craft personnel for Project Work and future construction work to be undertaken by the District.

(c) The Union shall not knowingly refer an employee currently employed by a Contractor on Project Work to any other Contractor.

Section 5.4 Non-Discrimination in Referral, Employment, and Contracting. The Unions and Contractors agree that they will not discriminate against any employee or applicant for employment on the basis of race, color, religion, gender, national origin, age, union status, sex, sexual orientation, marital status, political affiliation, or membership in a labor organization, or disability. Further, it is recognized that the District has certain policies, programs, and goals for the utilization of Small Business Enterprises. The Parties shall jointly endeavor to assure that these commitments are fully met, and that any provisions of this CSWPA which may appear to interfere with a Small Business Enterprises successfully bidding for work within the scope of this CSWPA shall be carefully reviewed, and adjustments made as may be appropriate and agreed upon among the Parties, to ensure full compliance with the spirit and letter of the District's policies and commitment to its goals for the significant utilization of Small Business Enterprises as direct contractors or suppliers on Covered Work.

Section 5.5 Employment of District Residents.

(a) In order to encourage the utilization of graduates of the District's Joint Apprenticeship and Training Committee programs, apprentices currently enrolled and participating in their Joint Labor Management Apprenticeship Committee classroom training through the District and veterans of the U.S. Armed Forces, those individuals will be considered residents within the meaning of this section regardless of their place of residence. In recognition of the District's mission to serve the District and its residents, the Unions and Contractors agree that, to the extent allowed by law, and as long as they possess the requisite skills and qualifications, District Residents shall be first referred for Project Work, including journeyman, apprentice, or other positions which may be established under a Schedule A and covered by the applicable prevailing wage for utilization on Project Work.

It is the Parties goal that sixty-six percent (66%) of the positions for Project Work for a particular Contractor (including the Contractor's "core employees") by craft, have been filled with residents of Orange County and fifty percent (50%) of the positions should be District Residents. To

facilitate the dispatch of local residents all Contractors will be required to utilize the Craft Employee Request Form for Covered Projects, a sample of which is attached as Attachment B.

(b) Only if:

(1) sixty-six percent (66%) of the positions for any one Contractor, by individual craft, are filled by residents of Orange County and fifty percent (50%) of the positions are filled by District Residents; or

(2) such individuals are not available, may others be referred to Contractor for Project Work.

(c) The Project Labor Coordinator shall work with the Unions and Contractors in the administration of this local residency goal. The Unions shall, upon request of the Project Labor Coordinator, provide their response(s) to the Craft Request Form submitted to them by the Contractors. The Unions will also respond in writing, if requested, if they, or any of them, are unable to fill the dispatch request. As part of this process, and in order to facilitate the contract administration procedures, as well as appropriate benefit fund coverage, all Contractors shall require their "core work force" and any other persons employed other than through the Union referral process, to register with the appropriate hiring hall, if any, prior to their first day of employment at a project site.

(d) Notwithstanding the transfer or portability provisions of the Schedule A agreements, Contractors which are directly signatory to a Schedule A agreement shall comply with subsection (a) second paragraph in transferring and employing workers on Project Work.

Section 5.6 Core Employees. Except as otherwise provided in separate collective bargaining agreement(s) to which the Contractor is signatory,

(a) Contractors, including Subcontractors, may employ, as needed, first, a member of his core workforce, then an employee through a referral from the appropriate Union hiring hall, then a second core employee, then a second employee through the referral system, and so on until a maximum of five (5) core employees are employed. Once a maximum of five (5) core employees are employed, all further employees shall be employed pursuant to the dispatch provisions of this Article. It is agreed that of the five (5) core employees at least fifty percent (50%) be District Residents and sixty-six percent (66%) reside within the County and meet the requirements of subsection (b).

(b) The core work force is comprised of those employees:

(1) whose names appeared on the Contractor's active payroll for at least thirty (30) of the last one-hundred eighty (180) working days before award of the Project Work to the Contractor; and

(2) who possess any license required by state or federal law for the Project Work to be performed; and

(3) who have the ability to safely perform the basic functions of the applicable trade; and

(4) who are residents of the District or County on the effective date of this CSWPA, or have been residents of the District or County for one-hundred eighty (180) days prior to the award of Project Work to the Contractor.

(c) If there are any questions regarding a core employee's eligibility under this provision, the Project Labor Coordinator, at the Council's request, shall obtain appropriate proof of such from the Contractor. For proof of employment eligibility, quarterly tax records or payroll records normally maintained by the Contractor (or officially recognized substitutes) shall be utilized; and for residency, adequate proof thereof through driver's license, voter registration, postal address, or other official acknowledgements.

(d) The provisions of this section 5.6 shall only apply to employees working for employers not signatory to a Schedule A at the time of their transfer to work covered under this Agreement and is not intended to limit the transfer provisions of the Schedule A Agreements of any of the Unions signatory hereto.

Section 5.7 Time for Referral. If any Union's registration and referral system does not fulfill the requirements for specific classifications of covered employees requested by any Contractor within forty-eight (48) hours (excluding Saturdays, Sundays and holidays), that Contractor may use employment sources other than the Union registration and referral services, and may employ applicants meeting such standards from any other available source. The Contractor shall promptly inform the Union of any applicants hired from other sources, and such applicants shall register with the appropriate hiring hall, if any, within twenty-four (24) hours after being hired.

Section 5.8 Lack of Referral Procedure. If a signatory local Union does not have a job referral system as set forth in Section 5.3 above, the Contractors shall give the union equal opportunity to refer applicants. The Contractors shall notify the Union of employees so hired, as set forth in Section 5.7.

Section 5.9 Union Membership. No employee covered by this CSWPA shall be required to join any Union as a condition of being employed, or remaining employed, for the completion of Project Work; provided, however, that any employee who is a member of the referring Union at the time of referral shall maintain that membership in good standing while employed under this CSWPA. All employees shall, however, be required to comply with the union security provisions of the applicable Schedule A for the period during which they are performing on-site Project Work to the extent, as permitted by law, of rendering payment of an amount equal to the applicable monthly window and working dues.

Section 5.10 Individual Seniority. Except as provided in Article 6, Section 6.3, individual seniority shall not be recognized or applied to employees working on the Project; provided, however, that group and/or classification seniority in a Union's Schedule A as of the Effective Date of this CSWPA shall be recognized for purposes of layoffs.

Section 5.11 Foremen. The selection and number of craft foremen and/or general foremen shall be the responsibility of the Contractor. All foremen shall take orders exclusively from the designated Contractor representatives. Craft foremen shall be designated as working foreman at the request of the Contractors.

ARTICLE 6 UNION ACCESS AND STEWARDS

Section 6.1 Access to Project Sites. Authorized representatives of the Union shall have access to Project Work, provided that they do not interfere with the work of employees and further provided that such representatives fully comply with posted visitor, security and safety rules.

Section 6.2 Stewards.

(a) Each signatory local Union shall have the right to dispatch a working journeyman as a steward for each shift, and shall notify the Contractor in writing of the identity of the designated steward or stewards prior to the assumption of such person's duties as steward. Such designated steward or stewards shall not exercise any supervisory functions. There will be no non-working stewards. Stewards will receive the regular rate of pay for their respective crafts.

(b) In addition to his/her work as an employee, the steward should have the right to receive, but not to solicit, complaints or grievances and to discuss and assist in the adjustment of the same with the employee's appropriate supervisor. Each steward should be concerned only with the employees of the steward's Contractor and, if applicable, Subcontractor(s), and not with the employees of any other Contractor. The Contractor will not discriminate against the steward in the proper performance of his/her union duties.

(c) When a Contractor has multiple, non-contiguous work locations at one site, the Contractor may request and the Union shall appoint such additional working stewards as the Contractor requests to provide independent coverage of one or more such locations. In such cases, a steward may not service more than one work location without the approval of the Contractor.

(d) The stewards shall not have the right to determine when overtime shall be worked or who shall work overtime.

Section 6.3 Steward Layoff/Discharge. The Contractor agrees to notify the appropriate Union twenty-four (24) hours before the layoff of a steward, except in the case of disciplinary discharge for just cause. If the steward is protected against such layoff by the provisions of the applicable Schedule A, such provisions shall be recognized when the steward possesses the necessary qualifications to perform the remaining work. In any case in which the steward is discharged or disciplined for just cause, the appropriate Union will be notified immediately by the Contractor, and such discharge or discipline shall not become final (subject to any later filed grievance) until twenty-four (24) hours after such notice have been given.

Section 6.4 Employees on Non-Project Work. On work where the personnel of the District may be working in close proximity to the construction activities covered by this CSWPA, the Union agrees that the Union representatives, stewards, and individual workers will not interfere with the District personnel, or with personnel employed by any other employer not a party to this CSWPA.

ARTICLE 7 WAGES AND BENEFITS

Section 7.1 Wages. All employees covered by this CSWPA shall be classified in accordance with work performed and paid the hourly wage rates for those classifications in compliance with the applicable prevailing wage rate determination established pursuant to the California Labor Code by the Department of Industrial Relations. If a prevailing rate increases under state law, the Contractor shall pay that rate in accordance with the California Labor Code. If the prevailing wage laws are repealed during the term of this CSWPA, the Contractor shall pay the wage rates established under the Schedule A's, except as otherwise provided in this CSWPA. Notwithstanding Section 4.6 (a), Signatory Contractor to one or more of the Schedule A Agreements are required to pay all of the wages set forth in such Agreements.

Section 7.2 Benefits.

(a) Contractors shall pay contributions for all employees to the established employee benefit funds in the amounts designated in the appropriate Schedule A; and make all employee - authorized deductions in the amounts designated in the appropriate Schedule A: provided, however, that the Contractor and Unions agree that only such bona fide employee benefits as accrue to the direct benefit of the employees (such as pension and annuity, health and welfare, vacation, apprenticeship, and training funds) shall be included in this requirement and required to be paid by the Contractor on the Project; and provided further, however, that such contributions shall not exceed the contribution amounts set forth in the applicable prevailing wage determination. Notwithstanding Section 4.6 (a), Signatory Contractor to one or more of the Schedule A Agreements are required to make all contributions set forth in those Schedule A Agreements without reference to the forgoing.

(b) Benefits designated in the Schedule A will be paid on all employees dispatched by the Union.

(c) Where applicable, the Contractor adopts and agrees to be bound by the written terms of the applicable, legally established, trust agreement(s) specifying the detailed basis on which payments are to be made into, and benefits paid out of, such trust funds for its employees. The Contractor authorizes the Parties to such trust funds to appoint trustees and successors' trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor.

(d) Each Contractor and Subcontractor is required to certify to the Project Labor Coordinator that it has paid all benefit contributions due and owing to the appropriate Trust(s) or fringe benefit programs prior to the receipt of its final payment and/or retention. Further, upon timely notification by a Union to the Project Labor Coordinator, the Project Labor Coordinator

shall work with any Contractor or Subcontractor who is delinquent in payments to assure that proper benefit contributions are made, to the extent of requesting the District or the prime Contractor to withhold payments otherwise due such Contractor, until such contributions have been made or otherwise guaranteed.

Section 7.3 Wage Premiums. Wage premiums, including but not limited to pay based on height of work, shift premiums, hazard pay, scaffold pay and special skills shall not be applicable to work under this CSWPA, except to the extent provided for in any applicable prevailing wage determination.

Section 7.4 Compliance with Prevailing Wage Laws. The Parties agree that the Project Labor Coordinator shall monitor the compliance by all Contractors and Subcontractors with all applicable federal and state prevailing wage laws and regulations, and that such monitoring shall include Contractors engaged in what would otherwise be Project Work but for the exceptions to CSWPA coverage in Section 4.2. All complaints regarding possible prevailing wage violations shall be referred to the Project Labor Coordinator for processing, investigation and resolution, and if not resolved within thirty (30) calendar days, may be referred by any party to the State Labor Commissioner.

ARTICLE 8 WORK STOPPAGES AND LOCKOUTS

Section 8.1 No Work Stoppages or Disruptive Activity. The Council and the Unions signatory hereto agree that neither they, and each of them, nor their respective officers, or agents or representatives, shall incite or encourage, condone or participate in any strike, walk-out, slowdown, picketing, observation of picket lines or other activity of any nature or kind whatsoever, for any cause or dispute whatsoever with respect to or any way related to Project Work, or which interferes with or otherwise disrupts, Project Work, or with respect to or related to the District or Contractors or Subcontractors, including, but not limited to, economic strikes, unfair labor practice strikes, safety strikes, sympathy strikes and jurisdictional strikes whether or not the underlying dispute is arbitrable. Any such actions by the Council, or Unions, or their members, agents, representatives or the employees they represent shall constitute a material violation of this CSWPA. The Council and the Union shall take all steps necessary to obtain compliance with this Article.

Section 8.2 Employee Violations. The Contractor may discharge any employee violating Section 8.1 above and any such employee will not be eligible for rehire under this CSWPA.

Section 8.3 Standing to Enforce. The District, the Project Labor Coordinator, or any Contractor affected by an alleged violation of Section 8.1 shall have standing and the right to enforce the obligations established therein.

Section 8.4 Expiration of Schedule A's. If the Schedule A Agreement, or any local, regional, and other applicable collective bargaining agreements expire during the term of the Project, the Union(s) agree that there shall be no work disruption of any kind as described in Section 7.1 above as a result of the expiration of any such agreement(s) having application on this Project and/or failure of the involved Parties to that agreement to reach a new contract.

Terms and conditions of employment established and set at the time of bid shall remain established and set. Otherwise to the extent that such agreement does expire and the Parties to that underlying agreement have failed to reach concurrence on a new contract, work will continue on the Project on one of the following two (2) options, both of which will be offered by the Unions involved to the Contractors affected:

(a) Each of the Unions with a contract expiring must offer to its Signatory Contractors to continue working on the Project under interim agreements that retain all the terms of the expiring contract, except that the Unions involved in such expiring contract may each propose wage rates and employer contribution rates to employee benefit funds under the prior contract different from what those wage rates and employer contributions rates were under the expiring contracts. The terms of the Union's interim agreement offered to Signatory Contractors will be no less favorable than the terms offered by the Union to any other employer or group of employers covering the same type of construction work in Orange County.

(b) Each of the Unions with a contract expiring must offer to continue working on the Project under all the terms of the expiring contract, including the wage rates and employer contribution rates to the employee benefit funds, if a Signatory Contractor affected by that expiring contract agrees to the following retroactive provisions: if a new, local, regional or other applicable labor agreement for the industry having application at the Project is ratified and signed during the term of this Agreement and if such new labor agreement provides for retroactive wage increases, then each affected Signatory Contractor shall pay to its employees who performed work covered by this Agreement at the Project during the hiatus between the effective dates of such expired and new labor agreements, an amount equal to any such retroactive wage increase established by such new labor agreement, retroactive to whatever date is provided by the new labor agreement for such increase to go into effect, for each employee's hours worked on the Project during the retroactive period. All Parties agree that such affected Signatory Contractors shall be solely responsible for any retroactive payment to its employees.

(c) Some Signatory Contractors may elect to continue to work on the Project under the terms of the interim agreement option offered under paragraph (a) above and other Signatory Contractors may elect to continue to work on the Project under the retroactivity option offered under paragraph (b) above. To decide between the two options, Signatory Contractors will be given one week after the particular labor agreement has expired or one week after the Union has personally delivered to the Signatory Contractors in writing its specific offer of terms of the interim agreement pursuant to paragraph (a) above, whichever is the later date. If the Signatory Contractor fails to timely select one of the two options, the Signatory Contractor shall be deemed to have selected option (b).

Section 8.5 No Lock-Outs. Contractors shall not cause, incite, encourage, condone or participate in any lock-out of employees with respect to Project Work during the term of this CSWPA. The term "lock-out" refers only to a Contractor's exclusion of employees in order to secure collective bargaining advantage, and does not refer to the discharge, termination or layoff of employees by the Contractor for any reason in the exercise of rights pursuant to any provision of this CSWPA, or any other agreement, nor does "lock-out" include the District's decision to stop, suspend or discontinue any Project Work or any portion thereof for any reason.

Section 8.6 Best Efforts To End Violations.

(a) If a Contractor contends that there is any violation of Section 9.3 or the provisions of Section 21.3, it shall notify, in writing, the Council of the involved Union(s) and the Project Labor Coordinator. The Council and the leadership of the involved Union(s) will immediately instruct, order and use their best efforts to cause the cessation of any violation of the relevant Article.

(b) If the Union contends that any Contractor has violated this Article, it will notify that the Contractor and the Project Labor Coordinator, setting forth the facts which the Union contends violate the CSWPA, at least twenty-four (24) hours prior to invoking the procedures of Section 8.7. The Project Labor Coordinator shall promptly order the involved Contractor(s) to cease any violation of the Article.

Section 8.7 Expedited Enforcement Procedures. Any party, including the District, which is an intended beneficiary of this Article, or the Project Labor Coordinator, may institute the following procedures, in lieu of or in addition to any other action at law or equity, when a breach of Section 8.1 or 8.5, above, or Section 9.3, or Section 21.3, is alleged.

(a) The party invoking this procedure shall notify Walt Daugherty, who has been selected by the negotiating Parties, and whom the Parties agree shall be the permanent arbitrator under this procedure. If the permanent arbitrator is unavailable at any time, the party invoking this procedure shall notify one of the alternates selected by the Parties, in that order on an alternating basis. Notice to the arbitrator shall be by the most expeditious means available, with notices to the Parties alleged to be in violation, and to the Council if it is a Union alleged to be in violation. For purposes of this Article, written notice may be given by telegram, facsimile, hand delivery or overnight mail and will be deemed effective upon receipt.

(b) Upon receipt of said notice, the arbitrator named above or his/her alternate shall sit and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists, but not sooner than twenty-four (24) hours after notice has been dispatched to the Council of the involved Union(s) and/or Contractor as required by Section 8.6, above.

(c) The arbitrator shall notify the Parties of the place and time chosen for this hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty four (24) hours unless otherwise agreed upon by all Parties. A failure of any Party or Parties to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

(d) The sole issue at the hearing shall be whether or not a violation of Sections 8.1 or 8.5, above, of Section 9.3, or Section 21.3, has in fact occurred. The arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages. The Award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the Award. The arbitrator may order cessation of the violation of the Article and other appropriate relief, and such Award shall be served on all Parties by hand or registered mail upon issuance.

(e) Such Award shall be final and binding on all Parties and may be enforced by any court of competent jurisdiction upon the filing of this CSWPA and all other relevant documents referred to herein above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In any judicial proceeding to obtain a temporary order enforcing the arbitrator's Award as issued under Section 8.7(d) of this Article, all Parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any Party's right to participate in a hearing for a final order of enforcement. The court's order or orders enforcing the arbitrator's award shall be served on all Parties by hand or by delivery to their address as shown on this CSWPA (for a Union), as shown in their business contract for work under this CSWPA (for a Contractor) and to the representing Union (for an employee), by certified mail by the Party or Parties first alleging the violation.

(f) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance hereto are hereby waived by the Parties to whom they accrue.

(g) The fees and expenses of the arbitrator shall be equally divided between the party or Parties initiating this procedure and the respondent Party or Parties.

ARTICLE 9 WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

Section 9.1 Assignment of Work. The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") currently in effect, or any successor plan.

Section 9.2 The Plan. All jurisdictional disputes between or among Building and Construction Trades Unions and Contractors, shall be settled and adjusted according to the Plan, or any other plan or method of procedures that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Union.

(a) For the convenience of the parties, and in recognition of the expense of travel between Southern California and Washington D.C., at the request of any party to a jurisdictional dispute under this Agreement an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsh, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the Council. All other procedures shall be as specified in the Plan.

Section 9.3 No Work Disruption Over Jurisdiction. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, disruption, or slowdown of any nature, and the Contractor's assignments shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

Section 9.4 Pre-job Conference. In order to avoid jurisdictional disputes, it is required that a pre-job conference be held prior to the start of work by the Contractor for the Covered Project covered by this CSWPA. The Subcontractors and Owner Operators will be advised in

advance of such conferences and may participate if they wish. The purpose of the conference will be to, among other things, determine craft and manpower needs, schedule of work for the Contract and Project Work rules/owner rules. As provided in Article 16, each Contractor will conduct a pre-job conference with the appropriate affected Union(s) prior to commencing work. The Council and the Project Labor Coordinator shall be advised in advance of all such conferences and may participate if they wish.

ARTICLE 10 MANAGEMENT RIGHTS

Section 10.1 Contractor and District Rights. The Contractors and the District have the sole and exclusive right and authority to oversee and manage construction operations on Project Work without any limitations unless expressly limited by a specific provision of this CSWPA. In addition to the following and other rights of the Contractors enumerated in this CSWPA, the Contractors expressly reserve their management rights and all the rights conferred upon them by law. The Contractor's rights include, but are not limited to, the right to:

- (a) Plan, direct and control operations of all work; and
- (b) Hire, promote, transfer and layoff their own employees, respectively, as deemed appropriate to satisfy work and/or skill requirements; and
- (c) Promulgate and require all employees to observe reasonable job rules and security and safety regulations; and
- (d) Discharge, suspend or discipline their own employees for just cause; and
- (e) Utilize, in accordance with District approval, any work methods, procedures or techniques, and select, use and install any types or kinds of materials, apparatus or equipment, regardless of source of manufacture or construction; assign and schedule work at their discretion; and
- (f) Assign overtime, determine when it will be worked and the number and identity of employees engaged in such work, subject to such provisions in the applicable Schedule A(s) requiring such assignments be equalized or otherwise made in a nondiscriminatory manner.

Section 10.2 Specific District Rights. In addition to the following and other rights of the District enumerated in this CSWPA, the District expressly reserves its management rights and all the rights conferred on it by law and contract. The District's rights (and those of the Project Labor Coordinator on its behalf) include but are not limited to the right to:

- (a) Inspect any construction site or facility to ensure that the Contractor follows the applicable safety and other work requirements; and
- (b) Require Contractors to establish a different work week or shift schedule for particular employees as required to meet the operational needs of the Project Work at a particular location or in order to accommodate the instructional programs at various Project sites where school may be in session during periods of construction activity; and

(c) At its sole option, terminate, delay and/or suspend any and all portions of the Covered Work at any time; prohibit some or all work on certain days or during certain hours of the day to accommodate the ongoing operations of the District's educational facilities and/or to mitigate the effect of ongoing Project Work on businesses and residents in the neighborhood of the Project site; and/or require such other operational or schedule changes it deems necessary, in its sole judgment, to effectively maintain its primary mission and remain a good neighbor to those in the area of its facilities. (In order to permit the Contractors and Unions to make appropriate scheduling plans, the District will provide the Project Labor Coordinator, and the affected Contractor(s) and Union(s) with reasonable notice of any changes it requires pursuant to this section); and

(d) Approve any work methods, procedures and techniques used by Contractors whether or not these methods, procedures or techniques are part of industry practices or customs; and

(e) Investigate and process complaints, through its Project Labor Coordinator, in the matter set forth in Articles 10 and 12.

Section 10.3 Use of Materials. There should be no limitations or restrictions by Union upon a Contractor's choice of materials or design, nor, regardless of source or location, upon the full use and utilization, of equipment, machinery, packaging, precast, prefabricated, prefinished, or preassembled materials, tools or other labor saving devices, subject to the application of the California Public Contract and Labor Codes. Generally, the onsite installation or application of such items shall be performed by the craft having jurisdiction over such work.

Section 10.4 Special Equipment, Warranties and Guaranties.

(a) It is recognized that certain equipment of a highly technical and specialized nature may be installed at Project Work sites. The nature of the equipment, together with the requirements for manufacturer's warranties, may dictate that it be prefabricated, pre-piped and/or pre-wired and that it be installed under the supervision and direction of the District's and/or manufacturer's personnel. The Unions agree that such equipment is to be installed without incident. The use of this provision requires written approval by District. The District will provide the result to the Council.

(b) The Parties recognize that the Contractor will initiate from time to time the use of new technology, equipment, machinery, tools, and other labor-savings devices and methods of performing Project Work. The Unions agree that they will not restrict the implementation of such devices or work methods. The Unions will accept and will not refuse to handle, install or work with any standardized and/or catalogue parts, assemblies, accessories, prefabricated items, preassembled items, partially assembled items, or materials whatever their source of manufacture or construction.

(c) If any disagreement between the Contractor and the Unions concerning the methods of implementation or installation of any equipment, device or item, or method of work, arises, or whether a particular part or pre-assembled item is a standardized or catalog part or item, the work will proceed as directed by the Contractor and the Parties shall immediately

consult over the matter. If the disagreement is not resolved, the affected Union(s) shall have the right to proceed through the procedures set forth in Article 11.

Section 10.5 No Less Favorable Treatment. The Parties expressly agree that Project Work will not receive less favorable treatment than that on any other project which the Unions, Contractors and employees work.

ARTICLE 11 SETTLEMENT OF GRIEVANCES AND DISPUTES

Section 11.1 Cooperation and Harmony on Site.

(a) This CSWPA is intended to establish and foster continued close cooperation between management and labor. The Council shall assign a representative to this Project for the purpose of assisting the local Unions, and working with the Project Labor Coordinator, together with the Contractors, to complete the construction of the Project Work economically, efficiently, continuously and without any interruption, delays or work stoppages.

(b) The Project Labor Coordinator, the Contractors, Unions, and employees collectively and individually, realize the importance to all Parties of maintaining continuous and uninterrupted performance of Project Work, and agree to resolve disputes in accordance with the grievance provisions set forth in this Article or, as appropriate, those of Article 8 or 10.

(c) The Project Labor Coordinator shall observe the processing of grievances under this Article and Articles 8 and 9, including the scheduling and arrangements of facilities for meetings, selection of the arbitrator from the agreed-upon panel to hear the case, and any other administrative matters necessary to facilitate the timely resolution of any dispute; provided, however, it is the responsibility of the principal Parties to any pending grievance to insure the time limits and deadlines are met.

Section 11.2 Processing Grievances. Any questions arising out of and during the term of this CSWPA involving its interpretation and application, but not jurisdictional disputes or alleged violations of Section 8.1, 8.4 and 8.5 and similar provisions, shall be considered a grievance and subject to resolution under the following procedures. Questions between or among parties arising out of or involving the interpretation of a provision in a Schedule A Agreement, which is not provided for in this CSWPA, shall be resolved under the grievance procedure provided in that Schedule A Agreement.

Step 1. (a) **Employee Grievances.** When any employee subject to the provisions of this CSWPA feels aggrieved by an alleged violation of this CSWPA, the employee shall, through his local Union business representative or job steward, within ten (10) working days after the occurrence of the violation, give notice to the work site representative of the involved Contractor stating the provision(s) alleged to have been violated. A grievance should be considered null and void if notice of the grievance is not given within the ten (10) day period. A business representative of the local Union or the job steward and the work site representative of the involved Contractor shall meet and endeavor to adjust the matter within ten (10) working days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party may, within ten (10) working days thereafter, pursue Step 2 of this grievance

procedure provided the grievance is reduced to writing, setting forth the relevant information, including a short description thereof, the date on which the alleged violation occurred, and the provision(s) of the applicable agreement alleged to have been violated.

Grievances and disputes settled at Step 1 shall be non-precedential except as to the Parties directly involved.

(b) Union or Contractor Grievances. Should the Union(s) or any Contractor have a dispute with the other Party(ies) and, if after conferring within ten (10) working days after the disputing party knew or should have known of the facts or occurrence giving rise to the dispute, a settlement is not reached within five (5) working days, the dispute shall be reduced to writing and processed to Step 2 in the same manner as outlined in Step 1(a) above for the adjustment of an employee complaint.

Step 2. The business manager of the involved local Union or his designee, together with the site representative of the involved Contractor, and the labor relations representative of the Project Labor Coordinator shall meet within seven (7) working days of the referral of the dispute to this second step to arrive at a satisfactory settlement thereof. If the Parties fail to reach an agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) calendar days after the initial meeting at Step 2.

Step 3.

(a) If the grievance shall have been submitted but not resolved under Step 2, either the Union or Contractor party may request in writing to the Project Labor Coordinator (with copy(ies) to the other Party(ies)) within seven (7) calendar days after the initial Step 2 meeting, that the grievance be submitted to an arbitrator selected from the agreed-upon list below, on a rotational basis in the order listed. Those arbitrators are: (1) Michael Prihar; (2) Robert Steinberg; (3) Mike Rappaport; (4) Louis Zigman; (5) Walt Daugherty; and (6) Fred Horowitz. The decision of the arbitrator shall be final and binding on all Parties and the fee and expenses of such arbitrations shall be borne equally by the involved Contractor(s) and the involved Union(s).

(b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended only by written consent of the Parties involved at the particular step where the extension is agreed upon. The arbitrator shall have the authority to make decisions only on issues presented and shall not have the authority to change, amend, add to or detract from any of the provisions of this CSWPA.

Section 11.3 Limit on Use of Procedures. Procedures contained in this Article shall not be applicable to any alleged violation of Article 8 or 9.3, with a single exception that any employee discharged for violation of Section 8.2, or Article 9.3, may resort to the procedures of this Article to determine only if he/she was, in fact, engaged in that violation.

Section 11.4 Notice. The Project Labor Coordinator (and the District, in the case of any grievance regarding the Scope of this CSWPA), shall be notified by the involved Contractor of all actions at Steps 2 and 3, and further, the Project Labor Coordinator shall, upon its own request, be permitted to participate fully as a party in all proceedings at such steps.

**ARTICLE 12
REGULATORY COMPLIANCE**

Section 12.1 Compliance with All Laws. The Council and all Unions, Contractors, Subcontractors and their employees shall comply with all applicable federal and state laws, ordinances and regulations including, but not limited to, those relating to safety and health, employment and applications for employment. All employees shall comply with the safety regulations established by the District, the Project Labor Coordinator or the Contractor. Employees must promptly report any injuries or accidents to a supervisor.

Section 12.2 Monitoring Compliance. The Parties agree that the District shall require, and that the Project Labor Coordinator and Council shall monitor, compliance by all Contractors and Subcontractors with all federal and state laws and regulations that, from time to time may apply to Project Work. It shall be the responsibility of both the Council and the Project Labor Coordinator (on behalf of the District) to investigate or monitor compliance with these various laws and regulations. The Council may recommend to the Project Labor Coordinator and/or the District procedures to encourage and enforce compliance with these laws and regulations.

Section 12.3 Prevailing Wage Compliance. The Council or Union shall refer all complaints regarding any potential prevailing wage violation to the Project Labor Coordinator, who on its own, or with the assistance of the District's Labor Compliance Program, shall process, investigate and resolve such complaints, consistent with Section 7.4. The Council or Union, as appropriate, shall be advised in a timely manner with regard to the facts and resolution, if any, of any complaint. It is understood that this Section does not restrict any individual rights as established under the State Labor Code, including the rights of an individual to file a complaint with the State Labor Commissioner or to file a grievance for such violation, under this CSWPA.

Section 12.4 Violations of Law. Based upon a finding of violation by the District of a federal and state law, and upon notice to the Contractor that it or its Subcontractors is in such violation, the District, in the absence of the Contractor or Subcontractor remedying such violation, shall take such action as it is permitted by law or contract to encourage the Contractor to come into compliance, including, but not limited to, assessing fines and penalties and/or removing the offending Contractor from Project Work.

**ARTICLE 13
SAFETY AND PROTECTION OF PERSON AND PROPERTY**

Section 13.1 Safety.

(a) It shall be the responsibility of each Contractor to ensure safe working conditions and employee compliance with all applicable safety laws and regulations and any safety rules contained herein or established by the District, the Project Labor Coordinator or the Contractor. It is understood that employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor and the District.

(b) Employees shall be bound by the safety, security and visitor rules established by the Contractor, the Project Labor Coordinator and/or the District. These rules will be published

and posted. An employee's failure to satisfy his/her obligations under this Section will subject him/her to discipline, up to and including discharge.

(c) The Project Labor Coordinator may, at the request of the District, establish and implement, after negotiation with the Union, reasonable substance abuse testing procedures and regulations, which may include pre-hire, reasonable cause, random and post-accident testing to the extent permitted by federal and state law. Should the Project Labor Coordinator approve an established program to which signatory Union(s) are currently a party, it shall become the project-wide substance abuse testing program, after consultation with the Unions. Until there is such a project-wide substance abuse testing procedure negotiated and/or otherwise adopted by the Project Labor Coordinator, the Parties agree that the Labor/Management Memorandum of Understanding ("MOU") on Drug Abuse Prevention and Detection negotiated with the various General Contractors Association and the Basic Trades Unions (titled Memorandum of Understanding testing policy for drug abuse; International Union of Operating Engineers Local Union 12; revised June 2009 as shown in Attachment C) shall be utilized under this CSWPA.

Section 13.2 Inspection. The inspection of shipments of equipment, machinery, and construction materials of every kind shall be performed at the discretion of the Contractor by individuals of its choice.

ARTICLE 14 TRAVEL AND SUBSISTENCE

Section 14.1 Travel expenses, travel time, subsistence allowances and/or zone rates and parking reimbursements shall not be applicable to work under this CSWPA, except to the extent provided for in any applicable prevailing wage determination. Parking for employees covered by this CSWPA shall be provided by the Contractor(s) according to the provision of the Schedule A(s) existing on the Effective Date of this CSWPA, and upon presentation of proof of any expense incurred.

ARTICLE 15 APPRENTICES

Section 15.1 Importance of Training. The Parties recognize the successful construction apprenticeship programs maintained by the District and to the greatest extent allowed by law agree to employ apprentices from these programs on Project Work. The Parties further recognize the need to maintain continuing support of the programs designed to develop adequate numbers of competent workers in the construction industry, the obligation to capitalize on the availability of the local work force in the area served by the District, and the opportunities to provide continuing work under the construction program funded by Measure Q. To these ends, and consistent with any laws or regulations, the Parties will facilitate, encourage, and assist local residents to commence and progress in Joint Labor/Management Apprenticeship Programs in the construction industry leading to participation in such Apprenticeship Programs. The District, the Project Labor Coordinator, other District consultants, the Contractors and the Council and Unions, will work cooperatively to identify, or establish and maintain, effective programs and procedures for persons interested in entering the construction industry and which will help prepare them for the entry into Apprenticeship Programs. Apprentices, if utilized, must be enrolled in a Joint Labor/Management Apprenticeship Program.

Section 15.2 Use of Apprentices.

(a) The Unions agree to cooperate with the Contractor in furnishing apprentices as requested up to the maximum percentage. The apprentice ratio for each craft shall be in compliance, at a minimum, with the applicable provisions of the Labor Code relating to utilization of apprentices. The District, unless otherwise required by law, shall encourage such utilization, and, both as to apprentices and the overall supply of experienced workers, the Project Labor Coordinator will work with the Council, Union(s), District's Apprenticeship Programs and other, Apprenticeship Programs and Contractors to assure appropriate and maximum utilization of apprentices and the continuing availability of both apprentices and journey persons.

(b) The Parties agree that all Contractors will comply with all applicable laws and regulations in the request for dispatch and employment of apprentices.

(c) The Parties agree that apprentices will not be dispatched to Contractors working under this CSWPA unless there is a journeymen or other Contractor employee working on the Project where the apprentice is to be employed who is qualified to assist and oversee the apprentice's progress through the program in which he is participating.

Section 15.3 Joint Subcommittee on Training and Apprenticeship. To carry out the intent and purposes of this Article, a subcommittee of the Labor Management Committee established pursuant to Article 17 shall be established, jointly chaired by a designee of the District and a designee of the Council, to oversee the identification and/or effective development of procedures and programs leading to the full utilization of District's Apprenticeship Programs, and to work with representatives of each apprenticeship committee and representatives of the District's Apprenticeship Programs to establish appropriate criteria for recognition by Joint Labor Management Apprenticeship Programs of the educational and work experience possessed by District students and graduates toward qualifying for entry or advanced level in the Joint Labor Management Apprenticeship Programs. The Joint Subcommittee will cooperate with and assist the District to facilitate students' entrance into the Joint Labor Management Apprenticeship Programs. The Subcommittee will meet as necessary at the call of the joint chairs to promptly facilitate its purposes in an expeditious manner as soon as this CSWPA becomes effective. In addition to the joint chairs, the membership of the committee will consist of at least three representatives of the signatory local Unions and three representatives of Contractors signatory to this CSWPA and experienced in overseeing and participating in Apprenticeship Programs.

**ARTICLE 16
PRE-JOB CONFERENCE**

Section 16.1 Work Assignments. Consistent with Section 9.4, all work assignments should be disclosed by the Contractor at a pre-job conference held in accordance with industry practice. The Contractor shall notify the Project Labor Coordinator at least two weeks before starting work under this CSWPA, and the Project Labor Coordinator shall coordinate the scheduling of a pre-job conference with the Council, the Contractor(s) and the affected Union(s). Should there be any formal jurisdictional dispute raised under Article 9, the Project Labor Coordinator shall be promptly notified. At the pre-job conference, the Project Labor Coordinator shall review the District's employment and contracting programs and goals with the participants.

The Council and Union(s) failure to participate in the pre-job conference may be considered by the District as a breach of the Agreement.

ARTICLE 17 LABOR/MANAGEMENT AND COOPERATION

Section 17.1 Joint Committee. The Parties to this CSWPA shall establish a six (6) person Joint Administrative Committee (JAC). This JAC shall be comprised of three (3) representatives selected by the Project Labor Coordinator and three (3) representatives selected by the Council. The purpose of the Committee shall be to promote harmonious and stable labor management relations on this Project, to ensure effective and constructive communication between labor and management Parties, to advance the proficiency of work in the industry, and evaluate and ensure an adequate supply of skilled labor for all Project Work. Representatives of the District may participate upon its request. Any JAC member wishing to call a meeting of the JAC shall contact the Project Labor Coordinator who shall schedule a meeting of the JAC if the Project Labor Coordinator believes such a meeting would be beneficial for the Parties or Contractors.

Section 17.2 Functions of Joint Committee. The Committee shall meet on a schedule to be determined by the Committee or at the call of the joint chairs, to discuss the administration of the CSWPA, the progress of the Project, general labor management problems that may arise, and any other matters consistent with this CSWPA. Substantive grievances or disputes arising under Articles 8, 9, or 11 shall not be reviewed or discussed by this Committee, but shall be processed pursuant to the provisions of the appropriate Article.

The Project Labor Coordinator shall be responsible for the scheduling of the meetings, the preparation of the agenda topics for the meetings, with input from the Unions, the Contractors, and the District. Notice of the date, time and place of meetings, shall be given to the Committee members at least three (3) days prior to the meeting. The District should be notified of the meetings and invited to send a representative(s) to participate.

The Project Labor Coordinator shall prepare quarterly reports on apprentice utilization and the training and employment of District residents, and a schedule of Project work and estimated number of craft workers needed. The Committee, or an appropriate subcommittee, may review such reports and make any recommendations for improvement, if necessary, including increasing the availability of skilled trades, and the employment of local residents or other individuals who should be assisted with appropriate training to qualify for apprenticeship programs.

Section 17.3 Subcommittees. The Committee may form subcommittees to consider and advise the full Committee with regard to safety and health issues affecting the Project and other similar issues affecting the overall Project, including any workers compensation program initiated under this CSWPA.

**ARTICLE 18
SAVINGS AND SEPARABILITY**

Section 18.1 Savings Clause. It is not the intention of the District, the Project Labor Coordinator, Contractor or the Union Parties to violate any laws governing the subject matter of this CSWPA. The Parties hereto agree that in the event any provision of this CSWPA is finally held or determined to be illegal or void as being in contravention of any applicable law or regulation, the remainder of the CSWPA shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this CSWPA. Further, the Parties agree that if and when any provision(s) of this CSWPA is finally held or determined to be illegal or void by a court of competent jurisdiction, the Parties will promptly enter into negotiations concerning the substantive effect of such decision for the purposes of achieving conformity with the requirements of any applicable laws and the intent of the Parties hereto. If the legality of this CSWPA is challenged and any form of injunctive relief is granted by any court, suspending temporarily or permanently the implementation of this CSWPA, then the Parties agree that all Project Work that would otherwise be covered by this CSWPA should be continued to be bid and constructed without application of this CSWPA so that there is no delay or interference with the ongoing planning, bidding and construction of any Project Work.

Section 18.2 Effect of Injunctions or Other Court Orders. The Parties recognize the right of the District to withdraw, at its absolute discretion, the utilization of the CSWPA as part of any bid specification should a Court of competent jurisdiction issue any order, or any applicable statute which results, temporarily or permanently in delay of the bidding, awarding and/or construction on the Project.

**ARTICLE 19
WAIVER**

Section 19.1 Waiver. A waiver of or a failure to assert any provisions of this CSWPA by any or all of the Parties hereto shall not constitute a waiver of such provision for the future. Any such waiver shall not constitute a modification of the CSWPA or change in the terms and conditions of the CSWPA and shall not relieve, excuse or release any of the Parties from any of their rights, duties or obligations hereunder.

**ARTICLE 20
AMENDMENTS**

Section 20.1 The provisions of this CSWPA can be renegotiated, supplemented, rescinded or otherwise altered only by mutual agreement in writing, hereafter signed by the Parties.

**ARTICLE 21
DURATION OF THE CSWPA**

Section 21.1 Duration. This CSWPA shall be effective _____, 2014 for purposes of Project Work funded under Measure Q and advertised for bid ninety (90) days thereafter ("Effective Date") and shall remain in effect for three (3) years after the Effective Date or three (3) years from the first award of the Covered Project or Covered Contract whichever is

later (provided, however, it shall continue in effect for all work awarded prior to such termination date until the completion of such Project Work). The CSWPA will automatically renew for another three (3) year term unless either party provides written notice of its intent to terminate sent no earlier than ninety (90) days or later than sixty (60) days prior to the Termination Date or Successor Termination Date. The District shall determine the Termination Date(s) within its sole and exclusive discretion and Termination Date(s) will not be subject to challenge. The District will provide the Termination Date to the Council within three (3) months of the first award of a Covered Project or Covered Contract. It is agreed that all notices shall be provided to the District at:

Raul Rodriguez, Ph.D.
Chancellor
Rancho Santiago Community College District
2323 North Broadway, Suite 410
Santa Ana, California 92706-1640

Notices to the Council, on behalf of the Council and the Local Unions, will be provided to:

Ron Miller
Executive Secretary
Los Angeles/Orange Counties Building and Construction Trades Council
1626 Beverly Blvd.
Los Angeles, California 90026

The Parties agreed to discuss extensions and/or modifications of the CSWPA based on the District's determination as to whether the CSWPA achieved its intent and goal.

Section 21.2 Turnover and Final Acceptance of Completed Work.

(a) Construction of any phase, portion, section, or segment of Project Work shall be deemed complete when such phase, portion, section or segment has been turned over to the District by the Contractor and the District has accepted such phase, portion, section, or segment. As areas and systems of the Project are inspected and construction-tested and/or approved and accepted by the District or third parties with the approval of the District, the CSWPA shall have no further force or effect on such items or areas, except when the Contractor is directed by the District to engage and repairs or modifications required by its contract(s) with the District.

(b) Notice of each final acceptance received by the Contractor will be provided to the Council with the description of what portion, segment, etc. has been accepted. Final acceptance may be subject to a "punch" list, and in such case, the CSWPA will continue to apply to each such item on the list until it is completed to the satisfaction of the District and Notice of Acceptance is given by the District or its representative to the Contractor.

Section 21.3 Continuation of Schedule A's. Schedule A's incorporated as part of this CSWPA shall continue in full force and effect, as previously stated, until the Contractor and Union Parties to the collective bargaining agreement(s), which are the basis for such Schedule A's, notify the Project Labor Coordinator of the mutually agreed upon changes in such agreements and their effective date(s).

The Parties agree to recognize and implement all applicable changes on their effective dates, except as otherwise provided by this CSWPA; provided, however, that any such provisions negotiated in said collective bargaining agreements will not apply to work covered by this CSWPA if such provisions are less favorable to the Contractor under the CSWPA than those uniformly required of Contractors for construction work normally covered by those agreements; nor shall any provision be recognized or applied if it may be construed to apply exclusively or predominately to work covered by this CSWPA. Any disagreement between the Parties over the incorporation into a Schedule A of any such provision agreed upon in a negotiation of the local collective bargaining agreement which is the basis for a Schedule A shall be resolved under the procedures established in Article 11.

Section 21.4 Final Termination. Final termination of all obligations, rights, and liabilities, and disagreements shall occur upon receipt by the Council of a Notice from the District saying that no work remains within the scope of the CSWPA.

ARTICLE 22 WORK OPPORTUNITIES PROGRAM

Section 22.1 Work Opportunity Programs. The Parties to this CSWPA support the development of increased numbers of skilled construction workers from among residents of the District and Orange County to meet the labor needs of covered projects specifically and the requirements of the local construction industry generally. Towards that end the Parties agree to cooperate respecting the establishment of a work opportunities program for District residents, the primary goals of which shall be to maximize (1) construction work opportunities for County and District residents, and (2) business opportunities for traditionally underrepresented members of the community, minority and women-owned business, and disabled veteran-owned businesses in the construction industry, the latter goal being consistent with the Government Code requirement that public agencies promote and encourage the use of these organization on public projects. In furtherance of the foregoing, the Unions specifically agree to:

(a) Encourage the referral and utilization, to the extent permitted by law and hiring hall practices, of qualified District residents as journeymen, and apprentices on Covered Projects and entrance into such qualified apprenticeship and training programs as may be operated by signatory Unions; and

(b) Work cooperatively with the District, the Project Labor Coordinator, and other District consultants to identify, or establish and maintain, effective programs, events and procedures for persons interested in entering the construction industry; and

(c) Participate in District based job fairs, career days and outreach events; and

(d) Provide speakers to speak at District programs and Academies as requested; and

(e) Assist District residents in contacting the Apprenticeship Training Committee for the crafts and trades they are interested in. The Unions shall assist District residents who are seeking Union jobs on the Project and Union membership in assessing their work experience and giving them credit for provable past experience in their relevant craft or trade, including

experience gained working for non-union Contractors. The Unions shall put on their rolls qualified bona fide District residents for work on this Project; and

(f) Allow tours of their JACs as requested; and

(g) Provide a contact information list for all Union representatives and Joint Apprenticeship Committee representatives; and

(h) Support local events and programs designed to recruit and develop adequate numbers of competent workers in the construction industry.

ARTICLE 23 HELMETS TO HARDHATS

Section 23.1 Veterans Entry into Building and Construction Trades. The Parties recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment and construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the Parties.

Section 23.2 Integrated Database. The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Covered Project and of apprenticeship and employment opportunities for this Covered Project.

In witness whereof the Parties have caused this Community and Student Workforce Project Agreement for Rancho Santiago Community College District Construction and Major Rehabilitation Funded by Measure Q to be executed as of the date and year below stated.

Dated: 6/10/2014

RANCHO SANTIAGO COMMUNITY COLLEGE
DISTRICT

By: 
[Insert Name and Title]

Dated: 6/6/14

LOS ANGELES/ORANGE COUNTIES
BUILDING AND CONSTRUCTION TRADES
COUNCIL

By: 
Executive Secretary

LOS ANGELES/ORANGE COUNTIES BUILDING AND CONSTRUCTION TRADES COUNCIL'S
AFFILIATED CRAFT LOCAL UNIONS/COUNCILS:



(Asbestos) Heat & Frost Local #5



Boilermakers Local #92




Elevator Constructors Local #18



Operating Engineers Local #12



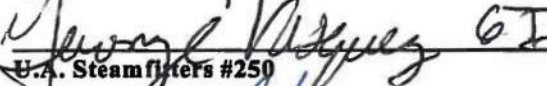
Gunite Workers #345



Iron Workers Local #433



Painters District Council & Allied Trades #36




U.A. Steamfitters #250



U.A. Plumbers & Fitters Local #582



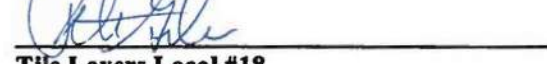
Plaster & Lathers #1414



Plasterers #200



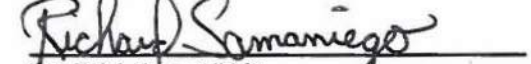
Sheet Metal Workers Local #105



Tile Layers Local #18



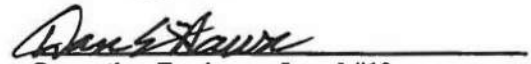
Bricklayers & Allied Trades #4




I.B.E.W. Local #441



Operating Engineers Local #12



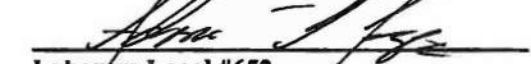
Operating Engineers Local #12



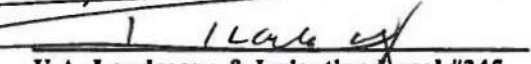
Iron Workers Local #416



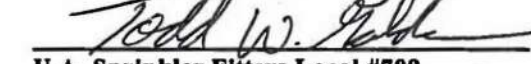
Laborers District Council



Laborers Local #652



U.A. Landscape & Irrigation Local #345



U.A. Sprinkler Fitters Local #709



Cement Masons #500



Roofers & Waterproofers #220



Teamsters Local #952



South West Regional Council of Carpenters

APPENDIX A
MEASURE Q PROJECTS

1. Central Chiller Plant - \$40.1 million
2. Johnson Center Renovation - \$10 million
3. New Science (STEM) Center - \$40 million
4. New Health Science Center - \$30.3 million

ATTACHMENT A - LETTER OF ASSENT

To be signed by all Contractors awarded work covered by the Community and Student Workforce Project Agreement prior to commencing work.

[CONTRACTOR’S LETTERHEAD]

DATE

Project Labor Coordinator

Address

Address

Address

Attention: _____

Re: Rancho Santiago Community College District Community and Student Workforce Project Labor Agreement

Dear Sir:

This is to confirm [Name of Company] agrees to be party to and bound by the Rancho Santiago Community College District Community and Student Workforce Project Agreement - for School Construction Major Rehabilitation Funded by Measure Q effective _____, as such Agreement may from time to time be amended by the negotiating parties or interpreted pursuant to its terms. Such obligation to be a party and bound by this Agreement shall extend to all work covered by the Agreement undertaken by this Company on the Project pursuant to [Contract No. _____ and Name of Project/School], and this Company shall require all of its subcontractors of whatever tier to be similarly bound for all work within the scope of the Agreement by signing and furnishing to you an identical Letter of Assent prior to their commencement of work.

Sincerely,

[Name of Construction Company]

By:

[Name and Title of Authorized Executive]

[Copies of this Letter must be submitted to the Project Labor Coordinator and to the Council consistent with Article 4, Section 4.4(b)]

ATTACHMENT B - CSWPA CRAFT REQUEST FORM

TO THE CONTRACTOR: Please complete and fax this form to the applicable union to request craft workers that fulfill all hiring requirements for this project. A duplicate fax request is to be sent to the Project Labor Coordinator. After faxing your request, please call the Local to verify receipt and substantiate their capacity to furnish workers as specified below. Please print your Fax Transmission Verification Reports and keep copies for your records.

The Rancho Santiago Community College District (District) Community and Student Workforce Project Agreement sets the goal that 66% of all of the labor and craft positions shall be from workers residing in the County of Orange and 50% of the positions are filled by residents of the District's service area which covers the following zip codes:

92602	92606	92610	92612	92614	92618 92620	92626	92627	92660
92675	92676	92679 92688	92701	92703	92704	92705	92706	92707
92707	92708	92780	92782	92802	92805 92806	92807	92808	92840
92843	92861	92862	92865	92866	92867	92868	92869	92883 92887

TO THE UNION: Please complete the "Union Use Only" section on the next page and fax this form back to the requesting Contractor. Be sure to retain a copy of this form for your records and send a copy to Project Labor Coordinator.

CONTRACTOR USE ONLY

To: Union Local # _____ **Fax#** () _____ **Date:** _____
Cc: Project Labor Coordinator
From: Company: _____ **Issued By:** _____
Contact Phone: () _____ **Contact Fax:** () _____

PLEASE PROVIDE ME WITH THE FOLLOWING UNION CRAFT WORKERS.

Craft Classification (i.e., plumber, painter, etc.)	Journeyman or Apprentice	Local Resident	Number of workers needed	Report Date	Report Time

TOTAL WORKERS REQUESTED = _____

Please have worker(s) report to the following work address indicated below:

Project Name: _____ **Site:** _____ **Address:** _____
Report to: _____ **On-site Tel:** _____ **On-site Fax:** _____
Comment or Special Instructions: _____

UNION USE ONLY

Date dispatch request rec'd:
Dispatch received by:
Classification of worker requested:
Classification of worker dispatched:

WORKER REFERRED

Name:			
Date worker was dispatched:			
Is the worker referred a:		(check all that apply)	
District (zip code) resident	(See zip code list above)	Yes _____	No _____
Veteran		Yes _____	No _____
Graduate of District's JATC	(Carp, Elect & O.E., only)	Yes _____	No _____
Current District JATC apprentice	(Carp, Elect & O.E., only)	Yes _____	No _____
Orange County resident		Yes _____	No _____
Regular dispatch from out of work list		Yes _____	No _____

[This form is not intended to replace a Local Union's Dispatch or Referral Form normally given to the employee when being dispatched to the jobsite.]

ATTACHMENT C
DRUG TESTING LANGUAGE

**MEMORANDUM
OF
UNDERSTANDING**



**TESTING POLICY FOR
DRUG ABUSE**

Revised June 2009

**International Union of
Operating Engineers
Local Union No. 12**



-INTRODUCTION-

At the June 1991 General Membership Meeting, the members in attendance acknowledged the need of some form of drug testing that would keep the jobsite safe while at the same time protect each member's individual rights under the constitution.

When signatory contractors were not being allowed to bid on projects because they had no official drug testing policy, it became obvious that we were going to have to develop a test to remedy that problem. We feel that within the confines of this addendum the best and fairest for all has been accomplished.

This Memorandum of Understanding is actually an addendum to Local 12's Master Labor Agreement. All the provisions in this shall be adhered to and enforced by Local 12. No member shall be subjected to any provision outside of this memorandum. If any employer asks a member to test for substance abuse and asks for any procedures outside of what is outlined here or in the Side Letter of Understanding on page 11 - that employer is in violation of the Master Labor Agreement and you are not required to comply.

Substance abuse has become a national problem. While jobsite safety has always been a priority in Local 12, it is not the intent of this policy to subject any member to a test that all members on a project are not subjected to.

You, as a member working under these conditions have rights as well as obligations. If you have any questions please contact this office or your business representative.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. C. Waggoner". The signature is fluid and cursive, with a long horizontal stroke at the end.

Wm. C. Waggoner, Business Manager &
General Vice President

This Memorandum of Understanding shall be considered as an addendum to the Master Labor Agreement currently in effect between the parties. It shall be effective as of the date it is signed and shall thereafter run concurrently with the Master Labor Agreement.

The parties recognize the problems which drug abuse has created in the construction industry and the need to develop drug abuse prevention programs. Accordingly, the parties agree that in order to enhance the safety of the workplace and to maintain a drug free work environment, individual Employers may require applicants or employees to undergo drug testing. The parties agree that if a testing program is implemented by an individual Employer, the following items have been agreed upon by the Labor and Management and will apply.

1. It is understood that the use, possession, transfer or sale of illegal drugs, narcotics, or other unlawful substances is absolutely prohibited while employees are on the Employer's job premises or while working on any jobsite in connection with work performed under the Master Labor Agreement.

2. No Employer may implement a drug testing program which does not conform in all respects to the provisions of this Agreement.

3. No Employer may implement drug testing at any jobsite unless written notice is

given to the Union setting forth the location of the jobsite, a description of the project under construction, and the name and telephone number of the Project Supervisor. Said notice shall be addressed to the International Union of Operating Engineers, 150 East Corson Street, Pasadena, California 91103. Said notice shall be delivered in person or by registered mail before the implementation of drug testing. Failure to give such notice shall make any drug testing engaged in by the Employer a violation of the Master Labor Agreement, and the Employer may not implement any form of drug testing at such jobsite for the following six months.

4. An Employer who elects to implement drug testing pursuant to this Agreement shall require all employees on the project to be tested. With respect to individuals who become employed on the project subsequent to the proper implementation of a valid drug testing program, such test shall be administered upon the commencement of employment on the project, whether by referral from a Union Dispatch Office, transfer from another project, or another method. Individuals who were employed on the project prior to the proper implementation of a valid drug testing program may only be subjected to testing for the reasons set forth in paragraph 5(f)(1) through 5(f)(3) of this Agreement. Refusal to undergo such testing shall be considered sufficient grounds to deny employment on the project.

5. The following procedure shall apply to all drug testing:

a. The Employer may request urine samples only. The applicant or employee shall not be observed when the urine specimen is given. An applicant or employee, at his or her sole option, shall, upon request, receive a blood test in lieu of a urine test. No employee of the Employer shall draw blood from a bargaining unit employee, touch or handle urine specimens, or in any way become involved in the chain of custody of urine or blood specimens. A Union Business Representative, subject to the approval of the individual applicant or employee, shall be permitted to accompany the applicant or employee to the collection facility to observe the collection, bottling, and sealing of the specimen.

b. The testing shall be done by a laboratory approved by the Substance Abuse & Mental Health Services Administration (SAMHSA), which is chosen by the Employer and the Union.

c. An initial test shall be performed using the Enzyme Multiplies Immunoassay Technique (EMIT). In the event a question or positive result arises from the initial test, a confirmation test must be utilized before action can be taken against the applicant or employee. The confirmation test will be by Gas Chromatography/Mass Spectrometry (GC/MS). Cutoff levels for both the initial test and confirmation test will be those established by the SAMHSA. Should these

SAMHSA levels be changed during the course of this agreement or new testing procedures are approved, then these new regulations will be deemed as part of this existing agreement. Confirmed positive samples will be retained by the testing laboratory in secured long-term frozen storage for a minimum of one year. Handling and transportation of each sample must be documented through strict chain of custody procedures.

d. In the event of a confirmed positive test result the applicant or employee may request, within forty-eight (48) hours, a sample of his/her specimen from the testing laboratory for purposes of a second test to be performed at a second laboratory, designated by the Union and approved by SAMHSA. The retest must be performed within ten (10) days of the request. Chain of custody for this sample shall be maintained by the Employer between the original testing laboratory and the Union's designated laboratory. Retesting shall be performed at the applicant's or employee's expense. In the event of conflicting test results the Employer may require a third test.

e. If, as a result of the above testing procedure, it is determined that an applicant or employee has tested positive, this shall be considered sufficient grounds to deny the applicant or employee his/her employment on the project.

f. No individual who tests negative for drugs pursuant to the above procedure and becomes employed on the project shall

again be subjected to drug testing with the following exceptions:

1. Employees who are involved in industrial accidents resulting in damage to plant, property or equipment or injury to him/herself or others may be tested pursuant to the procedures stated hereinabove.

2. The Employer may test employees following thirty (30) days advance written notice to the employee(s) to be tested and to the Union. Notice to the Union shall be as set forth in Paragraph 3 above and such testing shall be pursuant to the procedures stated hereinabove.

3. The Employer may test an employee where the Employer has reasonable cause to believe that the employee is impaired from performing his/her job. Reasonable cause shall be defined as being aberrant or unusual behavior, the type of which is a recognized and accepted symptom of impairment (i.e., slurred speech, unusual lack of muscular coordination, etc.). Such behavior must be actually observed by at least two persons, one of whom shall be a supervisor who has been trained to recognize the symptoms of drug abuse or impairment and the other of whom shall be the job steward. If the job steward is unavailable or there is no job steward on the project the other person shall be a member of the Operating Engineers bargaining unit. Testing shall be pursuant to the procedures stated hereinabove. Employees who are tested pursuant to the exceptions set forth in this paragraph and who test positive will be

removed from the Employer's payroll.

a. Applicants or employees who do not test positive shall be paid for all time lost while undergoing drug testing. Payment shall be at the applicable wage and benefit rates set forth in the Master Labor Agreement. Applicants who have been dispatched from the Union and who are not put to work pending the results of a test will be paid waiting time until such time as they are put to work. It is understood that an applicant must pass the test as a condition of employment. Applicants who are put to work pending the results of a test will be considered probationary employees.

6. The Employers will be allowed to conduct periodic jobsite drug testing on construction projects under the following conditions:

a. The entire jobsite must be tested, including any employee or subcontractor's employee who worked on that project three (3) working days before or after the date of the test;

b. Jobsite testing cannot commence sooner than thirty (30) days after start of the work on the project;

c. Prior to start of periodic testing, a Business Representative will be allowed to conduct an educational period on company time to explain periodic jobsite testing program to affected employees;

d. Testing shall be conducted by a SAMHSA certified laboratory, pursuant to the provisions set forth in Paragraph 5 hereinabove.

e. Only two periodic tests may be performed in a twelve month period.

7. It is understood that the unsafe use of prescribed medication, or where the use of prescribed medication impairs the employee's ability to perform work, is a basis for the Employer to remove the employee from the jobsite.

8. Any grievance or dispute which may arise out of the application of this Agreement shall be subject to the grievance and arbitration procedures set forth in the applicable Master Labor Agreement.

9. The establishment or operation of this Agreement shall not curtail any right of any employee found in any law, rule or regulation. Should any part of this Agreement be found unlawful by a court of competent jurisdiction of a public agency having jurisdiction over the parties, the remaining portions of the Agreement shall be unaffected and the parties shall enter negotiations to replace the affected provision.

10. Present employees, if tested positive, shall have the prerogative for rehabilitation program at the employee's expense. When such program has been successfully completed the Employer shall not discriminate in any way against the employee. If

work for which the employee is qualified exists he/she shall be reinstated.

11. The Employer agrees that results of urine and blood tests performed hereunder will be considered medical records held confidential to the extent permitted or required by law. Such records shall not be released to any persons or entities other than designated Employer representatives and the Union. Such release to the Union shall only be allowed upon the signing of a written release and the information contained therein shall not be used to discourage the employment of the individual applicant or employee on any subsequent occasion.

12. The Employer shall indemnify and hold the Union harmless against any and all claims, demands, suits, or liabilities that may arise out of the application of this Agreement and/or any program permitted hereunder.

13. Employees who seek voluntary assistance for substance abuse may not be disciplined for seeking such assistance. Requests from employees for such assistance shall remain confidential and shall not be revealed to other employees or management personnel without the employee's consent. Employees enrolled in substance abuse programs will be subject to all Employer rules, regulations and job performance standards with the understanding that an employee enrolled in such a program is receiving treatment for an illness.

14. The parties agree to develop and implement a drug abuse prevention and testing program for all apprentices entering the industry.

15. This Memorandum of Understanding shall constitute the only Agreement in effect between the parties concerning drug abuse, prevention and testing. Any modifications thereto must be accomplished pursuant to collective bargaining negotiations between the parties.

**DRUG ABUSE PREVENTION AND DETECTION
APPENDIX A - CUTOFF LEVELS**

DRUG	SCREENING METHOD	SCREENING LEVEL**	CONFIRMATION METHOD	CONFIRMATION LEVEL
Amphetamines	EMIT	1000 ng/ml*	GC/MS	500 ng/ml*
Barbiturates	EMIT	300 ng/ml	GC/MS	200 ng/ml
Benzodiazepines	EMIT	300 ng/ml	GC/MS	300 ng/ml
Cocaine	EMIT	300 ng/ml*	GC/MS	150 ng/ml*
Methadone	EMIT	300 ng/ml	GC/MS	100 ng/ml
Methaqualone	EMIT	300 ng/ml	GC/MS	300 ng/ml
Opiates	EMIT	2000 ng/ml*	GC/MS	2000 ng/ml*
PCP (Phencyclidine)	EMIT	25 ng/ml*	GC/MS	25 ng/ml*
THC (Marijuana)	EMIT	50 ng/ml*	GC/MS	15 ng/ml*
Propoxyphene	EMIT	300 ng/ml	GC/MS	100 ng/ml

* SAMHSA specified threshold

** A sample reported positive contains the indicated drug at or above the cutoff level for that drug.
A negative sample either contains no drug or contains a drug below the cutoff level.

EMIT - Enzyme Immunoassay

GC/MS - Gas Chromatography/Mass Spectrometry

**SIDE LETTER
OF
UNDERSTANDING**

In regard to the Memorandum of Understanding on Drug Abuse Prevention and Detection agreed to by the parties, it is agreed that if, as a condition of contract award or due to Federal, State or Governmental Agency requirements, an individual Employer is required to abide by or implement more stringent requirements than set forth in the Memorandum of Understanding, the individual Employer will notify the Union in writing of those requirements. The Union reserves the right, upon receiving notification, to require the individual Employer to meet to negotiate any changes.

Agreed to this 18th day of June, 1991.

**ASSOCIATED GENERAL
CONTRACTORS OF CALIFORNIA, INC.**

**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL UNION NO. 12**

Wm. C. Waggoner
Business Manager

Mickey J. Adams
President

Ronald J. Sikorski
Vice President

**SIDE LETTER
OF
AGREEMENT
TESTING POLICY
FOR DRUG ABUSE**

It is hereby agreed between the parties hereto that an Employer who has otherwise properly implemented drug testing, as set forth in the Testing Policy for Drug Abuse, shall have the right to offer an applicant or employee a "quick" drug screening test. This "quick" screen test shall consist either of the "ICUP" urine screen or similar test or an oral screen test. The applicant or employee shall have the absolute right to select either of the two "quick" screen tests, or to reject both and request a full drug test.

An applicant or employee who selects one of the "quick" screen tests, and who passes the test, shall be put to work immediately. An applicant or employee who fails the "quick" screen test, or who rejects the "quick" screen tests, shall be tested pursuant to the procedures set forth in the Testing Policy for Drug Abuse. The sample used for the "quick" screen test shall be discarded immediately upon conclusion of the test. An applicant or employee shall not be deprived of any rights granted to them by the Testing Policy for Drug Abuse as a result of any occurrence related to the "quick" screen test.

Agreed to this 5th day of November, 2004.

**ASSOCIATED GENERAL
CONTRACTORS OF CALIFORNIA, INC.**

**INTERNATIONAL UNION OF
OPERATING ENGINEERS,
LOCAL UNION NO. 12**

Wm. C. Waggoner
Business Manager

Mickey J. Adams
President

Ronald J. Sikorski
Vice President