

Mill Valley School District

**Energy Conservation And Energy Efficiency Services
Project**

BID #2017/18- EC-02

BID AND CONTRACT DOCUMENTS

Bid Packages Due on or Before:

April 20, 2018 – 10:00 AM

**ATTN: John Binchi
411 Sycamore Avenue, Mill Valley, CA 94941**

MILL VALLEY SCHOOL DISTRICT

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Mill Valley School District

**Proposition 39 Energy Conservation And Energy
Efficiency Services Project**

BID #2017/18- EC-02

**SECTION 1
NOTICE TO CONTRACTORS
CALLING FOR BIDS**

NOTICE TO CONTRACTORS CALLING FOR BIDS

NOTICE IS HEREBY GIVEN that the Mill Valley School District (“District”), acting by and through its Board of Trustees, hereinafter referred to as the DISTRICT will receive up to, but not later than **10:00 AM** on **April 20, 2018**, sealed bids for the award of a contract for the **BID #2017/18- EC-02, Proposition 39 Energy Conservation And Energy Efficiency Services Project**. Bids shall be received at the Mill Valley School District office located at 411 Sycamore Avenue, Mill Valley, CA 94941 and shall be opened and publicly read aloud at the above-stated time and place. Responses must be sealed and clearly marked **“Mill Valley School District BID #2017/18- EC-02, Proposition 39 Energy Conservation And Energy Efficiency Services Project”**. Facsimile copies of the bid will not be accepted.

Each bid must conform and be responsive to this Notice to Contractors, the Information for Bidders, and all other documents comprising the pertinent Contract Documents. All interested parties may obtain a copy of the bid package from the District office, 411 Sycamore Avenue, Mill Valley, CA 94941 or via email request to jbinchi@mvschools.org.

The successful bidder shall commence work on or about **May 21, 2018**. All work shall be completed by **July 31, 2018**. There will be a mandatory job walk at **April 4, 2018** at **1:00 p.m.** meeting in front of the Mill Valley Middle School, 425 Sycamore Ave., Mill Valley, CA 94941.

In contracts involving expenditures in excess of \$25,000.00, the successful bidder shall file a payment bond issued by an admitted Surety authorized to conduct business in California, in the form set forth in the Contract Documents. A payment bond may be required for contracts involving smaller expenditures at the option of the District. A performance bond will also be required.

All forms must be completed, signed, and returned with the bid. The contract award will be based on the lowest responsive and responsible bidder. The lowest bid shall be the lowest total of the bid prices on the base contract. Minority, women, and disabled veteran contractors are encouraged to submit bids.

The contract is for a public work. Contractor and any subcontractor shall pay all workers on the project at least the general prevailing rate of per diem wages as determined by the Director of the Department of Industrial Relations (“DIR”) pursuant to Labor Code section 1770 et seq. Prevailing wage rates are available from the District or online at: <http://www.dir.ca.gov>.

No contractor or subcontractor may be listed on a bid proposal or awarded a contract for public work unless currently registered with the DIR pursuant to Labor Code section 1725.5. This project is subject to compliance monitoring and enforcement by the DIR.

Each bidder shall be a licensed contractor at the time the bid pursuant to the Business and Professions Code and such license(s) shall remain in active and good standing for the duration of the contract. The bidder shall be licensed in one or more the following classifications: A, B, and C-10.

Mill Valley School District

Proposition 39 Energy Conservation And Energy
Efficiency Services Project

BID #2017/18- EC-02

SECTION 2
INFORMATION FOR
BIDDERS

INFORMATION FOR BIDDERS

1. Preparation and Availability of Bid Form

The District invites bids on the attached form to be submitted by qualified contractors to the District at such time and place as is stated in the Notice to Contractors Calling for Bids, not later than 10:00 AM on April 20, 2018. Bids shall only be prepared using the copy of the Bid Form included in the Contract Documents. The use of substitute bid forms other than clear and correct photocopies of those provided by the District will not be permitted. Bids shall be received at the Mill Valley School District office, located at 411 Sycamore Avenue, Mill Valley, CA 94941. All blanks in the bid form must be appropriately filled in, and all prices must be stated in both words and figures. If a different price is stated in words than is stated in figures, the price stated in words shall be the price bid.

QUESTIONS CONCERNING BID DOCUMENTS: Any questions pertaining to the Bid or the Bid documents are to be directed via e-mail only to the District's Director of Maintenance and Operations at jbinchi@mvschools.org.

Any clarifications resulting from questions will be distributed to all firms participating in this opportunity who have received a copy of the Bid documents. Questions received after **10:00 a.m. on April 6, 2018**, will NOT be addressed.

2. Bid Security

Bids must be accompanied by a certified check, cashier's check, or bidder's bond (executed by the Bidder as principal and surety as obligor), in the form and content attached hereto, for an amount not less than ten percent (10%) of the amount of the base bid, made payable to the order of the Mill Valley School District ("Bid Security")

Personal sureties and unregistered surety companies are unacceptable. The surety insurer shall be California admitted surety insurer, as defined in Code of Civil Procedure Section 995.120. The surety insurer must, unless otherwise agreed to by District in writing, at the time of issuance of the bond, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. The District reserves the right to approve or reject the surety insurer selected by the Contractor and to require the Contractor to obtain a bond from a surety satisfactory to the District.

The check or bid bond shall be given as a guarantee that the Bidder shall execute the Contract if it be awarded to the Bidder, shall provide the payment and performance bonds and insurance certificates and endorsements as required herein within ten (10) calendar days after notification of the award of the Contract to the Bidder. Failure to provide the required documents may result in forfeiture of the Bidder's bid deposit or bond to the District and the District may award the Contract to the next lowest responsible Bidder, or may call for new bids.

3. Faxed and Electronic Mail Bids

All bids must be under sealed cover. District will not accept any bids or bid modifications submitted by facsimile or electronic mail transmission.

4. Signing of Bids

All Bids submitted shall be executed by the Bidder or its authorized representative. Bidders may be asked to provide evidence in the form of an authenticated resolution of its Board of Directors or a Power of Attorney evidencing the capacity of the person signing the Bid to bind the Bidder to each Bid and to any Contract arising therefrom.

If a Bidder is a joint venture or partnership, it may be asked to submit an authenticated Power of Attorney executed by each joint venturer or partner appointing and designating one of the joint venturers or partners as a management sponsor to execute the Bid on behalf of Bidder. Only that joint venturer or partner shall execute the Bid. The Power of Attorney shall also: (1) authorize that particular joint venturer or partner to act for and bind Bidder in all matters relating to the Bid; and (2) provide that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Bidder assumed under the Bid and under any Contract arising therefrom. The Bid shall be executed by the designated joint venturer or partner on behalf of the joint venture or partnership in its legal name.

5. Modifications

Each Bidder shall submit its Bid in strict conformity with the requirements of the Contract Documents. Unauthorized additions, modifications, revisions, conditions, limitations, exclusions or provisions attached to a Bid may render it non-responsive and may cause its rejection. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms, nor make substitutions thereon. Oral, telephonic and electronic modifications will not be considered, unless the Notice to Contractors Calling for Bids authorizes the submission of electronic bids and modifications thereto and such modifications are made in accordance with the Notice to Contractors Calling for Bids.

6. Erasures/Mutilation of Bid Documents

The Bid submitted must not contain any erasures, interlineations, or other corrections unless each such correction is suitably authenticated by affixing in the margin immediately opposite the correction the surname or surnames of the person or persons signing the bid.

Contractors should not deface or mutilate the bid documents to the extent that they may not be usable for construction purposes. Bid documents obtained under deposit shall be returned within 10 days after bid opening.

7. Examination of Site and Contract Documents

Each Bidder shall visit the site(s) of the proposed work and fully acquaint itself with the conditions relating to the construction and labor so that it may fully understand the facilities, difficulties, and restrictions attending the execution of the work under the Contract. Bidders shall thoroughly examine and be familiar with the Drawings and Specifications. The failure or omission of any Bidder to receive or examine any Contract Documents, forms, instruments, addenda, or other documents or to visit the site(s) and acquaint itself with conditions there existing shall in no way relieve any Bidder from obligations with respect to its bid or to the Contract. The Bidder is responsible to obtain any geotechnical and/or soils report pertaining to the site of the work at Bidder's expense, if applicable. Although any such report does not operate as a warranty or guarantee of site conditions, the submission

of a Bid shall be taken as prima facie evidence of compliance with all terms of this section.

Discrepancies in, and/or omissions from the Plans, Specifications or other Contract Documents or questions as to their meaning shall be immediately brought to the attention of the District by submission of a written request for an interpretation or correction to the District. Such submission, if any, must be sent to the District's Director of Maintenance and Operations at jbinchi@mvschools.org.

Any interpretation of the Contract Documents will be made only by written addenda duly issued and mailed or delivered to each person or firm who has obtained a set of Contract Documents directly from the District. The District will not be responsible for any explanations or interpretations provided in any other manner. No person is authorized to make any oral interpretation of any provision in the Contract Documents to any Bidder, and no Bidder should rely on any such oral interpretation.

Bids shall include complete compensation for all items that are noted in the Contract Documents as the responsibility of the Contractor.

- 7.1 Each Bidder, by making its bid, represents that it has read and understands the Contract and Contract Documents and any and all related reports and information. After executing the Agreement, no consideration will be given to any claim of misunderstanding of the documents.
- 7.2 Each Bidder, by making its bid, represents that it has visited the site(s), inspected the area of the work, and familiarized itself with the local conditions under which the work is to be performed, including sub-surface conditions, as appropriate. Such inspection shall specifically consider requirements for accessing the site and determining the work can be completed as required by, and as shown in, the Contract Documents.
- 7.3 With District's approval, including provision of insurance as required, and after scheduling access with the District, each Bidder may conduct additional site investigations at the Bidder's sole cost.

8. Withdrawal of Bids

Prior to bid opening, a Bid may be withdrawn by the Bidder only by means of a written request signed by the Bidder or its properly authorized representative.

9. Agreements and Bonds

The Agreement form, which the successful Bidder, as Contractor, will be required to execute, and the forms and amounts of surety bonds, which will be required to furnish at the time of execution of the Agreement, are included in the Contract Documents and shall be carefully examined by the Bidder. The required number of executed copies of the Agreement, the Performance Bond, and the Payment Bond is as specified in the Special Conditions.

The Performance Bond must be executed by an admitted surety insurer approved to conduct business in the State of California which meets the highest standards the District is legally permitted to establish and which it has established. The surety insurer must, unless

otherwise agreed to by District in writing, at the time of issuance of the bond, have a rating not lower than "A-" as rated by A.M. Best Company, Inc. or other independent rating companies. The District reserves the right to approve or reject the surety insurer selected by the Contractor and to require the Contractor to obtain a bond from a surety satisfactory to the District.

The Payment Bond must be in the amount of one hundred percent (100%) of the total amount payable. Bonds shall be in the form set forth in the Contract Documents.

10. Bidders Interested in More Than One Bid and Bidders Not Qualified to Bid

No person, firm, or corporation shall be allowed to make, or file, or be interested in more than one bid for the same work unless alternate bids are specifically called for. A person, firm, or corporation that has submitted a sub-proposal to a Bidder, or that has quoted prices of materials to a Bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Bidders or making a prime proposal. No person, firm, or corporation shall be allowed to bid who has participated in the preparation of contract specifications; a bid by such a person, firm, or corporation shall be determined to be nonresponsive.

11. Award of Contract

The Contract shall be awarded to the lowest responsible and responsive bidder as interpreted by the District under California law and the Contract Documents, including the Notice to Contractors Calling for Bids and these Instructions. The District will issue a Notice of Intent Award of Contract, identifying the bidder to whom the District intends to award the Contract and the date/time/place of the District's board meeting at which the award of the Contract will be considered. The District reserves the right, without any liability, to cancel the award of any bid for any reason at any time before the full execution of the Agreement between Owner and Contractor.

The District may reject any bid which, in its opinion when compared to other bids received or to the District's internal estimates, does not accurately reflect the cost to perform the Work. The District may reject as non-responsive any bid which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular bid items.

The District reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bid or in the bidding process.

12. Additive and Deductive Items – Method of Determining Basis of Award

Pursuant to Public Contract Code section 20103.8, should this bid solicitation include additive and/or deductive items, the checked [X] method shall be used to determine the lowest bid:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

_____ (b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in the numerical order set forth in the bid form.

_____ (c) The lowest bid shall be the lowest total of the bid prices on the base contract

and those additive or deductive items taken in order from a specifically identified list of those items that, when in the bid form and added to, or subtracted from, the base contract, are less than, or equal to, a funding amount publicly disclosed by the District before the first bid is opened.

_____ (d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the Bidders from being revealed to the public entity before the ranking of all Bidders from lowest to highest has been determined.

Notwithstanding the method used by the District to determine the lowest responsible Bidder, the District retains the right to add to or deduct from the Contract any of the additive or deductive items included in the bid solicitation.

13. Evidence of Responsibility

Upon the request of the District, a Bidder whose bid is under consideration for the award of the Contract shall submit promptly to the District satisfactory evidence showing the Bidder's financial resources, the Bidder's construction experience in the type of work being required by the District, and the Bidder's organization available for the performance of the Contract and any other required evidence of the Bidder's qualifications to perform the Contract. The District may consider such evidence before making its decision awarding the Contract. Failure to submit requested evidence of a Bidder's responsibility to perform the Contract may result in rejection of the Bid.

14. Listing Subcontractors

Each Bidder shall submit in its bid a list of the proposed subcontractors on this project as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 et seq.). Contractor shall provide the address, phone number, and license number of each listed subcontractor. Forms for this purpose are furnished with the Contract Documents.

15. Workers' Compensation

In accordance with the provisions of Section 3700 of the Labor Code, Contractor shall secure the payment of compensation to its employees. Contractor shall sign and file with District the following certificate prior to performing the work under this Contract:

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

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

16. Substitution of Security

The Contract Documents call for monthly progress payments based upon the percentage of the work completed. The District will retain five percent (5%) of each progress payment as

provided by the Contract Documents.

17. Contractor's License and Certifications

Pursuant to Section 7028.15 of the Business and Professions Code and Section 3300 of the Public Contract Code, all Bidders must possess proper licenses for performance of this Contract prior to submittal of bid documents. Subcontractors must possess the appropriate licenses for each specialty subcontracted prior to submittal of bid documents. Pursuant to Section 7028.5 of the Business and Professions Code, the District shall consider any bid submitted by a contractor not currently licensed in accordance with state law and pursuant to the requirements found in the Contract Documents to be non-responsive, and the District shall reject the Bid. The District shall have the right to request, and Bidders shall provide within five (5) calendar days, evidence satisfactory to the District of all valid license(s) currently held by that Bidder and each of the Bidder's subcontractors, before awarding the Contract.

Bidder must have all certifications and/or factory authorizations required for the project prior to submittal of the Bid including, but not limited to, the specified manufacturer certifications described in the Special Conditions section of this document. Subcontractors must have all certifications and/or factory authorizations required for each specialty subcontract prior to submittal of the Bid including, but not limited to, the specified manufacturer certifications described in the Special Conditions section of this document.

18. Ethics in Bidding

The District expects the Bidders to maintain high ethical standards in engaging in the competitive bidding process. The bid amount of one Bidder should not be divulged to another before the award of the subcontract or order, nor should it be used by Contractor to secure a lower proposal from another Bidder on that project (bid shopping). Subcontractors or suppliers should not request information from the Contractor regarding any sub-bid in order to submit a lower proposal on that project (bid peddling). The District will consider any Bidder found to be engaging in such practices to be a non-responsible Bidder and may reject its bid on that ground.

19. Substitutions and Special Brand Names

In accordance with Public Contract Code section 3400, except where the District has established a standard which has been approved by the Governing Board, requests for review and evaluation of "or equal" items will be considered. **Any proposals for substitutions of equipment, materials, or products other than what is specified in the bid documents must be submitted to the District's Director of Maintenance and Operations, prior to 1:00 a.m. on April 2, 2017** in order to be considered. After reviewing the request, the District will respond with its decision to all parties who have received bid packages. The District has the right to reject any or all requests for substitutions of equipment, materials, products, things, or services other than what is specified in the bid documents if the District determines that such substitutions are not equal to the equipment, materials, products, things, or services set forth in the Bid. The documentation submitted must include any and all illustrations, specifications, and other relevant data including catalogue information which describes the substituted item or product or work and substantiates that it is an "equal" to the specified item or product or work. In addition, the submittal documentation must also include a statement of the cost implications of the

substitution being requested stating whether and why the substitution will reduce or increase the contract price. The documentation submitted must also include information regarding the durability and life cycle cost of the substituted item, product or work. Substantiating data shall include a signed affidavit from the Bidder stating that the substituted item or product or work is equivalent to the specified item or product or work in every way except as listed on the affidavit. Whenever possible, the same substitution information is to be included in the sealed bid submittal package. Failure to submit all the needed substantiating data, including the signed affidavit, may result in a determination that the bid is nonresponsive.

IF A PROPOSED SUBSTITUTION IS REJECTED, BIDDER SHALL BE RESPONSIBLE FOR PROVIDING THE ITEM OR PRODUCT OR WORK AS ORIGINALLY SPECIFIED AT NO ADDITIONAL COST TO THE DISTRICT. THE DISTRICT HAS THE COMPLETE AND SOLE DISCRETION TO DETERMINE IF AN ITEM OR ARTICLE IS AN EQUAL ITEM.

20. Fingerprinting

By law it is the District's responsibility to determine whether a Contractor must provide fingerprint certification. Pursuant to Education Code section 45125.2, the District considers the totality of the circumstances in order to determine if fingerprinting of employees of a Contractor working on a school site is required. Factors to be considered include the length of time the Contractor's employees are on school grounds, whether students are in proximity with the location where the Contractor's employees are working, and whether the Contractor's employees are working alone or with others. A determination regarding whether fingerprint certification is required is contained in the Special Conditions.

21. Retention

Public agencies generally cannot withhold more than five percent (5%) of the amount to be paid to a contractor for work to be completed unless the project is "substantially complex." The Project will use a five percent (5%) retention.

22. Contractor/Subcontractor Registration and Labor Compliance Enforcement

Except as provided in Labor Code Section 1771.1(a), no Contractor or Subcontractor may be listed on a bid proposal for a public works project submitted or perform work on a public works contract awarded unless registered with the Department of Industrial Relations pursuant to California Labor Code Section 1725.5. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Contractor and any Subcontractors engaging in work on the Project are required to review and comply with the provisions of the California Labor Code section 1720 et seq., and the regulations of the Department of Industrial Relations implementing those provisions. These statutory and regulatory provisions contain specific requirements concerning, for example, the determination and payment of prevailing wages, retention, inspection and auditing of payroll records, use of apprentices, payment of overtime compensation, and various penalties or fines which may be imposed for violations of the requirements of the chapter. Submission of a bid proposal constitutes the Bidder's representation that it has thoroughly reviewed these statutory and regulatory requirements and agrees to bind every Subcontractor performing work on the Project to these requirements to the extent such requirements are applicable to the Subcontractor's work.

23. Disabled Veteran Business Enterprises

Compliance with Disabled Veteran Business Enterprise (“DVBE”) contracting goals may be required for this project. Minority, women and disabled veteran contractors are encouraged to submit bids.

24. Immigration Reform and Control Act

The Bidder hereby certifies that he or she or it is, and at all times during the performance of work hereunder shall be, in full compliance with the provisions of the Immigration Reform and Control Act of 1986 (“IRCA”) in the hiring of its employees and the Bidder shall indemnify, hold harmless and defend the District against any and all actions, proceedings, penalties or claims arising out of the Bidder’s failure to comply strictly with the IRCA.

25. Filing of Bid Protests

A bidder may protest the bidding process for the project only by filing a written protest with the District’s Director of Maintenance and Operations in accordance with the procedures set forth in this section. The District will not consider any verbal protests (e.g., by telephone) or any protests sent by electronic mail. In order for a protest to be valid and considered by the District, the protest must: (a) be filed not later than forty-eight (48) hours after the end of the bid opening; (b) clearly identify the bidder on whose behalf the protest is being filed, together with the name, address and telephone number of the person representing the bidder for purposes of the protest; (c) clearly identify the specific bidding process, bid or award of the Contract being protested; (d) clearly identify and describe in detail the specific basis or bases for the protest and all facts relevant thereto and in support thereof; (e) clearly identify all references to the specific portions of all documents relevant to the protest; (f) clearly identify and describe in detail all arguments in support of the protest, including, without limitation, any citations to all legal authorities; and (g) be submitted with all documentation that is relevant to and supports the basis or bases underlying the protest.

If a protest filed by a Bidder does not comply with each and every one of the foregoing requirements, the District may reject the protest as invalid. If a Bidder files a valid protest, the District shall review the protest and all relevant information and documents and will provide written decision to the protesting bidder. In response to a protest, the Governing Board may decline to award a contract, may award a contract to a bidder other than as previously intended, or may award a contract to a bidder as previously intended despite the protest. Such action by the Governing Board shall be a condition precedent to the filing of any claim or demand and to the initiation of any action (legal or equitable) or other proceeding arising from the matter(s) protested.

COMPLIANCE WITH THE FOREGOING REQUIREMENTS IS MANDATORY. Each bidder that desires to protest must file a protest in accordance with the foregoing requirements, and no bidder may rely on a protest by another bidder as a means of satisfying such requirements. Compliance with the foregoing requirements is the sole and exclusive means of protesting the bidding process, any bid, and/or the intended award of a contract for the project, and failure to so comply shall be deemed and construed as a waiver of any and all rights the Bidder may have to pursue a claim, demand or action based on the bidding, any bids, and/or any contract awarded for the project.

26. Addendum

The District reserves the right to revise the Contract Documents prior to the bid opening date. Revisions, if any, shall be made by written addendum. All addenda issued by the District shall be included in the bid and made part of the Contract Documents. Pursuant to Public Contract Code Section 4104.5, if the District issues an addendum which includes material changes to the Project less than 72 hours prior to the deadline for submission of bids, the District will extend the deadline for submission of bids. The District may determine, in its sole discretion, whether an addendum warrants postponement of the bid submission date. Each prospective Bidder shall provide District a name, address, facsimile number and email address to which addenda may be sent, as well as a telephone number by which the District can contact the Bidder. Copies of addenda will be furnished by email without charge to all Bidders who have obtained a copy of the Contract Documents and provided such current information.

Please note: Bidders are responsible for ensuring that they have received any and all addenda. To this end, each Bidder should contact the Business Services Department to verify that he/she has received all Addenda issued, if any, prior to the bid opening.

27. Submission of Sealed Bids

Once the Bid and supporting documents have been completed and signed as set forth herein, they shall be placed, along with the Bid Guarantee and other required materials in an envelope, sealed, addressed and delivered or mailed, postage prepaid to the District at the place and to the attention of the person indicated in the Notice Inviting Bids. No oral or telephonic bids will be considered. No forms transmitted via the internet, e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by District as provided herein. The envelope shall also contain the following in the lower left-hand corner thereof:

Bidder's Name

BID #2017/18- EC-02

Proposition 39 Energy Conservation And Energy Efficiency Services Project

Only where expressly permitted in the Notice to Contractors Calling for Bids may Bidders submit their bids via electronic transmission pursuant to Public Contract Code sections 1600 and 1601. The acceptable method(s) of electronic transmission shall be stated in the Notice to Contractors Calling for Bids. District reserves the right to not accept electronically transmitted bids, where not specifically authorized in the Notice to Contractors Calling for Bids, and may reject any bid not strictly complying with District's designated methods for delivery.

28. Delivery and Opening of Bids

Bids will be received by the District at the address shown in the Notice to Contractors Calling for Bids up to the date and time shown therein. The District will leave unopened any Bid received after the specified date and time, and any such unopened Bid will be returned to the Bidder. It is the Bidder's sole responsibility to ensure that its Bid is received as specified. Bids may be submitted earlier than the dates(s) and time(s) indicated.

Bids will be opened at the date and time stated in the Notice to Contractors Calling for Bids,

and the amount of each Bid will be read aloud and recorded. All Bidders may, if they desire, attend the opening of Bids. The District may in its sole discretion, elect to postpone the opening of the submitted Bids. District reserves the right to reject any or all Bids and to waive any informality or irregularity in any Bid. In the event of a discrepancy between the written amount of the Bid Price and the numerical amount of the Bid Price, the written amount shall govern.

29. Insurance Requirements

The successful Bidder shall procure the insurance in the form and in the amount specified in the Contract Documents.

30. Prevailing Wage

The Project is a public works project subject to prevailing wage requirements. The general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract may be obtained online at <http://www.dir.ca.gov/dlsr>. Bidders are advised that a copy of these rates must be posted by the successful Bidder at the job site(s).

31. [INTENTIONALLY BLANK]

32. Sales and Other Applicable Taxes, Permits, and Fees

Contractor and its subcontractors performing work under this Contract will be required to pay California sales tax and other applicable taxes, and to pay for permits, licenses and fees required by the agencies with authority in the jurisdiction in which the work will be located, unless otherwise expressly provided by the Contract Documents.

33. Iran Contracting Act of 2010

The Bidder hereby certifies that he or she or it is, and at all times during the performance of work hereunder shall be, in full compliance with the provisions of the Iran Contracting Act of 2010. The Bidder shall indemnify, hold harmless and defend the District against any and all actions, proceedings, penalties or claims arising out of the Bidder's failure to comply strictly with the Iran Contracting Act of 2010.

34. Anti-Discrimination

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

35. Public Records

All documents included in the bids become the exclusive property of the District upon submittal to the District. All Bids and other documents submitted in response to the Notice to Contractors Calling for Bids become a matter of public record, except for information contained in such bids deemed to be trade secrets, as defined in California Civil Code Section 3426.1. A Bidder that indiscriminately marks all or most of its Bid as exempt from disclosure as a public record, whether by the notations of "Trade Secret," "Confidential," "Proprietary," or otherwise, may render the Bid non-responsive and rejected. The District is not liable or responsible for the disclosure of such records, including those exempt from disclosure if disclosure is deemed required by law by an order of court, or which occurs through inadvertence, mistake or negligence on the part of the District or its officers, employees or agents. At such time as Bids are deemed a matter of public record, pursuant to the above, any Bidder or other party shall be afforded access for inspection and/or copying of such bids, by request made to the District in conformity with the California Public Records Act, Government Code §§ 6250 et seq.

36. Drug-Free Workplace Certification

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

37. Early Termination

Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the Governing Board of the District fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, the District may, upon thirty (30) days' notice, order work on the Project to cease. The District will remain obligated to pay for the work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the work has not been done.

Mill Valley School District

**Proposition 39 Energy Conservation And Energy
Efficiency Services Project**

BID #2017/18- EC-02

**SECTION 3
CONTRACT BID FORMS**

BID FORM AND PROPOSAL

To: Board of Trustees of the Mill Valley School District ("District")

From: _____

(Insert Proper Name of Bidder)

The undersigned declares that the Contract Documents including, without limitation, the Notice to Contractors Calling for Bids and the Information for Bidders have been read and agrees and proposes to furnish all necessary labor, materials, and equipment to perform and furnish all work in accordance with the terms and conditions of the Contract Documents, including, without limitation, the Drawings and Specifications of the Proposition 39 Energy Conservation And Energy Efficiency Services Project, BID #2017/18- EC-02 ("Project" or "Contract") and will accept in full payment for that Work the following total lump sum amount, all taxes included:

_____ Dollars

Alternates:

Provide additional cost to replace ballasts at each light fixture.

Descriptions of alternates are primarily scope definitions and do not necessarily detail the full range of materials and processes needed to complete the construction.

- 1. **Unit Prices.** The Bidder's Base Bid includes the following unit prices, which the Bidder must provide and the District may, at its discretion, utilize in valuing additive and/or deductive change orders:

[NOT APPLICABLE]

- 2. The undersigned has reviewed the Work outlined in the Contract Documents and fully understands the Scope of Work required in this Proposal, understands the construction and project management function(s) described in the Contract Documents, and that each Bidder who is awarded a Contract shall be in fact a prime contractor, not a subcontractor, to the District, and agrees that its Proposal, if accepted by the District, will be the basis for the Bidder to enter into a Contract with the District in accordance with the intent of the Contract Documents.
- 3. The undersigned has notified the District in writing of any discrepancies or omissions or of any doubt, questions, or ambiguities about the meaning of any of the Contract Documents, and has contacted the District before the bid opening date to verify the issuance of any clarifying Addenda.
- 4. The undersigned agrees to commence work under this Contract on the date established in the Contract Documents and to complete all work within the time specified in the Contract Documents.
- 5. The liquidated damages clause of the General Conditions and Special Conditions is hereby acknowledged.
- 6. It is understood that the District reserves the right to reject this bid and that the bid shall remain open to acceptance and is irrevocable for a period of sixty (60) days.
- 7. The following documents are attached hereto:

Bid Bond on the District's form or other security
Designated Subcontractors List
Non-Collusion Affidavit
Project Warranty

8. Receipt and acceptance of the following Addenda is hereby acknowledged:

Addendum No. 1 _____ Dated: _____

Addendum No. 2 _____ Dated: _____

Addendum No. 3 _____ Dated: _____

9. The Bidder represents that it is competent, knowledgeable, and has special skills with respect to the nature, extent, and inherent conditions of the Work to be performed.

10. Bidder expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California False Claims Act, Gov. Code § 12650 et seq.), the District will be entitled to civil remedies set forth in the California False Claim Act. It may also be considered fraud and the Contractor may be subject to criminal prosecution.

11. The undersigned Bidder certifies that it is, at the time of bidding, and shall be throughout the period of the contract, licensed by the State of California to do the type of work required under the terms of the Contract Documents. Bidder further certifies that it is regularly engaged in the general class and type of work called for in the Contract Documents.

Furthermore, Bidder hereby certifies to the District that all representations, certifications, and statements made by Bidder, as set forth in this bid form, are true and correct and are made under penalty of perjury.

Dated this _____ day of _____, 2017

Name of Bidder _____

Type of Organization _____

Signature _____

Signed by _____

Title of Signer _____

Address of Bidder _____

Bidder's Taxpayer Identification No. _____

Telephone Number _____

Fax Number _____

E-mail _____ Website _____

Contractor's License No(s): No.: _____ Class: _____ Expiration Date: _____

No.: _____ Class: _____ Expiration Date: _____

No.: _____ Class: _____ Expiration Date: _____

If Bidder is a corporation, affix corporate seal.

Name of Corporation: _____

President: _____

Secretary: _____

Treasurer: _____

Manager: _____

BID BOND

WHEREAS, _____, as Principal, and _____, as Surety, a corporation organized and existing under and by virtue of the laws of the State of _____ and authorized to do business as a surety in the State of California, are held and firmly bound unto the Mill Valley School District ("District"), as Obligee, in the sum of _____ DOLLARS (\$ _____), being not less than ten percent (10%) of the Total Bid Price; for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal has submitted a bid to the District to perform all Work required for the Proposition 39 Energy Conservation And Energy Efficiency Services Project, **BID #2017/18- EC-02** as set forth in the Notice to Contractors Calling for Bids and accompanying Contract Documents.

NOW, THEREFORE, if said Principal is awarded a Contract for the Work by the District and, within the time and in the manner required by the above-referenced Contract Documents, enters into the written form of Contract bound with said Contract Documents, furnishes the required bonds (one to guarantee faithful performance and the other to guarantee payment for labor and materials), furnishes the required insurance certificates and endorsements, and furnishes any other certifications as may be required by the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

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

The bid security will be held by the District for ten (10) days after the period for which bids must be held open or until posting by the successful bidder(s) of the bonds, certificates of insurance required and return of executed copies of the Agreement, whichever first occurs, at which time the bid security will be returned.

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

SIGNED AND SEALED, this _____ day of _____, 2017.

Principal

Surety

By: _____
Signature

By: _____
Signature

(SEAL)

(SEAL)

DESIGNATED SUBCONTRACTORS LIST

In compliance with the "Subletting and Subcontracting Fair Practices Act," Sections 4100 through 4114 of the California Public Contract Code, and any amendments thereto, each Bidder shall provide the information requested below for each subcontractor who will perform work, labor or render service to Bidder in or about the construction of the Work in an amount in excess of one-half of one percent (greater than 0.5 %) of the Bidder's Total Bid Price and shall further set forth the portion of the Work which will be done by each subcontractor. Bidder shall list only one subcontractor for any one portion of the Work.

If the Bidder fails to specify a subcontractor for any portion of the Work to be performed under the Contract, it shall be deemed to have agreed to perform such portion itself, and shall not be permitted to subcontract that portion of the Work except under the conditions hereinafter set forth below.

Subletting or subcontracting of any portion of the Work in excess of one half of one percent (greater than 0.5%) of the Total Bid Price for which no subcontractor was designated in the original bid shall only be permitted in cases of public emergency or necessity, and then only after District approval.

<u>Name and Location of Subcontractor</u>	<u>Description of Work to be Subcontracted</u>
Name: _____	_____
Address: _____	_____
Ph: _____ Fax: _____ License No. _____	

~~~~~

| <u>Name and Location<br/>of Subcontractor</u> | <u>Description of Work<br/>to be Subcontracted</u> |
|-----------------------------------------------|----------------------------------------------------|
| Name: _____                                   | _____                                              |
| Address: _____                                | _____                                              |
| Ph: _____ Fax: _____ License No. _____        |                                                    |

~~~~~

<u>Name and Location of Subcontractor</u>	<u>Description of Work to be Subcontracted</u>
Name: _____	_____
Address: _____	_____
Ph: _____ Fax: _____ License No. _____	

~~~~~

| <u>Name and Location<br/>of Subcontractor</u> | <u>Description of Work<br/>to be Subcontracted</u> |
|-----------------------------------------------|----------------------------------------------------|
| Name: _____                                   | _____                                              |
| Address: _____                                | _____                                              |
| Ph: _____ Fax: _____ License No. _____        |                                                    |

Name and Location  
of Subcontractor

Description of Work  
to be Subcontracted

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Ph: \_\_\_\_\_ Fax: \_\_\_\_\_ License No. \_\_\_\_\_

~~~~~  
Name and Location
of Subcontractor

Description of Work
to be Subcontracted

Name: _____

Address: _____

Ph: _____ Fax: _____ License No. _____

~~~~~  
Name and Location  
of Subcontractor

Description of Work  
to be Subcontracted

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Ph: \_\_\_\_\_ Fax: \_\_\_\_\_ License No. \_\_\_\_\_

~~~~~  
Name and Location
of Subcontractor

Description of Work
to be Subcontracted

Name: _____

Address: _____

Ph: _____ Fax: _____ License No. _____

~~~~~  
Name and Location  
of Subcontractor

Description of Work  
to be Subcontracted

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Ph: \_\_\_\_\_ Fax: \_\_\_\_\_ License No. \_\_\_\_\_

**NON-COLLUSION AFFIDAVIT**

In accordance with Public Contract Code Section 7106, the undersigned declares that he or she holds the position listed below with the bidder, the party making the foregoing bid, that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

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

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Bidder

Subscribed and sworn before me  
This \_\_\_\_ day of \_\_\_\_\_, 2017

[Seal]

\_\_\_\_\_  
Notary Public in and for  
the State of California



**PROJECT WARRANTY**

We, the undersigned, do hereby warrant and guarantee all products and services described within which we have provided for:

**BID #2017/18- EC-02**

are in accordance with the Contract Documents and that all such Work as installed will fulfill or exceed all minimum warranty requirements. We agree to repair or replace Work installed by us, together with any adjacent Work which is displaced or damaged by so doing, that proves to be defective in workmanship, material, or function at no expense to the Owner, Mill Valley School District, for a period of two (2) years.

In the event of our failure to comply with the above-mentioned conditions within ten (10) business days, after notification in writing, we, the undersigned, all collectively and separately, hereby authorize the Owner to have said defective Work, repaired or replaced to be made good, and agree to pay to the Owner upon demand all moneys that the Owner may expend in making good said defective Work, including all collection costs and reasonable attorneys' fees.

Company Name: \_\_\_\_\_

Signed: \_\_\_\_\_  
(Contractor's signature)

Name: \_\_\_\_\_  
(printed)

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

**Mill Valley School District**

**Proposition 39 Energy Conservation And Energy  
Efficiency Services Project**

**BID #2017/18- EC-02**

**SECTION 4  
AGREEMENT**

## AGREEMENT

THIS AGREEMENT is made this 18th day of May, 2018 in the County of Marin, State of California, by and between the **Mill Valley School District** (the "District") and \_\_\_\_\_ (the "Contractor"). The District and Contractor may be referred to herein individually as a "Party" and collectively as the "Parties."

## RECITALS

- A. District is contracting for the Proposition 39 Energy Conservation And Energy Efficiency Services Project ("Project").
- B. Contractor has been selected as the lowest responsible and responsive bidder for the Project.
- C. District desires that the Contractor complete the Project in accordance with the terms and conditions set forth in this Agreement and all Contract Documents incorporated herein.

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE 1 - SCOPE OF WORK.** The Contractor shall perform within the time stipulated the contract as herein defined, and shall provide all labor, materials, tools, utility services, and transportation to complete in a workmanlike manner all of the work required in connection with the following titled project:

### **Proposition 39 Energy Conservation And Energy Efficiency Services Project**

in strict compliance with the Contract Documents as specified in Article 4 below, which shall be free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the Project.

**ARTICLE 2 - TIME FOR COMPLETION.** The Contractor shall mobilize and commence work on the Project after May 21, 2018 and complete all work by July 31, 2018. Time is of the essence for this Contract and the Contractor shall complete the Project within the period specified and in accordance with the schedule for the Project developed by the District and the John Binchi, if applicable. Any additional projects will be coordinated between the District and Contractor. In entering into this Agreement, Contractor acknowledges and agrees that the duration stipulated herein is adequate and reasonable for the size and scope of the Project.

**ARTICLE 3 - CONTRACT PRICE.** The District shall pay to the Contractor as full consideration for the faithful performance of the Contract, as determined on a per project basis by issuance of Purchase Order(s) against the Contract. Payment and performance bonds are to be issued each in the amount of one hundred percent (100%) of the total amount payment under the Contract. Contractor shall adjust the payment and performance bonds if outstanding work exceeds the original amount of the bonds.

The Contract Price is subject to increases or decreases as provided in the Contract Documents. The District shall pay the Contract Price to the Contractor in accordance with the General Conditions.

**ARTICLE 4 - COMPONENT PARTS OF THE CONTRACT.** The Contract entered into by this Agreement consists of the following Contract Documents, all of which are component parts of the Contract as if herein set out in full or attached hereto:

- Notice to Contractors Calling for Bids
- Information for Bidders
- Bid Form and Proposal, as accepted
- Bid Bond
- Designated Subcontractors List
- Non-Collusion Affidavit
- Project Warranty Agreement
- Workers' Compensation Certification
- Affirmative Action Program
- Performance Bond
- Payment Bond
- Contractor Fingerprinting Certification
- Asbestos-Free Materials Certification
- Drug-Free Workplace Certification
- Bidder's Acknowledgement of Project Schedule
- Certificate Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- General Conditions
- Special Conditions
- Drawings and Specifications
- Addenda Nos. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, as issued

All of the above-named Contract Documents are intended to be complementary. Work required by one of the above-named Contract Documents and not by others shall be done as if required by all. This Agreement shall supersede any prior agreement of the Parties.

**ARTICLE 5 – CONTRACTOR'S LICENSE.** The Contractor must possess throughout the Project the legally-required contractor's license classification for this Project, issued by the State of California, which must be current and in good standing.

**ARTICLE 6 – ENTIRE AGREEMENT.** The Contract, which consists of all of the documents listed in Article 4 above, constitutes the entire agreement between the Parties relating to the Project, and supersedes any prior or contemporaneous agreement between the Parties, oral or written, including the District's award of the Project to Contractor, unless such agreement is expressly incorporated herein. The District makes no representations or warranties, express or implied, not specified in the Contract. The Contract is intended as the complete and exclusive statement of the Parties' agreement pursuant to Code of Civil Procedure section 1856.

**ARTICLE 7 – EXECUTION OF OTHER DOCUMENTS.** The Parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract.

**ARTICLE 8 – EXECUTION IN COUNTERPARTS.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

**ARTICLE 9 – BINDING EFFECT.** Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract shall inure to the benefit of and shall be binding upon the Contractor and the District and their respective successors and assigns.

**ARTICLE 10 – SEVERABILITY; GOVERNING LAW; CHOICE OF FORUM.** If any provision of the Contract shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. The Contract shall be governed by the laws of the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for the County of Marin, subject to transfer of venue under applicable State law.

**ARTICLE 11 – AMENDMENTS.** The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever except by written agreement signed by the Parties and approved or ratified by the District's Board of Trustees.

**ARTICLE 12 – ASSIGNMENT OF CONTRACT.** The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of the surety on the payment bond, the surety on the performance bond, and the District.

**ARTICLE 13 – WRITTEN NOTICE.** Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to an officer of the corporation for whom it was intended, or if delivered at or sent by registered or certified or overnight mail to the last business address known to the person who gives the notice.

**ARTICLE 14 – PROVISIONS REQUIRED BY LAW.** Each and every provision of law and clause required to be inserted in this contract shall be deemed to be inserted herein, and this Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either Party the Contract shall forthwith be physically amended to make such insertion or correction.

**ARTICLE 15 – AUTHORITY TO EXECUTE.** The individual(s) executing this Agreement on behalf of the Contractor is/are duly and fully authorized to execute this Agreement on behalf of Contractor and to bind the Contractor to each and every term, condition and covenant of the Contract Documents.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, this Agreement has been duly executed by the above-named parties, on the day and year first above written. To the extent that there exists any conflicts or inconsistencies between this Agreement and the General Conditions, the provisions contained in the General Conditions shall govern.

**CONTRACTOR:**

License No.

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

**DISTRICT:**

Mill Valley School District

By \_\_\_\_\_

Title Superintendent of Schools

Governing Board Date \_\_\_\_\_

Agenda Item No. \_\_\_\_\_

**[END OF DOCUMENT]**

**Mill Valley School District**

**Proposition 39 Energy Conservation And Energy  
Efficiency Services Project**

**BID #2017/18- EC-02**

**SECTION 5  
PERFORMANCE BOND**

**PERFORMANCE BOND  
(CALIFORNIA PUBLIC WORK)**

WHEREAS the **Mill Valley School District** (also referred to herein "Obligee") has awarded to \_\_\_\_\_ (hereinafter "Contractor"), a contract for work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the **Proposition 39 Energy Conservation And Energy Efficiency Services Project** (the "Project");

WHEREAS, the Work to be performed by the Contractor is more particularly set forth in that certain Agreement between the Obligee and Contractor dated May 16, 2018, which Agreement and all other contract documents set forth therein (collectively, the "Contract Documents") are incorporated herein and made a part hereof by this reference; and

WHEREAS, the Contractor is required by said Contract Documents furnish a bond ensuring the Contractor's prompt, full and faithful performance of the Work under the Contract Documents ("Bond"),

NOW, THEREFORE, we \_\_\_\_\_, the undersigned Contractor, as Principal, existing under the laws of the State of California, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound, along with our respective heirs, executors, administrators, successors and assigns, jointly and severally, unto the **Mill Valley School District** in the sum of \_\_\_\_\_, said sum being not less than 100% of the total amount payable by the said Obligee under the terms of the Contract Documents, in lawful money of the United States, as more particularly set forth herein.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal, his or its heirs, executors, administrators, successors or assigns, promptly, fully and faithfully performs each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract Documents, as they may be modified or amended from time to time, and if the Principal indemnifies and saves harmless the Obligee, its officers, agents and employees from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description which may be incurred by the Obligee by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or obligations of the Contract Documents, including all modifications and amendments thereto, and any warranties or guarantees required thereunder, as set forth in the Contract Documents, 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 no change, adjustment of the Contract Time, adjustment of the Contract Price, alterations, deletions, additions, or any other modifications to the terms of the Contract Documents, the Work to be performed thereunder, or to the Specifications or the Drawings shall limit, restrict or otherwise impair Surety's obligations or Obligee's rights hereunder. Surety hereby waives notice from the Obligee of any such changes, adjustments of Contract Time, adjustments of Contract Price, alterations, deletions, additions or other modifications to the Contract Documents, the Work to be performed under the Contract Documents, or the Drawings or the Specifications.

In the event of the Obligee's termination of the Contract due to the Principal's breach or default of the Contract Documents, within twenty (20) days after written notice from the Obligee to the Surety of the Principal's breach or default of the Contract Documents and Obligee's termination of the Contract, the Surety shall notify Obligee in writing of Surety's assumption of



obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense ("Notice of Election"); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Obligee, which approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal's mere denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety's prompt, diligent inquiry and investigation of such denial, be justification for Surety's failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

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

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

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

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, we have set our hands and seals this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Principal/Contractor

By: \_\_\_\_\_  
President

\_\_\_\_\_  
urety S

By: \_\_\_\_\_  
Attorney-in-Fact

The rate of premium on this bond is \_\_\_\_\_ per thousand.

The total amount of premium charged, \$\_\_\_\_\_.

(The above must be filled in by corporate surety.)

A notary public or other officer 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            )  
                                                  )  
County of \_\_\_\_\_        )

On this \_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said state, personally appeared \_\_\_\_\_, known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument as the Attorney-in-Fact of the \_\_\_\_\_ (surety) and acknowledged to me that he subscribed the name of the \_\_\_\_\_ (surety) thereto and his own name as Attorney-in-Fact.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)

My Commission expires \_\_\_\_\_.

**CERTIFICATE AS TO CORPORATE PRINCIPAL**

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ Secretary of the corporation named as principal to the within bond; that \_\_\_\_\_ who signed the said bond on behalf of the principal was then \_\_\_\_\_ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

[This space intentionally left blank.]

**Mill Valley School District**

**Proposition 39 Energy Conservation And Energy  
Efficiency Services Project**

**BID #2017/18- EC-02**

**SECTION 6  
PAYMENT BOND**

**PAYMENT BOND**  
(CALIFORNIA PUBLIC WORK)

WHEREAS, the **Mill Valley School District** (the "Obligee") has awarded to \_\_\_\_\_ (the "Principal") a contract for the Work commonly described as the: Proposition 39 Energy Conservation And Energy Efficiency Services Project (the "Project"); and

WHEREAS, the Work to be performed by the Principal is more particularly set forth in that certain Agreement between the Principal and the Obligee, dated \_\_\_\_\_ which Agreement and all other contract documents set forth therein (collectively, the "Contract Documents") are incorporated herein and made a part hereof by this reference; and

WHEREAS, by the terms of the Contract Documents, and in accordance with California Civil Code §§ 9550 *et seq.*, the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor, materials or services used, or reasonably required for use, in the performance of the Work on the Project ("Bond"); and

WHEREAS, the term "Claimant" shall refer to any of the persons described in California Civil Code § 9100, who provide or furnish labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard to whether such labor, materials or services were sold, leased or rented.

NOW THEREFORE, we, \_\_\_\_\_, as Principal, are held and firmly bound, along with our respective heirs, executors, administrators, successors and assigns, jointly and severally, unto Mill Valley School District, as Obligee, for payment of the penal sum of \_\_\_\_\_, said sum being not less than one hundred percent (100%) of the total amount payable by the Obligee under the terms of the Contract Documents, in lawful money of the United States, as more particularly set forth herein.

This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

The condition of the obligation is such that if the Principal, or its subcontractors, heirs, executors, administrators, successors or assigns fail to pay (1) any Claimant, (2) amounts due under the Unemployment Insurance Code with respect to Work or labor performed on the Project, or (3) amounts required to be deducted, withheld, and paid to the Employment Development Department from the wages of employees of the Principal and its subcontractors under Section 13020 of the Unemployment Insurance Code with respect to the Work and labor, then Surety will pay for the same in an amount not to exceed the sum specified above and, if an action is brought to enforce the liability on the Bond, the Surety shall pay such reasonable attorneys' fees as fixed by the court, as set forth in Civil Code § 9554.

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

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this

Bond; the Surety hereby waives notice from the Obligee of any such change, extension of time, alteration, deletion, addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by their duly authorized agents or representatives.

(Corporate Seal)

\_\_\_\_\_  
(Principal Name)

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

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

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

(Corporate Seal)

\_\_\_\_\_  
(Surety Name)

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

(Attach Attorney-in-Fact Certificate)

\_\_\_\_\_  
(Typed or Printed Name of Attorney-in-Fact)

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

\_\_\_\_\_  
(Area Code and Telephone Number of 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 officer 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, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me 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), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, 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: \_\_\_\_\_

NOTE: A copy of the power-of-attorney to local representatives of the Surety must be attached hereto.

**Mill Valley School District**

**Proposition 39 Energy Conservation And Energy  
Efficiency Services Project**

**BID #2017/18- EC-02**

**GENERAL CONDITIONS**



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## GENERAL CONDITIONS

### Article 1. DEFINITIONS

- a. The "District" and "Contractor" are those mentioned as such in the agreement. For convenience and brevity, these terms, as well as terms identifying other persons involved in the contract are treated throughout the Contract Documents as if they are of singular number and masculine gender.
- b. "Subcontractor," as used herein, includes one having a direct contract with Contractor who furnishes material worked to a special design according to plans and specifications of this work, but does not include one who merely furnishes material not so worked.
- c. "Surety" is the person, firm, or corporation, admitted as a California admitted surety that executes as surety the Contractor's Performance Bond and Payment Bond for Public Works.
- d. "Provide" shall include "provide complete in place," that is, "furnish and install."
- e. Words such as "indicated," "shown," "detailed," "noted," "scheduled," or words of similar meaning shall mean that reference is made to the drawings, unless otherwise noted. It shall be understood that the direction, designation, selection, or similar import of the District is intended, unless stated otherwise.
- f. "Work" of the Contractor or subcontractor includes labor or materials or both.
- g. The term "day" as used herein shall mean calendar day unless otherwise specifically designated.
- h. Where the words "equal," "equivalent," "satisfactory," "directed," "designated," "selected," "as required," and words of similar meaning are used, the written approval, selection, satisfaction, direction, or similar action of the District is required.
- i. Where the word "required" and words of similar meaning are used, it shall mean, "as required to properly complete the work as required by the District," unless stated otherwise.
- j. The word "perform" shall be understood to mean that the Contractor, at Contractor's expense, shall perform all operations necessary to complete the work, including furnishing of necessary labor, tools, and equipment, and further including the furnishing and installing of materials that are indicated, specified, or required to complete such performance.
- k. Where the words "acceptable," "acceptance," or words of similar import are used, it shall be understood that the acceptance of the District is intended.
- l. Where shown, the words "includes," and "including," do not limit the work to the items following those words.

### Article 2. DRAWINGS AND SPECIFICATIONS

- a. **Contract Documents.** Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intention of documents is to include all labor and

materials, equipment, and transportation necessary for the proper execution of the work. Materials or work described in words which as applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

b. **Interpretations.** Drawings and specifications are intended to be fully cooperative and to agree. However, if Contractor observes that drawings and specifications are in conflict, he shall promptly notify the District in writing and any necessary changes shall be adjusted as provided in the contract for changes in work. If such conflict arises, the following order of precedence shall generally apply, provided, however, that the order of precedence shall not be so rigidly interpreted as to affect an absurd or costly result:

1. Special Conditions shall take precedence over General Conditions.

2. Technical Specifications implement, in additional detail, the requirements of the General Conditions. In the event of conflict between the Technical Specifications and the General Conditions, the General Conditions shall take precedence.

3. In the event of a conflict between the Technical Specifications and the drawings, the higher quality, higher quantity and most stringent requirements shall be deemed to apply and shall govern as to materials, workmanship, and installation procedures.

4. With regard to drawings:

- (a) Figures govern over scaled dimensions;
- (b) Larger details govern over general drawings;
- (c) Addenda/change order drawings govern over contract drawings;
- (d) Contract drawings govern over standard drawings.

5. Work not particularly shown or specified shall be the same as similar parts that are shown or specified.

c. Misunderstanding of drawings and specifications shall be clarified by the District, whose decisions shall be final.

d. Standards, Rules, and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications within limits specified.

### **Article 3. COPIES FURNISHED**

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

### **Article 4. OWNERSHIP OF DRAWINGS**

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

### **Article 5. ARCHITECT OF RECORD**

a. **Duties.** In addition to the below, the Architect of Record ("AOR") shall perform the duties and responsibilities set forth in the Contract Documents.

b. **AOR Represents District.** The Architect of Record shall represent the District during the Project in observing the progress and quality of the Work on behalf of the District. The AOR shall have the authority to act on behalf of District to the extent expressly provided in the Contract Documents except to the extent such authority is modified in writing by District to AOR and Contractor. AOR shall have authority to reject materials, workmanship, and/or the Work whenever rejection may be necessary, in AOR's reasonable opinion, to insure conformance with the Contract Documents.

c. **Interpretation of Contract Document.** Architect of Record shall, on behalf of the District and with consultation with the District when such consultation is deemed appropriate by AOR and/or District, determine the amount, quality, acceptability, and fitness of all parts of the Work, interpret the Drawings and Specifications and interpret all other Contract Documents.

d. **AOR's Authority.** Architect of Record shall have all authority and responsibility established by law, including title 24 of the California Code of Regulations.

e. **Written Communication.** Contractor shall provide District and the Construction Manager (if any) with a copy of all written communication between Contractor and AOR at the same time as that communication is made to AOR, including, without limitation, all correspondence, RFIs, Submittals, Claims, and Proposed Change Orders except to the extent that the provision of such copies are modified by written agreement among District, AOR, Construction Manager (if any) and Contractor following the Execution Date of the Contract Documents.

#### **Article 6. CONSTRUCTION MANAGER**

a. **Construction Manager's Role.** The Construction Manager shall be identified together with its specific role, responsibilities and authority by the District pursuant to the contract documents. If a Construction Manager is used on the Project, the Construction Manager will provide administration of the Contract Documents on the District's behalf. All correspondence and/or instructions from Contractor and/or District shall be forwarded through the Construction Manager. The Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures or for safety precautions in connection with the Work, which shall all remain the Contractor's responsibility.

b. **Construction Manager's Authority.** The Construction Manager, however, will have authority to reject materials and/or workmanship not conforming to the Contract Documents, as determined by the District, the AOR, and/or the Project Inspector. The Construction Manager shall also have the authority to require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully completed. Any decision made by the Construction Manager, in good faith, shall not give rise to any duty or responsibility of the Construction Manager to the Contractor, any Subcontractor, their agents, employees, or other persons performing any of the Work. The Construction Manager shall have free access to any or all parts of Work at any time.

c. **District as Construction Manager.** If the District does not use a Construction Manager on this Project, all references to Construction Manager shall be read as District.

#### **Article 7. INSPECTOR OF RECORD.**

a. **Duties**

1. One or more inspector(s) (“Inspector of Record” or “IOR”), including specialty inspector(s) to whom IOR has delegated a portion of the responsibility on the Project (“Special Inspector(s)”), as required, will be assigned to the Project by District, in accordance with requirements of title 24, part 1, of the California Code of Regulations, to enforce the CBC and monitor compliance of the Work with the Drawings and Specifications. The duties of the IOR and the Special Inspector(s) are specifically defined in the Contract Documents.

2. No Work shall proceed without the knowledge and under the inspection of the IOR. The IOR may delegate responsibility for inspection of various parts of the Work to the Special Inspector(s) as allowed by DSA and under the California Code of Regulations. The IOR and Special Inspector(s) shall have free access to any or all parts of the Work at any time. Contractor shall furnish reasonable opportunities for IOR to obtain such information within Contractor’s control as IOR may reasonably request in IOR’s effort to be fully informed respecting the progress and manner of the Work and the character of materials incorporated into the Work. Inspection of the Work shall by IOR and Special Inspector(s) shall not relieve Contractor from conformance with the Drawings and Specifications. The IOR and the DSA are authorized to stop Work whenever the Contractor and/or its Subcontractor(s) are not complying with the Drawings and Specifications. Any Work stoppage by the IOR and/or DSA shall be without liability to the District provided Contractor is subsequently found to have been executing Work that did not conform to the Drawings and Specifications. Contractor shall instruct its Subcontractors and employees accordingly.

3. The costs of inspections, including off-site inspections, by the IOR and/or the Special Inspector(s), including travel time, transportation, lodging, meals and all other related expenses, shall be borne by the District. If, due to negligence on the part of the Contractor or Subcontractors, additional inspections, the incremental cost of those inspections shall be paid for by the District and reimbursed by the.

**b. Tests and Inspections.**

1. Physical tests and inspections complying with title 24, part 1, California Code of Regulations, group 1, article 5, section 4-335, DSA and with the requirements of the Drawings and Specifications are required for the execution of the Work.

2. The District will select an independent testing laboratory to conduct the tests and/or inspections if such tests and/or inspections are not to be performed by the IOR. Selection of the materials required to be tested and/or inspected shall be by the independent testing laboratory, the IOR or the District and not by the Contractor.

3. If the manufacturing of materials to be inspected or tested will occur in a plant or location outside the geographic limits of District, the Contractor shall pay for any excessive or unusual costs associated with such testing or inspection, including but not limited to excessive travel time, standby time and required lodging.

Reexamination of the Work may be ordered by the District. If so ordered, the Work must be uncovered or deconstructed by Contractor. If the Work is found to be in accordance with the Contract Documents, the District shall pay the costs of reexamination and reconstruction. If such Work is found not to be in accordance with the Contract Documents, Contractor shall pay all costs.

4. The Contractor shall notify the IOR of its readiness for the required testing and/or inspections of material to be fabricated and/or supplied under the Drawings and Specifications,



that must by terms of the Contract Documents be tested, in order that the District may arrange for the testing of same on the Project Site or at the source of supply. This notice shall be, at a minimum, forty eight (48) hours prior to the manufacture and/or supply of such material if such testing and/or inspection is to occur with the IOR's Approval on the Project Site and seventy-two (72) hours prior to the manufacture and/or supply of such material if such testing and/or inspection is to occur at the source of supply. These notices shall be submitted in all instances via hard copy and, if requested by the IOR, also electronically via an internet-based notification/reporting system.

5. Any material shipped by the Contractor from the source of supply prior to having satisfactorily passed such testing and inspection or material tested and/or inspected with the IOR's Approval on the Project Site which does not pass such inspection and/or testing, absent prior receipt of notice from the IOR that such testing and inspection will not be required, shall not be incorporated into the Work.

**c. Responsibility for Inspection Costs.**

1. The District acknowledges that Contractor's operating hours on the Project Site (subject to local municipal ordinances governing operating hours on construction sites) when tests and/or inspections by the IOR, Special Inspector(s) and/or independent testing laboratory will be required may consist of a cumulative average of ten (10) hours per day each weekday plus the equivalent of ten (10) hours per Day every other Saturday over the duration of the Construction Schedule.

2. The District acknowledges that the operating hours at the off-site locations where tests and/or inspections by the IOR, Special Inspector(s) and/or independent testing laboratory will be required may include 12-hour Days and 6-Day work weeks for the duration of the off-site supply and/or fabrication.

3. The hours identified above in section (c)1 and Section (c)2 above are defined as the "Inspection Hours".

4. The Inspection Hours are hereby acknowledged by the District. All costs incurred including travel time, transportation, lodging, meals, all other related expenses and overtime for tests and/or inspections performed by the IOR, Special inspector(s) and/or the independent testing laboratory on the Project Site or at off-site locations within these Inspection Hours shall be the responsibility of the District.

**Article 8. DETAIL DRAWINGS AND INSTRUCTIONS**

a. **Examination of Contract Documents.** Before commencing any portion of the Work, Contractor shall again carefully examine all applicable Contract Documents, the Project site and other information given to Contractor as to materials and methods of construction and other Project requirements. This review shall include examination by subcontractors who will be participating in the installation of windows, doors, skylights or other similar building penetrations. Contractor shall request a meeting between the these subcontractors and the Architect of Record to discuss and questions the subcotnractors may have regarding these drawing details and discuss the need for the preparation of a mockup to illustrate the intent of the drawings. Contractor shall immediately notify the District Representative of any potential error, inconsistency, ambiguity, conflict or lack of detail or explanation. If Contractor performs, permits, or

causes the performance of any Work which is in error, inconsistent or ambiguous, or not sufficiently detailed or explained, Contractor shall bear any and all resulting costs, including, without limitation, the cost of correction. In no case shall the Contractor or any subcontractor proceed with Work if uncertain as to the applicable requirements.

- b. **Additional Instructions.** After notification of any error, inconsistency, ambiguity, conflict or lack of detail or explanation, the District Representative will provide any required additional instructions, by means of drawings or other written direction, necessary for proper execution of the Work.
- c. **Quality of Parts, Construction and Finish.** All parts of the Work shall be of the best quality of their respective kinds and the Contractor must use all diligence to inform itself fully as to the required construction and finish. In no case shall Contractor proceed with the Work without obtaining first from the District Representative such approval as may be necessary for the proper performance of Work.
- d. **Contractor's Variation from Contract Document Requirements.** If it is found that the Contractor has varied from the requirements of the Contract Documents including the requirement to comply with all applicable laws, ordinances, rules and regulations, the District Representative may at any time, before or after completion of the Work, order the improper Work removed, remade or replaced by the Contractor at the Contractor's expense.

**Article 9. REQUESTS FOR INFORMATION.**

- a. **Administration.** Any Request for Information shall be processed in accordance with the Contract Documents. Each RFI shall reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), Drawing number(s), and detail number(s). The Contractor shall provide Contractor's interpretations of the applicable Contract Documents and shall where applicable provide suggestions for resolving the issue raised by each Request for Information. An Approved RFI cannot modify the the Contract Time but does modify the Drawings and Specifications if the execution of the Approved RFI by the Contractor does not cause an increase in the Contract Time.
- b. **Costs Incurred for Professional Services Relating to RFI(s).** The Contractor shall be responsible for any costs incurred, if any, for professional services that District may deduct from any amounts owing to the Contractor, if Contractor makes multiple Requests for Information that request interpretation(s) or decision(s) of a matter where the information sought is readily, clearly and unambiguously available to the Contractor in the Contract Documents. Notwithstanding the foregoing, Contractor shall not be obligated to pay any costs related to the first seven (7) RFI(s).

**Article 10. TIME FOR COMPLETION AND LIQUIDATED DAMAGES**

- a. The Project shall be commenced on and completed by Contractor in the time specified in the Contract. The Contractor shall make sure that, before commencing the Work, all Contract Documents, including the Contract, the necessary original Certificates of Insurance, Endorsements of Insurance, Performance Bond, Payment Bond and all other documentation and certification required by the Contract have been received by the District. The District has stipulated in the Bid Form and the Special Conditions the schedule for contract submittals. The District is under no obligation to consider early completion of the Project and the contract completion date shall not be amended by the District's acceptance of the Contractor's proposed earlier completion date. Furthermore, Contractor shall not, under any circumstances receive additional compensation from

the District for indirect, general, administrative or other forms of overhead costs for the period between the time of earlier completion proposed by the Contractor and the official contract completion date. If the Work is not completed in accordance with the foregoing, it is understood that the District will suffer damage. It being impractical and infeasible to determine the amount of actual damage, it is agreed that Contractor shall pay to District as fixed and liquidated damages, and not as a penalty, the sum stipulated in the Special Conditions for each calendar day of delay until the Work is completed and accepted. Contractor and his surety shall be liable for the amount thereof. Any money due or to become due the Contractor may be retained to cover said liquidated damages. Should such money not be sufficient to cover said liquidated damages, District shall have the right to recover the balance from the Contractor or his sureties, who will pay said balance forthwith. Regardless of the time lines in the schedule submitted by Contractor, no delay claims shall be accepted by District unless the event or occurrence delays the completion of the Project beyond the contractual completion date.

b. Contractor shall abide by the District's determination of what constitutes inclement weather based upon the inspector or geotechnical engineer's recommendation. A bad weather day is a day when the weather causes unsafe work conditions or is unsuitable for work that should not be performed during inclement weather (e.g., exterior finishes). Time extensions shall only be granted when the work that is stopped during inclement weather is on the critical path of the Project schedule. The District's consideration of time extension requests will take into account situations when rain days exceed the normal frequency and amount based on the closest weather station data averaged over the past three years, for the period of this Contract and when Contractor can show such rain days impact the critical path. Contractor shall be expected to perform all work he can possibly complete during inclement weather (e.g., interior work).

c. **Extension of Time.** Contractor shall not be charged liquidated damages because of any delays in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of Contractor including, but not restricted to: acts of God, or of public enemy, acts of Government, acts of District or anyone employed by it or acts of another Contractor in performance of a contract with District, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes. Contractor shall within five (5) days of beginning of any such delay (unless District grants a further period of time prior to date of final settlement of the contract) notify District in writing of causes of delay. The District shall ascertain the facts and extent of delay and grant extension of time for completing the Work when, in its judgment, the findings of fact justify such an extension. The District's findings of fact shall be final and conclusive on all parties. In case of a continuing cause of delay, only one claim is necessary. Time extensions to the Project should be requested by the Contractor as they occur and without delay. Regardless of the time lines in the schedule submitted by Contractor, no delay claims shall be accepted by District unless the event or occurrence delays the completion of the Project beyond the contractual completion date.

d. **Determining Damages for Delay.** District's liability to Contractor for delays for which District is responsible shall be limited to an extension of time for delays unless such delays were unreasonable under the circumstances involved and were not within the contemplation of the parties when the contract was awarded. Contractor agrees that the District's representative shall determine the actual costs to Contractor of any delay for which Contractor may claim damages from District. Such costs, if any, shall be directly related to the Project, and shall not include costs that would be borne by the Contractor in the regular course of business, including, but not limited to, office overhead and ongoing insurance costs. The District shall not be liable for any damages which the Contractor could have avoided by any reasonable means including, but not limited to, the judicious handling of forces, equipment, or plant.

e. **Removal or Relocation of Main or Trunkline Utility Facilities.** The Contractor shall not be assessed for liquidated damages for delay in completion of the Project, when such delay was caused by the failure of the District of this Contract or the owner of the utility to provide for removal or relocation of the existing main or trunkline utility facilities; however, when the Contractor is aware that removal or relocation of an existing utility has not been provided for, Contractor shall promptly notify the awarding authority and the utility in writing, so that provision for such removal or relocation may be made to avoid and minimize any delay which might be caused by the failure to remove or relocate the main or trunkline utility facilities, or to provide for its removal or relocation. In accordance with section 4215 of the Government Code, if the Contractor while performing the Contract discovers any existing main or trunkline utility facilities not identified by the District in the Contract plans or specifications, he shall immediately notify the District and utility in writing. The public utility, where it is the owner, shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price. The Contractor shall be compensated for the costs of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment on the project necessarily idled during such work. Such compensation shall be in accordance with the extra work provisions set out at Article 40 hereof. Alternatively, the District may make changes in the alignment and grade of the Work to obviate the need to remove, relocate, or temporarily maintain the utility, or the District may make arrangements with the owner of the utility for such work to be done at no cost to the Contractor.

Nothing herein shall preclude the District from pursuing any appropriate remedy against the utility for delays which are the responsibility of the utility. Further, nothing herein shall be construed to relieve the utility from any obligation as required either by law or by contract to pay the cost of removal or relocation of existing utility facilities.

#### **Article 11. PROGRESS SCHEDULE**

a. Within fourteen (14) days after the date of the award of the Contract, Contractor shall prepare a baseline progress schedule in digital format and shall submit this schedule for the District's approval. The schedule shall clearly identify all staffing and other resources which in the Contractor's judgment are needed to complete the Project within the time specified for completion. The schedule shall include milestones. The Contractor is fully responsible to determine and provide for any and all staffing and resources at levels which allow for good quality and timely completion of the Project; the District's approval of the progress schedule does not relieve the Contractor of any such responsibility. Contractor's failure to incorporate all elements of work required for the performance of the Contract or any inaccuracy in the schedule shall not excuse the Contractor from performing all work required for a completed project within the specified contract time period, notwithstanding the District's acceptance of the schedule. **The first payment will not be made unless the District has been provided and has accepted the project schedule.**

b. The schedule shall allow enough time for inclement weather. All required schedules shall be periodically updated to reflect changes in the status of the job, including weather delays. **At a minimum, the Contractor shall be required to provide and keep updated a monthly schedule in order to prevent delay claims.**

#### **Article 12. CONTRACT SECURITY**

Unless otherwise specified in the Contract Documents, prior to commencing any portion of the

Work, the Contractor shall apply for and furnish the District separate payment and performance bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. All bonds shall be provided by a corporate surety authorized and admitted to transact business in California. All bonds shall be submitted on the District's approved form.

To the extent, if any, that the Contract price is increased in accordance with the Contract Documents, the Contractor shall 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 bond, the District may terminate the Contract for cause.

### **Article 13. ASSIGNMENT**

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

### **Article 14. PROHIBITED INTERESTS**

No official of the District and no District representative who is authorized in such capacity and on behalf of the District to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting or approving any engineering, inspection, construction or material supply contract or any subcontract in connection with construction of the Project, shall be or become directly or indirectly interested financially in this Contract or in any part thereof. No officer, employee, attorney, engineer or inspector of or for the District who is authorized in such capacity and on behalf of the District to exercise any executive, supervisory or other similar functions in connection with construction of the Project, shall become directly or indirectly interested financially in this Contract or in any part thereof.

### **Article 15. SEPARATE CONTRACTS**

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

If any part of Contractor's Work depends for proper execution or results upon work of any other contractor, the Contractor shall inspect and promptly report to District any defects in such work that renders it unsuitable for such proper execution and results. His failure to inspect and report shall constitute his acceptance of other contractor's work as fit and proper for reception of his Work,

except as to defects which may develop in the other contractor's work after execution of Contractor's Work.

To insure proper execution of his subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the District any discrepancy between executed work and the Contract Documents.

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

#### **Article 16. SUBCONTRACTING**

a. Contractor agrees to bind every subcontractor by terms of the Contract as far as such terms are applicable to subcontractor's work. If Contractor subcontracts any part of this Contract, Contractor shall be as fully responsible to District for the acts and omissions of his subcontractor and of persons either directly or indirectly employed by his subcontractor, as he is for acts and omissions of persons directly employed by himself. Nothing contained in these Contract Documents shall create any contractual relation between any subcontractor and District. The District shall be deemed to be the third party beneficiary of the Contract between the contractor and the subcontractor.

b. District's consent to or approval of any subcontractor under this Contract shall not in any way relieve Contractor of his obligations under this Contract and no such consent or approval shall be deemed to waive any provision of this Contract. The District reserves the right of approval of all subcontractors proposed for use on this Project, and to this end, may require financial, performance and such additional information as is needed to secure this approval. If a subcontractor is not approved, the Contractor shall promptly submit another of the same trade for approval.

c. Substitution or addition of subcontractors shall be permitted only as authorized in California Public Contract Code Sections 4100 et seq.

#### **Article 17. DISTRICT'S RIGHT TO TERMINATE CONTRACT**

District may, without prejudice to any other right or remedy, serve written notice of intent to terminate upon Contractor and his surety stating its intention to terminate this Contract if the Contractor (i) refuses or fails to prosecute the Work or any separable part thereof with such diligence as will insure its completion within the time specified or any extension thereof, or (ii) fails to complete said Work within such time, or (iii) if the Contractor should file a bankruptcy petition, or (iv) if he should make a general assignment for the benefit of his creditors, or (v) if a receiver should be appointed on account of his insolvency, or (vi) if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly

skilled workers or proper materials to complete the Work in the time specified, or (vii) if he should fail to make prompt payment to subcontractors or for material or labor, or (viii) persistently disregard laws, ordinances or instructions of District, or (ix) otherwise substantially violate any provision of the Contract, or (x) if he or his subcontractors should violate any of the provisions of this Contract. Additionally, District may terminate the Contract for convenience. The notice of intent to terminate shall state generally the reasons for such intention to terminate. Unless within five (5) days after the service of such notice, such condition shall cease or such violation shall cease and satisfactory arrangements for the correction thereof be made, this Contract shall be deemed to have ceased and terminated. Upon the termination of the Contract as provided above, District shall immediately serve upon surety and the Contractor written notice of termination stating that the Contract has ceased and terminated. Surety shall have the right to investigate, take over and perform this Contract, provided, however, that if surety, within five (5) days after service upon it of said notice of termination, does not give District written notice of its intention to take over and perform this Contract and does not commence performance thereof within seven (7) days from the date of service upon it of such notice of termination, District may take over the work and prosecute same to completion by the Contract or by any other method it may deem advisable for the account and at the expense of Contractor. If Surety does not perform the Project Work itself, the surety shall consult with the District regarding its planned choice of a contractor or contractors to complete the Project, and upon request by District, surety shall provide the District with evidence of responsibility of surety's proposed contractor or contractors. District shall be entitled to reject surety's choice of contractor or contractors if District determines in its sole discretion that the contractor or contractors are nonresponsible. If surety provides District written notice of its intention to take over and perform this Contract, within fourteen (14) days of such written notice of intent to take over and perform, surety or its chosen contractor or contractors (if such contractor or contractors are approved by District) shall provide District a detailed Progress Schedule as specified in Article 7 above. Contractor and his surety shall be liable to District for any excess cost or other damages occasioned the District as a result of surety or surety's contractor or contractors' takeover and performance. If the District takes over the Work as hereinabove provided, the District may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the Work and necessary therefore.

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

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

#### **Article 18. WARRANTY/GUARANTEE/INDEMNITY**

##### **a. Warranty.**

1. The Contractor shall obtain and preserve for the benefit of the District, manufacturer's warranties on materials, fixtures, and equipment incorporated into the Work, as specified in the Drawings and Specifications.

2. Contractor shall warrant all Work performed by Contractor against all defects for a period of ONE (1) year after the earliest of the following dates:

- i. Beneficial Occupancy of any portion of the Project
- ii. Substantial Completion; or
- iii. The commissioning date for the Project, if any.

At the District's sole option, Contractor shall repair or replace any Work that is found to be defective in workmanship or materials, together with any other Work that may be damaged in so doing, within a ONE (1) year period from the earliest date set forth above, without expense whatsoever to District, except that Contractor shall be entitled to apply the amount of any Contractor Contingency that remained available at Project Completion.

3. Corrections of the Work during such one-year warranty period shall be performed in accordance with the provisions of Article 56 hereof.

4. Nothing contained in this Article 17 shall limit any longer warranties specified in the Drawings and Specifications or on any items for which a manufacturer gives a warranty for a longer period.

5. Nothing contained in this Article 17 shall limit other rights or remedies available to District pursuant to this Contract.

b. **Indemnity.** Contractor shall indemnify the District as expressly provided in the Contract Documents.

#### **Article 19. NOTICE AND SERVICE THEREOF**

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

1. If notice is given to District, by personal delivery thereof to District's representative or by depositing same in United States mail, enclosed in a sealed envelope addressed to District for attention of said representative or District, postage prepaid and registered;

2. If notice is given to Contractor, by personal delivery thereof to said Contractor or to his foreman at site of the Project, or by depositing same in United States mail, enclosed in a sealed envelope addressed to said Contractor at his regular place of business or at such other address as may have been established for the conduct of work under this contract, postage prepaid and registered;

3. If notice is given to surety or other person, by personal delivery to such surety or other person or by depositing same in United States mail, enclosed in a sealed envelope addressed to such surety or person at the address of such surety or person last communicated by him to party giving notice, postage prepaid and registered.

4. If notice is served by mail, it shall be deemed received and all time periods associated with the giving of notice shall run from the third day after mailing.



**Article 20. WORKERS**

- a. Contractor shall at all times enforce strict discipline and good order among his employees. Contractor shall not employ on work any unfit person or anyone not skilled in work assigned to him.
- b. Any person in the employ of the Contractor whom the District may deem incompetent or unfit shall be dismissed from work and shall not again be employed on it except with the written consent of District.
- c. The District reserves the right to request that the Project Supervisor be replaced immediately.

**Article 21. WAGE RATES, PAYROLL RECORDS AND DEBARMENT**

- a. The Contractor is aware of the requirements of California Labor Code sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Since this Project involves an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. The Contractor shall obtain a copy of the prevailing rates of per diem wages at the commencement of this Agreement from the website of the Division of Labor Statistics and Research of the Department of Industrial Relations located at [www.dir.ca.gov/dlsr/](http://www.dir.ca.gov/dlsr/). In the alternative, the Contractor may view a copy of the prevailing rates of per diem wages at the District's Facilities Department. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to perform work on the Project available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the Project site. Contractor shall defend, indemnify and hold the District, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.
- b. The Contractor and each subcontractor shall forfeit as a penalty to the District not more than Two Hundred Dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the stipulated prevailing wage rate for any work done by him, or by any subcontract under him, in violation of the provisions of the California Labor Code. The difference between such stipulated prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.
- c. As a further material part of this Contract, Contractor agrees to hold harmless and indemnify the District, its Board members, and its officers, employees and agents from any and all claims, liability, loss, costs, damages, expenses, fines and penalties, of whatever kind or nature, including all costs of defense and attorneys' fees, arising from any alleged failure of Contractor or its subcontractors to comply with the Prevailing Wage Laws of the State of California. If the District or any of the indemnified parties are named as a party in any dispute arising from the failure of Contractor or its subcontractors to pay prevailing wages, Contractor agrees that the District and the other indemnified parties may appoint their own independent counsel, and Contractor agrees to pay all attorneys' fees and defense costs of the District and the other indemnified parties as billed, in addition to all other damages, fines, penalties and losses incurred by the District and the other indemnified parties as a result of the action.

d. Accurate payroll records shall be kept by the Contractor and each subcontractor, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Work.

e. It shall be the responsibility of Contractor to comply with Labor Code section 1776 as it may be amended by the Legislature from time to time with respect to each payroll record. Labor Code section 1776 provides in relevant part,

“(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(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. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in (a) above.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in

subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) (1) 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. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit One Hundred Dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

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

f. Debarment. The Contractor, or any subcontractor working under the Contractor may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to California Labor Code Sections 1777.1 or 1777.7. Any contract on a public works project entered into between the Contractor and a debarred subcontractor is void

as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by the Contractor on the project shall be returned to the District. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

## **Article 22. APPRENTICES**

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

## **Article 23. HOURS OF WORK**

a. As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions herein above set forth, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

b. The Contractor and every subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the District and to the Division of Labor Law Enforcement, Department of Industrial Relations of the State of California.

c. The Contractor shall pay to the District a penalty of twenty-five dollars (\$25) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2 of the Labor Code.

d. Any work necessary to be performed after regular working hours or on Sundays or other holidays shall be performed without additional expense to District. Refer to Special Conditions for information on specific time-of-day and weekend hour restrictions which apply to this Contract.

## **Article 24. WORKERS' COMPENSATION INSURANCE**

a. The Contractor shall provide, during the life of this Contract, workers' compensation insurance for all of his employees engaged in work under this Contract, on or at the site of the Project, and, in case any of his work is sublet, the Contractor shall require the subcontractor

similarly to provide workers' compensation insurance for all the latter's employees. Any class of employee or employees not covered by a subcontractor's insurance shall be covered by the Contractor's insurance. In case any class of employees engaged in work under this Contract, on or at the site of the Project, is not protected under the workers' compensation statutes, the Contractor shall provide or shall cause a subcontractor to provide, adequate insurance coverage for the protection of such employees not otherwise protected. The Contractor shall file with the District certificates of his insurance protecting workers.

b. Company or companies providing insurance coverage shall be acceptable to the District, and in the following form and coverage.

1. Statutory Workers' Compensation and Employer's Liability Coverage: Contractor shall maintain insurance to afford protection for all claims under California Workers' Compensation Act and other employee benefit acts, and in addition, shall maintain Employer's Liability Insurance for a minimum limit of \$1,000,000. The Workers' Compensation Policy shall include the following endorsements, copies of which shall be provided to District:

- (a) The Voluntary Compensation Endorsement; and
- (b) Broad Form All States Endorsement; and
- (c) The Longshoremen's and Harbor Workers endorsement, where applicable to the Work under this Contract; and
- (d) Waiver of Subrogation Endorsement.

**Article 25. COMMERCIAL GENERAL LIABILITY AND PROPERTY DAMAGE INSURANCE**

a. Contractor shall procure and maintain during the life of this Contract and for such other period as may be required herein, at its sole expense, such comprehensive general liability insurance or commercial general liability and property damage insurance as shall protect Contractor and District from all claims for bodily (personal) injury, including accidental death, as well as claims for property damage arising from operations under this Contract, and other covered loss, however occasioned, occurring during the policy term. Such policy shall comply with all the requirements of this article, and shall be in the form and amounts as set forth in the Special Conditions. The limits set forth in the Special Conditions shall not be construed to relieve the Contractor from liability in excess of such coverage, nor shall it limit Contractor's indemnification obligations to the District, and shall not preclude the District from taking such other actions available to the District under other provisions of the Contract Documents or law.

b. Contractor shall make certain that any and all subcontractors hired by Contractor are insured in accordance with this Contract. If any subcontractor's coverage does not comply with the foregoing provisions, Contractor shall indemnify and hold District harmless from any damage, loss, cost, or expense, including attorneys' fees, incurred by District as a result thereof.

c. Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.

d. Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to District, members of District's board of trustees, and the officers, agents, employees and volunteers of District, the State Allocation Board, if applicable, and the District's consultants, individually and collectively, as additional insureds using form CG2010 11-85 or equivalent which must include products and completed operations coverage, broad form property

damage coverage, coverage for collapse, explosion and underground, and include independent contractor coverage.

e. The coverage afforded by the additional insured endorsement described in paragraph (d) above, shall apply as primary insurance, and any other insurance maintained by District, the members of District's Board of Trustees, or its officers, agents, employees and volunteers, or any self-funded program of District, shall be in excess only and not contributing to such coverage.

f. Contractor shall notify District in writing of the amount, if any, of self-insured retention provided under the General Liability coverage, with a maximum limit of \$25,000. District may approve higher retention amounts, based upon review of documentation submitted by Contractor. Such review shall take into consideration Contractor's net worth and reserves for payment of claims of liability against Contractor, which must be sufficient to adequately compensate for the lack of other insurance coverage required hereunder.

g. All general liability policies shall be written to apply to all bodily injury, including death, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, and shall specifically insure the performance by Contractor of that part of the indemnification contained in Article 25 hereof, relating to liability for injury to or death of persons and damage to property. If the coverage contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any aggregate limit has been paid or reserved, District may require additional coverage to be purchased by Contractor to restore the required limits. Contractor may combine primary, umbrella, and as broad as possible excess liability coverage to achieve the total limits indicated above. Any umbrella or excess liability policy shall include the additional insured endorsement, products and completed operations coverage and broad form property damage described in paragraphs (d) and (e), above. To the extent that the umbrella insurer requires notice of changes to the primary policy, notice will be considered to be given and not prejudice the District's rights to recover under the umbrella policy.

h. Contractor and District release each other, and their respective authorized representatives, from any Claims (as further defined in Article 25), but only to the extent that the proceeds received from any policy of liability insurance carried by District or Contractor, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of liability insurance provided by Contractor hereunder shall be a standard waiver of rights of subrogation against District by the insurance company issuing said policy or policies.

i. If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

1. The policy retroactive date coincides with or precedes Contractor's commencement of work under the Contract (including subsequent policies purchased as renewals or replacements).
2. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Contract, including the requirement of adding all additional insureds.
3. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Contract.
4. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

j. Contractor's failure to procure the insurance specified herein, or failure to deliver certified copies or appropriate certificates of such insurance, or failure to make the premium payments required by such insurance, shall constitute a material breach of the Contract, and District may, at its option, terminate the Contract for any such default by Contractor.

k. The requirements as to the types and limits of insurance coverage set forth herein and in the Special Conditions to be maintained by the Contractor, and any approval of said insurance by the District or its insurance advisor(s), are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to the Agreement, including, but not limited to, the provisions concerning indemnification.

l. District shall retain the right at any time to review the coverage, form, and amount of insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required.

m. All deviations from the contractual insurance requirements stated herein must be approved in writing by District's risk manager.

#### **Article 26 AUTOMOBILE LIABILITY INSURANCE**

Contractor shall take out and maintain at all times during the term of this Contract Automobile Liability Insurance in the amount of at least one million dollars (\$1,000,000). Such insurance shall provide coverage for bodily injury and property damage including coverage for non-owned and hired vehicles, in a form and with insurance companies acceptable to the District.

#### **Article 27 BUILDER'S RISK/APPLICABLE INSTALLATION/FIRE INSURANCE**

a. It is the Contractor's responsibility to maintain or cause to be maintained builder's risk insurance or applicable installation coverage on all work, material, equipment, appliances, tools, and structures which are a part of the Contract and subject to loss or damage by fire, extended coverage, and vandalism and malicious mischief. District accepts no responsibility until the Contract is formally accepted by the Governing Board for the Work. The Contractor is required to file with the District a certificate evidencing builder's risk or applicable installation of not less than the amount identified in the Special Conditions insurance coverage.

b. Provide insurance coverage on completed value form, all-risk or special causes of loss coverage.

1. Insurance policies shall be so conditioned as to cover the performance of any extra work performed under the Contract.
2. Coverage shall include all materials stored on site and in transit.
3. Coverage shall include Contractor's tools and equipment.
4. Insurance shall include boiler, machinery, and material hoist coverage.

c. Company or companies providing insurance coverage shall be acceptable to the District and authorized to conduct business in the State of California.

**Article 28 PROOF OF CARRIAGE OF INSURANCE**

- a. Any insurance carrier providing insurance coverage required by the Contract Documents shall be admitted to and authorized to do business in the State of California unless waived, in writing, by the District Risk Manager. Carrier(s) shall have an A.M. Best rating of not less than an A:VIII. Insurance deductibles or self-insured retentions must be declared by the Contractor, and such deductibles and retentions shall have the prior written consent from the District. At the election of the District, the Contractor shall either 1) reduce or eliminate such deductibles or self-insured retentions, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.
- b. Contractor shall cause its insurance carrier(s) to furnish the District with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so in writing by the District Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. The District, its directors and officers, employees, agents or representatives shall be named as additional insureds and a waiver of subrogation shall be provided in favor of those parties. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that shall provide no less than thirty (30) days written notice be given to the District prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, the District may terminate or stop the Work pursuant to the Contract Documents, unless the District receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing the coverage set forth herein and the insurance required herein is in full force and effect. Contractor shall not take possession, or use the Project site, or commence operations under this Contract until the District has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance, including all endorsements and any and all other attachments as required in this Section. The original Endorsements for each policy and the Certificate of Insurance shall be signed by an individual authorized by the insurance carrier to do so on its behalf.
- c. It is understood and agreed to by the parties hereto and the insurance company(ies), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary, and the District's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory.
- d. The District reserves the right to adjust the monetary limits of insurance coverage during the term of this Contract, including any extension thereof, if in the District's reasonable judgment the amount or type of insurance carried by the Contractor becomes inadequate.
- e. Contractor shall pass down the insurance obligations contained herein to all tiers of sub-contractors working under this Contract.

**Article 29 INDEMNIFICATION**

Contractor shall defend (with counsel of District's choosing), indemnify and hold the District, its officials, officers, agents, employees, and representatives free and harmless from any and all



claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or equity, regardless of whether the allegations are false, fraudulent, or groundless, to property or persons, including wrongful death, to the extent arising out of or incident to any act, omission, breach, or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Work or this Contract, including claims made by subcontractors for nonpayment, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses, save to the extent that the District's active negligence or willful misconduct caused the harm. Contractor shall defend, at Contractor's own cost, expense and risk, with counsel of District's choosing, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the District, its officials, officers, agents, employees and representatives. To the extent of its liability, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against District, its officials, officers, employees, agents, employees and representatives, in any such suit, action or other legal proceeding. Contractor shall reimburse District, its officials, officers, agents, employees and representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

**Article 30 LAWS AND REGULATIONS**

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

**Article 31 PERMITS AND LICENSES**

Permits and licenses necessary for prosecution of The Work shall be secured and paid for by Contractor, unless otherwise specified in the Contract Documents.

- a. Contractor shall obtain and pay for all other permits and licenses required for the Work, including excavation permit and for plumbing, mechanical and electrical work and for operations in or over public streets or right of way under the jurisdiction of public agencies other than the District.
- b. The Contractor shall arrange and pay for all off-site inspection of the Work related to permits and licenses, including certification, required by the specifications, drawings, or by governing authorities, except for such off-site inspections delineated as the District's responsibility pursuant to the Contract Documents.
- c. Before acceptance of the Project, the Contractor shall submit all licenses, permits, certificates of inspection and required approvals to the District.

**Article 32 INSPECTION FEES FOR PERMANENT UTILITIES**

All inspection fees and other municipal charges for permanent utilities including, but not limited to, sewer, electrical, phone, gas, water, and irrigation shall be paid for by District. Contractor shall be

responsible for arranging the payment of such fees, but inspection fees and other municipal fees relating to permanent utilities shall be paid by District. Contractor may either request reimbursement from District for such fees, or obtain the funds from District prior to paying such fees.

**Article 33 EASEMENTS**

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

**Article 34 SURVEYS**

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

**Article 35 EXCISE TAXES**

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

**Article 36 PATENTS, ROYALTIES, AND INDEMNITIES**

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

**Article 37 MATERIALS**

- a. Except as otherwise specifically stated in this contract, Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, superintendency, temporary constructions of every nature, and all other services and facilities of every nature whatsoever necessary to execute and complete this Contract within specified time.
- b. Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of good quality.
- c. Materials shall be furnished in ample quantities and at such times as to insure uninterrupted progress of work and shall be stored properly and protected as required. Contractor shall be entirely responsible for damage or loss by weather or other causes to materials or work under this contract.
- d. No materials, supplies, or equipment for Work under this Contract shall be purchased subject to any chattel mortgage or under a conditional sale or other agreement by which an interest therein or in any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in work and agrees upon completion of all Work to deliver premises, together with all

improvements and appurtenances constructed or placed thereon by him, to District free from any claims, liens, or charges. Contractor further agrees that neither he nor any person, firm, or corporation furnishing any materials or labor for any Work covered by this Contract shall have any right to a lien upon premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivisions, title to which is commonly retained by the utility company or political subdivision. In event of installation of any such metering device or equipment, Contractor shall advise District as to owner thereof. Nothing contained in this article, however, shall defeat or impair right of persons furnishing material or labor under any bond given by Contractor for their protection or any rights under any law permitting such persons to look to funds due to Contractor in the hands of the District, and this provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.

- e. Materials shall be stored on the Project site in such manner so as not to interfere with any operations of the District or any independent contractor.

**Article 38 SUBSTITUTION AFTER CONTRACT IS AWARDED**

- a. Pursuant to Public Contract Code Section 3400(b) the District may make a finding that is described in the invitation for bids that designates certain products, things, or services by specific brand or trade name.
- b. Refer to Section 19 of the Information for Bidders.

**Article 39 SHOP DRAWINGS**

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

District, Contractor or separate contractors, while allowing sufficient time in the District's professional judgment to permit adequate review.

**Article 40 SUBMITTALS**

- a. Contractor shall furnish for approval, within eight (8) days following award of the Contract, a log of all samples, material lists and certifications, mix designs, schedules, and other submittals, as required in the specifications. Such log shall indicate whether samples will be provided as specified and in accordance with other provisions of this Contract.
- b. Contractor will provide samples and submittals, together with catalogs and supporting data required by District within a reasonable time period so as not to cause delays on the Project.
- c. This provision shall not authorize any extension of time for performance of this Contract. The District representative will check and approve such samples only for conformance with the design concept of the Work and for compliance with information given in Contract Documents. Work shall be in accordance with approved samples. District action will be taken within ten (10) calendar days after receiving such samples and submittals. If in the District's professional judgment ten (10) days is an insufficient amount of time to permit adequate review, District shall, within the initial ten (10) day period, notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond.
- d. If the District's response results in a change in the Project, then such change shall be effected by a written change order.

**Article 41 CLOSEOUT SUBMITTALS**

The Contractor shall be responsible for the timely delivery of the technical manuals, warranties and guarantees as required in the technical specifications. The final payment will not be made until the District representative has had an opportunity to review and accept the required documents.

**Article 42 COST BREAKDOWN AND PERIODICAL ESTIMATES**

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

**Article 43 PAYMENTS AND RETENTION**

- a. Each month as soon as practicable after receipt of approved periodical estimate for partial payment, but in order to avoid the payment of interest, in any event within thirty (30) days of receipt

of such periodical estimate, there shall be paid to Contractor a sum equal to ninety-five percent (95%) of the value of work performed up to the last day of the previous month, less the aggregate of previous payments. Upon receipt of a payment request, the District shall as soon as practicable determine whether the payment request is proper. If the request is determined not to be a proper payment request suitable for payment, it shall be returned to the Contractor as soon as practicable within seven (7) days after receipt and shall be accompanied by a statement in writing as to the reasons why the payment request is not proper. Monthly payments shall be made only on the basis of monthly estimates which shall be prepared by Contractor on a form approved by the District and filed before the fifth (5<sup>th</sup>) day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall operate to release Contractor or any bondsman from damages arising from such Work or from enforcing each and every provision of this Contract and District shall have the right subsequently to correct any error made in any estimate for payment. Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for Work performed so long as any lawful or proper direction given by the District concerning the Work, or any portion thereof, remains uncompleted with.

b. The final payment of five percent (5%) of the value of work done under this Contract, if unencumbered, shall be made within sixty (60) days after the date of completion of the Work, provided however, that in the event of a dispute between the District and the Contractor, the District may withhold from the final payment an amount not to exceed one hundred and fifty percent (150%) of the disputed amount. Completion means any of the following as provided by Public Contract Code section 7107:

1. The occupation, beneficial use, and enjoyment of a work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement.
2. The acceptance by the public agency, or its agent, of the work of improvement. For purposes of this Contract, the acceptance by the District means acceptance made only by an action of the governing body of District in session. Acceptance by Contractor of said final payment shall constitute a waiver of all claims against District arising from this contract.
3. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 100 days or more, due to factors beyond the control of the Contractor.
4. After the commencement of a work of improvement, a cessation of labor on the work of improvement for a continuous period of 30 days or more, if the public agency files for record a notice of cessation or a notice of completion.

c. This Contract is subject to the provisions of Public Contract Code section 7107.

d. At any time after fifty percent (50%) of the work has been completed, if the District, by action of its governing body, finds that satisfactory progress is being made, District may make any of the remaining payments in full for actual work completed or may withhold any amount up to five percent (5%) thereof as District may find appropriate based on the Contractor's progress.

e. Whenever any part of the Work is in a condition suitable for use, and the best interest of the District requires such use, the District may take possession of, connect to, open for public use, or

use a part thereof. When so used, maintenance and repairs due to ordinary wear and tear or vandalism will be made at District's expense. The use by the District as contemplated in this section shall in no case be construed as constituting acceptance of the Work or any part thereof. Such use shall neither relieve the Contractor of any of his responsibilities under the Contract nor act as a waiver by the District of any of the conditions thereof. Contractor shall continue to maintain all insurance, including Builder's Risk insurance, on the Project.

#### **Article 44 PAYMENTS WITHHELD**

In addition to amounts which the District may retain under other provisions of the Contract Documents, the District may withhold payments due to Contractor as may be necessary to cover:

- a. Stop Payment Notice Claims.
- b. Defective work not remedied.
- c. Failure of Contractor to make proper payments to its subcontractors or suppliers.
- d. Completion of the Contract if there exists a reasonable doubt that the Work can be completed for balance then unpaid.
- e. Damage to another contractor or third party.
- f. Amounts which may be due the District for claims against Contractor.
- g. Failure of Contractor to keep the record ("as-built") drawings up to date.
- h. Failure to provide updates on the construction schedule.
- i. Site clean-up.
- j. Failure of the Contractor to comply with requirements of the Contract Documents.
- k. Liquidated damages.
- l. Legally permitted penalties.

Upon completion of the Contract, the District will reduce the final Contract amount to reflect costs charged to the Contractor, back charges or payments withheld pursuant to the Contract Documents.

District may apply such withheld amount or amounts to payment of such claims or obligations at its discretion. In so doing, District shall be deemed the agent of Contractor and any payment so made by District shall be considered as a payment made under the Contract by District to Contractor and District shall not be liable to Contractor for such payments made in good faith. Such payments may be made without prior judicial determination of claim or obligations. District will render Contractor a proper accounting of such funds disbursed on behalf of Contractor.

#### **Article 45 CHANGES AND EXTRA WORK**

##### **a. CHANGES**

1) No Changes Without Authorization. There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Construction Change Directive, or order by the Architect for a minor change in the Work as herein provided. 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 the District's Governing Board has authorized the same and the cost thereof approved in writing by Change Order or executed Construction Change Directive. 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 Change Order. 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 45, all Change Orders shall be prepared and issued by the Architect and shall become effective when executed by the District's Governing Board, the Architect, the Contractor, and the DSA.

2) Architect Authority. The Architect will have authority to order minor changes in the Work not involving any adjustment in the Contract Sum, or an extension of the Contract Time, or a change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Change Order and shall be binding on the District and the Contractor. The Contractor shall carry out such written orders promptly.

**b. CHANGE ORDERS ("CO")**

1) A CO is a written instrument prepared by the Architect and signed by the District(as authorized by the District's Governing Board), the Contractor, the Architect, and the DSA (if necessary), stating their agreement upon all of the following:

- (a) A description of a change in the Work;
- (b) The amount of the adjustment in the Contract Sum, if any; and
- (c) The extent of the adjustment in the Contract Time, if any.

**c. CONSTRUCTION CHANGE DIRECTIVES**

1) Definition. A Construction Change Directive is a written order prepared by the Architect and signed by the District 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 Construction Change Directive, without invalidating the Contract, order 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. In the case of a Construction Change Directive being issued, Contractor must commence Work immediately or delays from failure to perform Construction Change Directive shall be the responsibility of the Contractor. Any dispute as to the sum of Construction Change Directive or timing of payment, shall be resolved pursuant to article 70.

2) Use to Direct Change. A Construction Change Directive shall be used in the absence of agreement on the terms of a CO. A copy of a proposed form is provided at the end of this Article.

**d. REQUEST FOR INFORMATION ("RFI")**

1) Definition. An RFI is a written request prepared by the Contractor requesting the Architect to provide additional information necessary to clarify or amplify an item that the Contractor believes is

not clearly shown or called for in the drawings or specifications, or to address problems that have arisen under field conditions.

2) **Scope.** The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Cost, Contract Time, or the Contract Documents.

3) **Response Time.** The Architect must respond to a RFI within a reasonable time after receiving such request. If the Architect’s response results in a change in the Work, then such change shall be effected by a written CO or Construction Change Directive, if appropriate. If the Architect cannot respond to the RFI within a reasonable time, not to exceed five (5) working days, the Architect shall notify the Contractor, with a copy to the Inspector and the District, of the amount of time that will be required to respond.

4) **Costs Incurred.** The Contractor shall be responsible for any costs incurred for professional services, which shall be deducted from the next progress payment, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request. District, at its sole discretion, shall invoice Contractor for all such professional services arising from this Article.

**e. REQUEST FOR PROPOSAL (“RFP”)**

1) **Definition.** An RFP is a written request prepared by the Architect requesting the Contractor to submit to the District and the Architect an estimate of the effect of a proposed change on the Contract Price and the Contract Time.

2) **Scope.** An RFP shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by section g below. The Contractor shall not be entitled to any Additional Compensation for preparing a response to an RFP, whether ultimately accepted or not.

**f. CHANGE ORDER REQUEST (“COR”)**

1) **Definition.** A COR is a written request prepared by the Contractor requesting that the District and the Architect issue a CO based upon a proposed change called for in an RFP or a claim pursuant to .

2) **Changes in Price.** A COR shall include breakdowns per section g below to validate any change in Contract Price due to proposed change or claim.

3) **Changes in Time.**

A COR shall also include any additional time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Project Schedule as defined in Paragraph 3.8 of the General Contract. Any changes in time will be granted only if there is an impact to the critical path. If Contractor fails to request a time extension in a COR, then the Contractor is thereafter precluded from requesting or claiming a delay.

**g. COST OF CHANGE ORDERS**



1) Scope.

Within ten (10) days after a request is made for a change that impacts the Contract Sum as defined in Paragraph 9.1, the critical path, or the Contract Time as defined in Article 10, the Contractor shall provide the District and the Architect, with a written estimate of the effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, and wage rates required for the change, and the effect upon the Contract Time of such CO. Changes may be made by District by an appropriate written CO, or, at the District's option, such changes shall be implemented immediately upon the Contractor's receipt of an appropriate written Construction Change Directive.

District may, as provided by law and without affecting the validity of this Agreement, order changes, modification, deletions and extra work by issuance of written Construction Change Directives from time to time during the progress of the Project, contract sum being adjusted accordingly. All such work shall be executed under conditions of the original Agreement except that any extension of time caused thereby shall be adjusted at time of ordering such change. District has discretion to order changes on a "time and material" basis with adjustments to time made after Contractor has justified through documentation the impact on the critical path of the Project.

2) Determination of Cost.

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

i. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. If an agreement cannot be reached within fifteen (15) days after submission and negotiation of Contractor's proposal, Contractor may submit pursuant to Paragraph 7.7.3. Submission of sums which have no basis in fact are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650 et. seq.);

ii. By unit prices contained in Contractor's original bid and incorporated in the Project documents or fixed by subsequent agreement between District and Contractor;

iii. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee. However, in the case of disagreement, Contractor must utilize the procedure under section 7.7.3; or

iv. By cost of material and labor and percentage of overhead and profit. If the value is determined by this method the following requirements shall apply:

1. Basis for Establishing Costs.

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

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

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

c. Tool and Equipment Rental. No payment will be made for the use of tools which have a replacement value of \$250 or less.

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

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

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

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

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

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

f. Overhead. Overhead, including direct and indirect costs, shall be submitted with the COR and include: home office overhead, off-site supervision, CO preparation/negotiation/research, time delays, Project interference and disruption, additional guaranty and warranty durations, on-site supervision, additional temporary protection, additional temporary utilities, additional material handling costs, and additional safety equipment costs.

### 3) Deductive Change Orders

All deductive Change Order(s) must be prepared pursuant to Paragraph 7.7.3. Contractor will be allowed a maximum of 5% total profit and overhead. If subcontractor work is involved, subcontractors shall be entitled to a maximum of 5% profit and overhead on the deducted work. Any deviation from this Article shall not be allowed.

4) Discounts, Rebates, and Refunds.

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Contractor, and the Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Work as provided herein.

5) Accounting Records.

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

6) Notice Required.

If the Contractor desires to make a claim for an increase in the Contract Price, or any extension in the Contract Time for completion, it shall notify the District pursuant to Article 70 and this Article. No claim shall be considered unless made in accordance with this subparagraph. Contractor shall proceed to execute the Work even though the adjustment may not have been agreed upon. A CO shall authorize any change in the Contract Price or extension of the Contract Time resulting from such claim.

7) Applicability to Subcontractors.

Any requirements under this Article 45 shall be equally applicable to COs or Construction Change Directives issued to Subcontractors by the Contractor to the same extent required by the Contractor.

8) Alteration to Change Order Language.

Contractor shall not alter Change Orders or reserve time in Construction Change Directives. Contractor shall execute finalized Change Orders and proceed under section f(6) above and Articles 70 with proper notice. If Contractor intends to reserve time, without an approved critical path method schedule prepared pursuant to Article 11 then Contractor may be prosecuted pursuant to the False Claim Act.

**Article 46 DEDUCTIONS FOR UNCORRECTED WORK**

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

**Article 47 PAYMENTS BY CONTRACTOR**

Contractor shall pay:

- a. For all transportation and utility services, not later than the 20th day of the calendar month following that in which such services are rendered,

b. For all materials, tools, and other expendable equipment to the extent of ninety percent (90%) of cost thereof, not later than the 20th day of the calendar month following that in which such materials, tools, and equipment are delivered at the site of the Project and balance of cost thereof not later than the 30th day following completion of that part of Work in or on which such materials, tools, and equipment are incorporated or used, and

c. To each of his subcontractors, not later than the 5th day following each payment to Contractor, the respective amounts allowed Contractor on account of work performed by respective subcontractor to the extent of such subcontractor's interest therein. The Contractor shall, by appropriate agreement with each subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

**Article 48 CONTRACTOR'S SUPERVISION**

a. Unless personally present on the premises where the Work is being done, Contractor shall keep on the Work, during its progress, a competent full-time job (project) superintendent satisfactory to District. The job superintendent shall not be changed except with the written consent of the District unless the job superintendent proves to be unsatisfactory to Contractor and ceases to be in his employ. The job superintendent shall represent Contractor in his absence and all directions given to him shall be as binding as if given to Contractor. Other directions shall be so confirmed on written request in each case.

b. Contractor shall give efficient supervision to the Work, using his best skill and attention to control safety and job coordination. He shall carefully study and compare all drawings, specifications, and other instructions and shall at once report to District any error, inconsistency or omission which he may discover. The Contractor shall not be liable to District for any damage resulting from errors or deficiencies in the Contract Documents or other instructions by the District.

**Article 49 LABOR COMPLIANCE MONITORING AND ENFORCEMENT**

a. Contractor/Subcontractor Registration. A Contractor or Subcontractor shall not be qualified to bid on, be listed on a bid proposal (subject to the requirements of Public Contract Code section 4104), or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5, except under the limited circumstances set forth in Labor Code section 1771.1(a). The District may not accept a bid or enter into a contract for a public works project with an unregistered contractor.

b. Compliance Monitoring and Enforcement. Pursuant to Labor Code section 1771.4, this Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each Contractor and Subcontractor performing work on the Project shall be required to comply with the provisions of the California Labor Code, beginning with section 1720, and the regulations of the Department of Industrial Relations' Division of Labor Standards Enforcement (i.e., the Labor Commissioner), including, but not limited to, the standard provisions requiring payment of prevailing wages, maintenance and submission of certified payroll records, and the hiring of apprentices as appropriate. Unless otherwise specified, the Contractor shall be required to post job site notices regarding the requirements of this paragraph, as prescribed by regulation. Contractor and each Subcontractor shall be required to furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner at least monthly, or

more frequently if specified in the Contract Documents, and in a format prescribed by the Labor Commissioner.

c. Contractor shall be required to post a notice at the Project site in accordance with Title 8 of the California Code of Regulations, Section 16451.

#### **Article 50 DOCUMENTS ON WORK**

a. Contractor shall keep one copy of all Contract Documents, including addenda, change orders, Division I, Title 21 of the California Code of Regulations, Parts 1-5 and 12 of Title 24 of the California Code of Regulations, and the prevailing wage rates applicable at the time of the Contract, which are a part of Contract Documents, on the job at all times. Said documents shall be kept in good order and shall be available to the District and District representative. Contractor shall be acquainted with and comply with the provisions of said Titles 21 and 24 as they relate to this Project. (See particularly Duties of the Contractor, Title 24 California Code of Regulations, section 4-343.) Contractor shall also be acquainted with and comply with all California Code of Regulations provisions relating to this project, particularly Titles 17, 19, 21 and 24.)

a. Contractor shall also make available all books, records, accounts, contracts, bids, etc. upon request by the District.

#### **Article 51 RECORD ("AS BUILT") DRAWINGS**

a. Contractor shall maintain a clean, undamaged set of Contract drawings and shop drawings. In addition to maintaining one complete set of record drawings (herein referred to as "as-builts"), Contractor shall require each trade to do its own as-builts. The trade as-builts shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the District's representative or the District. Contractor shall mark the set to show the actual installation where the installation varies from the Work as originally shown. Contractor shall mark whichever drawings are most capable of showing conditions fully and accurately where shop drawings are used, and shall record a cross-reference at the corresponding location on the Contract drawings. Contractor shall give particular attention to concealed elements that would be difficult to measure and record at a later date. Contractor shall use colors to distinguish variations in separate categories of the work.

b. Contractor shall note related change order numbers where applicable. Contractor shall organize record drawings sheets into manageable sets, bound with durable paper cover sheets and shall print suitable title, dates and other identification on the cover of each set.

c. At the end of the Project, the Contractor shall provide the District representative with a complete set of as-built drawings. The complete set shall contain information showing clean and clear drawings with horizontal and vertical controls suitable for conversion to electronic media. Graphic quality must be equal to clean and clear original drawings; adequacy of the drawings shall be determined by the District's representative or District. The as-builts must show the entire site for each major trade, including but not limited to water, sewer, electrical, data, telephone, cable, fire, alarm, gas, and plumbing.

**Article 52 UTILITY USAGE**

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

**Article 53 SANITARY FACILITIES**

Contractor shall provide sanitary temporary toilet buildings for the use of all workers. All toilets shall comply with local codes and ordinances. Toilets shall be kept supplied with toilet paper and shall have workable door fasteners. Toilets shall be serviced no less than once weekly and shall be present in a quantity of not less than 1 per 20 workers as required by CAL-OSHA regulation. The toilets shall be maintained in a sanitary condition at all times. Use of toilet facilities in The Work under construction shall not be permitted. Any other sanitary facilities required by CAL-OSHA shall be the responsibility of the Contractor.

**Article 54 TRENCHES AND EXCAVATION**

- a. Trenches and Excavations Five Feet or More in Depth. 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. If the plan varies from shoring system standards, the plan shall be prepared by a registered civil or structural engineer. The plan shall not be less effective than the shoring, bracing, sloping, or other provisions of the Construction Safety Orders, as defined in the California Code of Regulations. 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.
- b. Trenches and Excavations Deeper than Four Feet. If Work under this Contract involves digging trenches or other excavation that extends deeper than four feet below the surface, Contractor shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any:
  - 1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, 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, or water table issues that impede construction or increase the construction cost.
- 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

The District shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or do involve hazardous waste, and cause a decrease or increase in 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 in these General Conditions. If asbestos-related work or hazardous substance removal is required that is not disclosed in the Contract Documents, such work shall be performed pursuant to a contract separate from any other Work to be performed as required by Section 25914.2 of the Health and Safety Code, as may be amended from time to time.

In the event that a dispute arises between the District and the Contractor as to 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. Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the parties.

**Article 55 PROTECTION OF WORK AND PROPERTY**

- a. The Contractor shall be responsible for all damages to persons or property that occur as a result of his fault or negligence arising from or in connection with the prosecution of this Contract. Contractor shall be responsible for the proper care and protection of all materials delivered and work performed until completion and final acceptance by the District. All work shall be solely at the Contractor's risk. Contractor shall adequately protect adjacent property from settlement or loss of lateral support as provided by law and the Contract Documents. Contractor shall take all necessary precautions for the safety of employees on the project and shall comply with all applicable safety laws and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where work is being performed. Contractor shall erect and properly maintain at all times, as required by conditions and progress of work, all necessary safeguards, signs, barriers, lights, and watchmen for protection of workers and the public and shall post danger signs warning against hazards created by such features in the course of construction. Contractor shall designate a responsible member of his organization on the Work, whose duty shall be prevention of accidents. The name and position of the person so designated shall be reported to the District by Contractor.
- b. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from the District, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury, and he shall so act, without appeal, if so authorized or instructed by the District. Any compensation claimed by Contractor on account of emergency work shall be determined by agreement.
- c. Contractor shall provide such heat, covering, and enclosures as are necessary to protect all work, materials, equipment, appliances, and tools against damage by weather conditions.
- d. Contractor shall take adequate precautions to protect existing sidewalks, curbs, pavements, utilities, adjoining property, and structures, and to avoid damage thereto, and repair any damage thereto caused by construction operations. Contractor shall:

1. Enclose the working area with a substantial barricade, arrange work to cause minimum amount of inconvenience and danger to students and faculty in their regular school activities, and perform work which so as to not interfere with school routine before or after school hours. (This subsection applies to new construction on existing sites.)
2. Provide substantial barricades around any shrubs or trees indicated to be preserved.
3. Deliver materials to the building area over a route designated by the District.
4. When directed by the District, take preventive measures to eliminate objectionable dust.
5. Confine Contractor's apparatus, the storage of materials, and the operations of his workers to limits indicated by law, ordinances, permits, or directions of District. Contractor shall not unreasonably encumber the premises with his materials. Contractor shall enforce all instructions of the District regarding signs, advertising, fires, danger signals, barricades, and smoking and require that all persons employed on work comply with all regulations while on the construction site.
6. Take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed by accident, they shall be replaced by an approved civil engineer or land surveyor, licensed in the State of California, at no cost to the District.

#### **Article 56 LAYOUT AND FIELD ENGINEERING**

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

#### **Article 57 REMOVAL OF HAZARDOUS MATERIALS**

- a. Since removal and/or abatement of asbestos, PCBs and other toxic wastes and hazardous materials is a specialized field of work with specialized insurance requirements, unless otherwise specified in the Contract Documents, the District shall contract directly for such specialized services, if required, and shall not require the Contractor to subcontract for such services.
- b. In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the District, inspector, and District in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the District and Contractor if in fact the material is asbestos or PCB and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or PCB, or when it has been rendered harmless, by written agreement of the District and Contractor.

#### **Article 58 CUTTING AND PATCHING**

- a. Contractor shall do all cutting, fitting, or patching of work as required to make its several parts come together properly and fit it to receive or be received by work of other contractors



showing upon, or reasonably implied by, the drawings and specifications for the completed structure. Contractor shall make good after them as District may direct.

b. All cost caused by defective or ill-timed work shall be borne by party responsible therefore.

c. Contractor shall not endanger any work by cutting, excavating, or otherwise altering work and shall not cut or alter work of any other contractor save with consent or at the direction of the District.

#### **Article 59 CLEANING UP**

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

#### **Article 60 CORRECTION OF WORK BEFORE FINAL PAYMENT**

a. Contractor shall promptly remove from the premises all Work condemned by District as failing to conform to the Contract Documents, whether incorporated or not. Contractor shall promptly replace and re-execute his own Work to comply with contract documents without additional expense to the District and shall bear the expense of making good all work of other contractors destroyed or damaged by such removal or replacement.

b. If Contractor does not remove such condemned Work within a reasonable time, fixed by written notice, District may remove it and may store the material at Contractor's expense. If Contractor does not pay expenses of such removal within ten (10) days' time thereafter, District may, upon ten (10) days' written notice, sell such materials at auction or at private sale and shall account for net proceeds thereof, after deducting all costs and expenses that should have been borne by Contractor.

#### **Article 61 ACCESS TO WORK**

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

#### **Article 62 COMPLETION OF THE WORK**

a. **Completion.**

1. Final Acceptance of the Project by the District recording of the Notice of Completion shall occur when Project Completion has been achieved.

2. Final Acceptance of the Project may only be confirmed by action of the governing board of the District.

3. District, at its sole option, may have the Notice of Completion recorded when Substantial Completion has been achieved. If Contractor fails to complete all Punch List items within thirty (30) Days after the date of the District's recording of the Notice of Completion under this paragraph, District shall withhold from the Final Payment one hundred fifty percent (150%) of the District's estimate of the amount required to complete the Punch List items, based upon the Schedule of Values, until the Punch List item(s) are completed.

4. At the end of the thirty (30) Day period, if there are any Punch List items remaining to be corrected, District may elect to perform the Punch List items and to deduct the actual amount of the costs incurred by the District from the Punch List.

**b. Closeout Procedures.**

1. Contractor shall comply with all the Closeout Procedures set forth in this Section provided however, that the Architect of Record shall perform and comply with all requirements of the DSA Closeout.

2. Punch List. The Contractor shall give Notice to the Architect of Record when Contractor considers the Work to be Substantially Complete. Upon receipt of such Notice, AOR will prepare a list of minor items to be completed or corrected ("Punch List"). The Contractor and/or its Subcontractors shall proceed promptly to complete and correct items on the Punch List within thirty (30) Days of Contractor's receipt of the Punch List from the AOR. Failure to include an item on Punch List does not alter the responsibility of the Contractor to complete all Work substantially in accordance with the Contract Documents.

3. Closeout Requirements.

i. Utility Connections. 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.

ii. Record Drawings. Contractor shall provide Record Drawings for the Work reflected in the Drawings, Contractor shall provide Record Drawings for the Work reflected in the Drawings in accordance with the Contract Documents upon Project Completion. Contractor shall correct any material inaccuracies in the Record Drawings, discovered within the warranty period described in Contract Documents. Upon Project Completion and as a condition precedent to the Approval of the final Application for Tenant Improvement Payment, Contractor shall obtain the IOR's Approval of the Record Drawings. Once Approved by the IOR, Contractor shall deliver to the District Approved Record Drawings on a diskette, CD or other data storage device in AutoCAD format, except for the Record Drawings reflecting the Work included in the Drawings which shall be provided to District in one (1) hard copy.

iii. Closeout Documentation: Except for the DSA Closeout, Contractor shall provide closeout documentation (the "Closeout Documentation"), as follows:

a. The Record Drawings.

b. All maintenance manuals, operations manual(s), and related information provided by equipment vendors.

c. All warranties described in the Drawings and Specifications or otherwise provided by the applicable vendors.

iv. The AOR shall obtain all verified report(s) for all scope(s) of work (DSA-6 Verified Report, Rev 04/08, or more recent revision if available), final Approval from DSA and certified DSA Closeout.

**c. Final Inspection.**

1. Contractor shall comply with Punch List procedures, and maintain the presence of its project superintendent and project manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Contractor shall not demobilize its forces prior to completion of the Punch List. Upon receipt of Contractor's Notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and Final Acceptance, Architect of Record and Inspector of Record will inspect the Work and shall submit to Contractor and District a final inspection report noting the Work, if any, required in order to achieve Project Completion. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

2. Upon Contractor's completion of all items remaining on the Punch List and any other uncompleted portions of the Work, the Contractor shall notify the District and AOR, who shall again inspect such Work. If the Architect of Record finds the Work substantially in accordance with the Drawings and Specifications, the AOR will notify the District and the Contractor that Project Completion has been achieved. Contractor shall then jointly submit to the AOR and the District its final Application for Tenant Improvement Payment.

3. Final Inspection Requirements. Before calling for final inspection, Contractor shall determine that the following have been performed:

- i. The Work has been completed substantially in accordance with the Drawings and Specifications.
- ii. All life safety items are completed and in working order.
- iii. Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.
- iv. Electrical circuits are scheduled in panels and disconnect switches are labeled.
- v. Painting and special finishes are completed.
- vi. Doors are complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.
- vii. Tops and bottoms of doors are sealed.
- viii. Floors are waxed and polished as specified.
- ix. Broken glass is replaced and glass cleaned.
- x. Grounds are cleared of Contractor's equipment, raked clean of construction debris left by Contractor, and trash left by Contractor or its Subcontractors is removed from Site.
- xi. Work is cleaned, free of stains, scratches, and other foreign matter, with damaged and broken material replaced.
- xii. Finished and decorative work shall have marks, dirt, and superfluous labels removed.

d. **Costs of Multiple Inspections.** If Contractor requests more than three (3) final inspections, The District shall be entitled to adjust the Project Cost by the amount of the actual costs, incurred by the District, if any, for the AOR, IOR and/or Special Inspector(s) to perform such additional final inspections, as evidenced by a Change Order executed by the District and the Contractor.

e. **Beneficial Occupancy or Use Prior to Project Completion.**

1. District's Rights to Beneficial Occupancy or Use. The District may, at its sole discretion, take Beneficial Occupancy of any completed or partially completed portion of the Project at any stage during the execution of the Work, provided that such Beneficial Occupancy or use is permitted by applicable jurisdictional authorities, is Approved by DSA and does not interfere with Contractor's ongoing prosecution of the Work. Beneficial Occupancy of the Project, in whole or in part, by District shall not constitute Final Acceptance of the Work which does not conform to the Drawings and Specifications, nor relieve the Contractor or the Contractor's performance bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated in the Work. In the event of District taking Beneficial Occupancy of any completed or partially completed portion of the Project, the District and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to allocation of responsibilities resulting from District's taking of Beneficial Occupancy shall be resolved pursuant to the Claims and Disputes provisions set forth in Article 25 hereof. During the dispute process, the District shall have the right to Beneficial Occupancy or use of any portion of the Project that it needs or desires to use.

2. Inspection Prior to Beneficial Occupancy or Use. Immediately prior to taking of Beneficial Occupancy of any completed or partially completed portion of the Project, the District, the Contractor, and the Architect of Record shall jointly inspect the area to be occupied or portion of the Project to be used in order to determine and record the condition of the Work.

3. No Waiver. Unless otherwise agreed upon, partial or entire Beneficial Occupancy of any completed or partially completed portion of the Project shall not in of itself constitute District's Final Acceptance of the Work that does not substantially comply with the requirements of the Contract Documents.

**Article 62 SOILS INVESTIGATION REPORT**

Unless otherwise specifically provided, when a soils investigation report obtained from test holes at the site is available, such report shall not be a part of this Contract. Nevertheless, with respect to any such soils investigation and/or geotechnical report regarding the site, it shall be the responsibility of the Contractor to review and be familiar with such report. Any information obtained from such report or any information given on drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, and does not form a part of the Contract, unless otherwise specifically provided. Contractor is required to make a visual examination of site and must make whatever tests he deems appropriate to determine the underground condition of the soil. Limited soil tests and subsurface investigations, if any, are available for review and consideration by Contractor and were conducted for the purpose of design only. Subsurface investigation information is made available by District solely as a matter of convenience and general information for Contractor and Contractor is expected to review and be familiar with such information. No representation is made by the District or its representatives that information provided is completely representative of all conditions and materials which may be encountered. If such a report is referenced in the Contract Documents for performance of the Work, such reference shall be to establish minimum requirements only. Further, no representation is made by the District or its representatives that information provided is solely adequate for purposes of construction. District disclaims responsibility for interpretations by Contractor of soil and subsurface investigation information, such as in protecting soil-bearing values, rock profiles, presence and

scope of boulders and cobbles, soil stability and the presence, level and extent of underground water. Contractor shall determine the means, methods, techniques and sequences necessary to achieve required characteristics of completed Work. Conditions found after execution of the Agreement to be materially different from those reported and which are not customarily encountered in the geographic area of the Work shall be governed by provisions of the General Conditions of the Contract for unforeseen conditions.

**Article 63 DISTRICT'S STATUS**

a. In general and where appropriate and applicable, the District's Director of Maintenance and Operation shall be the District's representative during the construction period and shall observe the progress and quality of the Work on behalf of the District. He shall have the authority to act on behalf of District only to the extent expressly provided in the Contract Documents. After consultation with the Inspector and after using his best efforts to consult with the District, the District 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.

b. Contractor further acknowledges that the District shall be, in the first instance, the judge of the performance of this Contract.

**Article 64 DISTRICT'S DECISIONS**

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

**Article 65 PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

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

**Article 65 LABOR/EMPLOYMENT SAFETY**

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.).

**Article 67 ASSIGNMENT OF ANTITRUST ACTIONS**

Pursuant to Public Contract Code Section 7103.5, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor 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, section 15) or under the Cartwright Act (chapter 2 (commencing with section 16700) of part 2 of division 7 of the Business and Professions Code), arising from the purchase of goods, services, or materials pursuant to this Contract or any subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor, without further acknowledgment by the parties.

**Article 68      SUBSTITUTION OF SECURITY**

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

1.      The Contractor shall bear the expense of the District and the escrow agent, either the District or the bank, in connection with the escrow deposit made.

2.      Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to the Contractor pursuant to this section.

3.      The Contractor shall enter into an escrow agreement satisfactory to the District, which agreement shall include provisions governing inter alia:

- (a)      The amount of securities to be deposited,
- (b)      The providing of powers of attorney or other documents necessary for the transfer of the securities to be deposited,
- (c)      Conversion to cash to provide funds to meet defaults by the Contractor, including, but not limited to, termination of the Contractor's control over the work, stop payment notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the contract,
- (d)      Decrease in value of securities on deposit,
- (e)      The termination of the escrow upon completion of the contract.

4.      The Contractor shall obtain the written consent of the surety to such agreement.

5.      As an alternative to Contractor depositing into escrow securities of a value equivalent to the amounts of retention to be paid to the Contractor, upon Contractor's request, District will make payment of retentions earned directly to the escrow agent at the expense of Contractor pursuant to and in accordance with Public Contract Code section 22300.

**Article 69      COMPLIANCE WITH STATE STORM WATER PERMIT FOR CONSTRUCTION**

a.      The Contractor shall be required to comply with all conditions of the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with Construction Activity (Permit) for all construction activity which results in the disturbance of in excess of one acre of total land area or which is part of a larger common area of development or sale. The Contractor shall be responsible for filing the Notice of Intent and for obtaining the Permit. The Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) prior to initiating Work. It shall be Contractor's responsibility to evaluate the cost of compliance with the SWPPP in bidding on this Contract. Contractor shall comply with all

requirements of the State Water Resources Control Board. Contractor shall include all costs of compliance with specified requirements in the Contract amount.

b. Contractor shall be responsible for implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, monitoring and reporting requirements as required by the Permit. Contractor shall provide copies of all reports and monitoring information to the District.

c. Contractor shall comply with the lawful requirements of any applicable municipality, the County, drainage district, and other local agencies regarding discharges of storm water to separate storm drain system or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

d. Failure to comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless 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 District, its Board members, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the Permit arising out of or in connection with the Project, except for liability resulting from the negligence or willful misconduct of the District, its Board members, officers, agents, employees or authorized volunteers. District may seek damages from Contractor for delay in completing the Contract in accordance with Article 6 hereof, caused by Contractor's failure to comply with the Permit.

## **Article 70     DISPUTES**

a. **Decision of Architect.** Disputes between District and Contractor involving money or time, including those alleging an error or omission by the Architect, shall be referred initially to the Architect, through the Construction Manager, for action as provided in Article 70 section (b) below. A decision by the Architect, as provided in Article 70 section (e) below, shall be required as a condition precedent to proceeding with remedies set forth in Article 70 section (f) as to all such matters arising prior to the date final payment is due, regardless of whether such matters relate to execution and progress of the Work, or the extent to which the Work has been completed. The decision by the Architect in response to a Claim shall not be a condition precedent to the remedies under Article 70 section (b) through (e) in the event: (1) the position of Architect is vacant; (2) the Architect has not received evidence or has failed to render a decision within agreed time limit; (3) the Architect has failed to take action required under Article 70 section (d) within thirty (30) days after the Claim is made, forty-five (45) days have passed after the Claim has been referred to the Architect; or (4) the Claim relates to a Stop Notice Claim not arising from any extra change or Construction Change Directive for which approval has not been provided.

b. **Architect's Review.** The Architect and/or Construction Manager will review claims and take one or more of the following preliminary actions within ten (10) days of receipt of a claim: (1) request additional supporting data from the claimant; (2) submit a schedule to the parties indicating when the Architect and/or Construction Manager expects to take action; (3) reject the claim in whole or in part, stating reasons for rejection; (4) recommend approval of the claim; or (5) suggest a compromise. The Architect and/or Construction Manager may also, but is not obligated to, notify the surety, if any, of the nature and amount of the claim.

c. **Documentation if Resolved.** If a claim has been resolved, the Architect and/or Construction Manager will prepare or obtain appropriate documentation.

d. **Actions if Not Resolved.** If a claim has not been resolved and all documentation requested pursuant to Paragraph 4.5.2 has been provided, the party making the claim shall, within ten (10) days after the Architect's and/or the Construction Manager's preliminary response, take one or more of the following actions: (1) modify the initial claim; (2) notify the Construction Manager that the initial claim stands; or (3) supplement with additional supporting data.

e. **Architect's Written Decision.** If a claim has not been resolved after consideration of the foregoing and of other evidence presented by the parties or requested by the Architect and/or Construction Manager, the Architect and/or Construction Manager will notify the parties in writing that the Architect's decision will be made within twenty (20) days. Upon expiration of such time period, the Architect will render to the parties its written decision relative to the claim, including any change in the Contract Sum or Contract Time or both. The Architect and/or Construction Manager may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

f. **Continuing Contract Performance.** Pending final resolution of a Claim, including, negotiation, mediation, arbitration, or litigation, the Contractor shall proceed diligently with performance of the Contract, and the District shall continue to make any undisputed payments in accordance with the Contract. If the dispute is not resolved, Contractor agrees it will neither rescind the contract nor stop the progress of the work, but Contractor's sole remedy shall be to submit such controversy to determination by a court of competent jurisdiction in the county where the Project is located, after the Project has been completed, and not before. At the District's sole option, the District may submit individual disputes for binding arbitration and Contractor agrees to the resolution determined for each individual dispute by Arbitrator, including resolution of time and delays. If binding arbitration is utilized for individual disputes, such resolution is full and final as to that particular claim.

g. **Claims for Extension of Time.** If Contractor and District cannot agree upon an extension of time, whether compensable or not, then Contractor must have first completed the procedures set forth in Article 10. Upon completion of the procedures set forth under Article 10, Contractor must then comply with the requirements in this Article including those set forth under section h below.

h. **Claims Procedures.**

1. Procedure applicable to all Claims:

- i. Notwithstanding any other language in the Contract Documents, claims between the District and the Contractor shall first be resolved using the procedures set forth at Public Contract Code §9204. "Claims" are defined for this Article, pursuant to Public Contract Code §9204, as a separate demand by the Contractor for one of the following: a time extension for relief from penalties for delay; payment of money or damages arising from work done; or payment of an amount disputed by the District.
- ii. Upon receiving a claim sent by registered or certified mail, the District must review and provide a written response within forty-five (45) days that identifies the disputed and undisputed portions of the claim. The forty-five (45) day period to respond may be extended by mutual agreement. The claim is deemed rejected in its entirety if the District does not issue a response. Any payment due on an undisputed portion of the claim must be processed within sixty (60) days after the District's response. If a claimant disputes the District's response or lack thereof, the claimant may demand to meet and confer for settlement of the issues in dispute. Any portion of a claim that remains in dispute after a meet and confer conference will be subject to



nonbinding mediation process, as described in Public Contract Code §9204. Undisputed and unpaid claims accrue interest at 7% per annum. A subcontractor or lower tier subcontractor may make a claim to the District through the Contractor, as specified in Public Contract Code §9204. However, the procedures in this section shall not supersede the requirements of the Contract Documents with respect to the Contractor's notification to the District of such claim or extend the time for the giving of such notice as provided in the Contract Documents.

- iii. Public work claims of \$375,000 or less between the Contractor and the District are subject to the provisions of Article 1.5 (commencing with §20104) of Chapter 1 of Part 2 of the Public Contract Code ("Article 1.5 claim"). For purposes of Article 1.5 this Article, "public work" has the same meaning as set forth in §§3100 and 3106 of the Civil Code.
- iv. All claims shall be submitted on or before the date of the Final Payment and shall include all documents necessary to substantiate the claim. District shall respond in writing within 45 days of receipt of claim if the claim is less than or equal to \$50,000 ("50,000 claim") or within 60 days if the claim is over \$50,000 but less than or equal to \$375,000 ("50,000 - \$375,000 claim"). In either case, District may request in writing within 30 days of receipt of claim any additional documentation supporting the claim or relating to any defenses to the claim which the District may have against the Contractor. Any additional information shall be requested and provided upon mutual agreement of the District and the Contractor. District's written response to the claim shall be submitted to Contractor within 15 days after receipt of the further documentation for \$50,000 claims or within 30 days after receipt of the further documentation for \$50,000 - \$375,000 claims or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
- v. Within 15 days of receipt of the District's response, if Contractor disputes the District's written response, or within 15 days of the District's failure to respond within the time prescribed, the Contractor shall provide written notification to District demanding an informal conference to meet and confer to be scheduled by District within 30 days. Following the meet and confer conference, if any claim or portion remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with §900) and Chapter 2 (commencing with §910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the period of time within which a claim must be filed is tolled from the time the claimant submits a written claim pursuant to this section until the time that claim is denied as a result of the conference process, including any period of time utilized by the meet and confer process.
- vi. Pursuant to Public Contract Code §20104.2(f), this section does not apply to tort claims and does not change the period for filing claims or actions specified by Chapter 1 (commencing with §900) and Chapter 2 (commencing with §910) of Part 3 of Division 3.6 of Title 1 of the Government Code.
- vii. If a civil action is filed, within 60 days, but no earlier than 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. The mediation process shall

provide that both parties select a disinterested third person mediator within 15 days, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days of the commencement of the mediation unless time is extended upon a good cause showing to the court or by stipulation of the parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

- viii. If the matter remains in dispute, the case shall be submitted to judicial arbitration as set forth in Public Contract Code §§20104.4 (b)(1) through (b)(3).
- ix. For any claim in excess of \$375,000, the Contractor and the District shall follow the same process as for an Article 1.5 claim. The District will forward a response within 60 days of submittal of any such claim. Judicial arbitration is not required for claims in excess of \$375,000.
- x. In addition, for all unresolved claims that the Contractor wishes to pursue, the Contractor shall file a timely claim pursuant to the Government Claims Act and shall otherwise comply with the procedures set forth in that Act prior to commencing any litigation against the District. The accrual date for any such claim is the date the dispute or controversy first arose regarding the issues raised in the claim.
- xi. "The date of Final Payment," as used in this Article 50, means the date the public entity is required to release retention proceeds in accordance with Public Contract Code §7107 regardless of whether any payment is made to the Contractor at that time.
- xii. The claims required by this Article are jurisdictional and conditions precedent to the commencement of any further legal proceedings. Strict compliance with all filing deadlines is mandatory.

**Article 71 – [Intentionally Blank]**

**Article 72 GOVERNING LAW AND VENUE**

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

**Article 73 FINGERPRINTING**

The determination of fingerprinting requirements are set forth in the Special Conditions.

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

If the District determines based on the totality of the circumstances concerning the Project that the Contractor and Contractor's employees are subject to the requirements of Education Code section 45125.2 pertaining to Contracts for Construction, Reconstruction, Rehabilitation or Repair of a School Facility because they will have contact other than limited contact with pupils, by execution of the Contract, the Contractor acknowledges that Contractor is entering into a contract for the construction, reconstruction, rehabilitation, or repair of a school facility where the Contractor and/or

Contractor's employees will have more than limited contact with students and the services to be provided do not constitute an emergency or exceptional situation. In accordance with Education Code section 45125.2 the Contractor shall, at Contractor's own expense, (a) install a physical barrier to limit contact with students by Contractor and/or Contractor's employees, or (b) provide for the continuous supervision and monitoring of the Contractor and/or Contractor's employees by an employee of the Contractor who has received fingerprint clearance from the California Department of Justice, or (c) provide for the surveillance of the Contractor and Contractor's employees by a District employee; and (d) Contractor and Contractor's employees shall not use student restroom facilities;

(b) **Contracts for Construction, Reconstruction Rehabilitation or Repair of a School Facility Involving Only Limited Contact With Students.**

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

**Article 74 COMPLIANCE WITH DTSC GUIDELINES – IMPORTED SOILS**

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

**Article 75 NO ASBESTOS**

a. The Contractor will be required to execute and submit a Certificate Regarding Non-Asbestos Containing Materials.

b. 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:

1. 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).

2. 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.

3. The asbestos consultant shall be chosen and approved by the District which shall have sole discretion and final determination in this matter.

4. The work will not be accepted until asbestos contamination is reduced to levels deemed acceptable by the asbestos consultant.

c. 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.

d. 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 Contract, the Contractor acknowledges the above and agrees to the fullest extent permitted by law to hold harmless the District, its Governing Board, employees, agents, representatives, including its District 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.

**Article 76      DISABLED VETERANS PARTICIPATION GOALS AND RECORD RETENTION**

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

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

**Article 77 NOTIFICATION OF THIRD PARTY CLAIMS**

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

**Article 78 DRUGS, TOBACCO, ALCOHOL, ANIMALS**

The Contractor shall prohibit and take all steps necessary to ensure that its and its subcontractors' employees do not possess, consume, or work under the influence of any alcohol, tobacco or illegal drugs while on the Project site. The Contractor shall take all necessary steps to ensure that its and its subcontractor's employees comply with all applicable District policies and directives relating to appearance and behavior on school sites and/or District property. The Contractor shall prohibit and prevent its employees and subcontractor's employees from bringing any animal onto the Project.

**END OF GENERAL CONDITIONS DOCUMENT**

00246-00005/3615506.1

**Mill Valley School District**

**Proposition 39 Energy Conservation And Energy  
Efficiency Services Project**

**BID #2017/18- EC-02**

**SECTION 8  
SPECIAL CONDITIONS**

## SPECIAL CONDITIONS

- A. **Time of Performance.** The Contractor shall mobilize and commence work on the Project on the date specified in the Agreement. The Contractor shall complete the project within the period specified in the Agreement and in accordance with the schedule for the Project developed for the District. Contractor acknowledges and agrees that the construction duration stipulated herein is adequate and reasonable for the size and scope of the Project.

Work under this Contract shall be scheduled and coordinated in compliance with the following:

1. The anticipated date of the award of the Contract is **May 18, 2018**.
2. Bid submittals are due on **May 28, 2018**
3. **Substitutions to Specified Materials, Processes, or Articles Prior to Bid Submittal:** Any proposals for substitutions of equipment, materials, or products other than what is specified in the bid documents must be submitted, in writing, to the District. After reviewing the request, the District will respond with its decision to all parties who have received a bid package. The District has the right to reject any or all requests for substitutions of equipment, materials, or products other than what is specified in the bid documents. The Bidder shall bear all of the District's costs associated with the review of substitution requests.
4. Contractor shall complete work under this agreement as identified in the Scope of Work and Drawings and Specifications, or as arranged by the John Binchi.
5. The Contractor acknowledges that it fully understands the Project work to be performed has been scheduled by the District for a specific time period. In addition the Contractor acknowledges that it fully understands that scheduling has been established for this Project in order to promote the best usage of school facilities and to timely provide an appropriate learning environment for students to the fullest extent possible. With these understandings in mind, pursuant to Article 13 of the General Conditions regarding the District's Right to Terminate Contract, it is acknowledged and understood by the Contractor that it is a substantial violation of the Contract for the Contractor to fail to provide all submittals in the time specified and identified. Furthermore, it is acknowledged and understood by the Contractor that it is a substantial violation of the Contract for the Contractor to fail to provide a full work crew or properly skilled workers with proper and sufficient materials and equipment from the first day of Project work scheduled.

If the site will not be available after the scheduled start date, Contractor shall utilize this time period for administrative tasks and initial mobilization and shall coordinate such activities with District.

- B. **Future Work:** All future work awarded from this bid shall be coordinated with the District's Director of Maintenance and Operations or his or her designee and the Contractor. No work shall be started until scheduling has been agreed upon by all parties.
- C. **Liquidated Damages – Contract Submittals:** If the executed Contract and required bonds and certificates of insurance are not received by the District prior to the scheduled

start date, the agreed liquidated damages established in Article 6 of the General Conditions is Five Hundred Dollars (\$500.00) per day for each calendar date the start date is delayed.

**Liquidated Damages – Time of Completion:** If work under this Contract is not ready for the intended use within the specified time period, the agreed liquidated damages established in Article 6 of the General Conditions is Five Hundred Dollars (\$500.00) per day for each calendar date completion is delayed.

- D. **Documents Furnished.** The number of copies of Drawings and Specifications to be furnished to Contractor free of charge, per Article 3 of the General Conditions, is one (1). The cost for additional copies of the drawings shall be borne by the Contractor.
- E. **Bonds.** Contractor shall provide (i) a bid bond or cashier’s check payable to Mill Valley School District in the amount not less than the total amount of the bid; (ii) a payment bond in the amount of one hundred percent (100%) of the total amount of the Contract Price or as specified in the Information for Bidders; and (iii) a performance bond in the amount of one hundred percent (100%) of the Contract Price or as specified in the Information for Bidders.
- F. **Insurance.** As provided in General Conditions, Contractor shall procure and maintain and shall require all subcontractors, if any, whether primary or secondary, to procure and maintain either:

**Comprehensive General Liability Insurance.**

with a combined single limit per occurrence of not less than \$1,000,000

**OR**

**Commercial General Liability and Property Damage Insurance**

(including automobile insurance) which provides limits of not less than:

- (a) Per occurrence (combined single limit) \$1,000,000
- (b) Project Specific Aggregate (for this project only) \$2,000,000
- (c) Products/Completed Operations \$1,000,000
- (d) Personal & Advertising Injury limit \$1,000,000

**AND**

**Builder's Risk (or Course of Construction Coverage) Applicable/Fire Insurance**

Project Replacement Value at 100% (One Hundred Percent) (see Article 23 of General Conditions).

**Insurance Covering Special Hazards:** The following special hazards shall be covered in addition to the above-mentioned commercial liability insurance or property damage insurance policy or policies of insurance, or by special policies of insurance, in amounts as follows:

Automotive and truck where operated in the amount of \$1,000,000



|                                                      |             |
|------------------------------------------------------|-------------|
| Material hoist where used in the amount of           | \$1,000,000 |
| Explosion, collapse & Underground (XCU) coverage     | \$1,000,000 |
| Excess Liability Insurance coverage in the amount of | \$1,000,000 |

**Additional Insurance:** As provided in General Conditions, Contractor shall procure and maintain and shall require all subcontractors, if any, whether primary or secondary, to procure and maintain Worker’s Compensation Insurance (Article 20 of General Conditions) and Automobile Liability Insurance (Article 22 of General Conditions).

**Additional Insured Endorsement:** Any general liability policy provided by Contractor hereunder shall contain an endorsement which applies its coverage to District, members of District’s Governing Board, and the officers, agents, employees and volunteers of District, the State Allocation Board if applicable, the Project Manager, and the Project Manager’s consultants, individually and collectively, as additional insureds (see General Conditions).

G. **Executed Copies:** The number of executed copies of the Agreement, the Performance Bond, and the Payment Bond for Public Works required is two (2).

H. **License Classification:** Each bidder shall be a licensed Contractor pursuant to the Business and Professions Code and shall be licensed in the following classification(s), including but not restricted to: A, B, and C-10.

I. **Certification Requirements:** The Contractor or subcontractor must be certified by the factory or manufacturer to install any equipment or other products that may require a certification. Such certifications must be obtained prior to submittal of the bid.

J. **Fingerprinting:**

Pursuant to the provisions of Article 72 of the General Conditions, the District Determination of Fingerprinting Requirement Application is as follows:

a. The District has considered the totality of the circumstances concerning the Project and has determined that the Contractor and Contractor’s employees:

1.   X   are subject to the requirements of Education Code section 45125.2 and Paragraph (a) of Article 72 of the General Conditions. Fingerprinting and criminal background checks are required for this project.
2. \_\_\_\_\_ are not subject to the requirements of Education Code section 45125.2 and are subject to Paragraph (b) of Article 72 of the General Conditions.

K. **Cleaning Up:** Pursuant to the specific provisions of Article 55 "Cleaning Up" of the General Conditions, the Contractor is responsible at all times to keep the premises free from debris, waste, rubbish and excess materials and dispose of it in disposal site in accordance with provisions of existing law. The Contractor acknowledges and

understands that the Project work hereunder is to be performed on existing and functioning school facilities. The Contractor hereby acknowledges and agrees that if and/or when the Contractor fails to fulfill its clean-up responsibility on a daily basis, the District will undertake to authorize additional regular work or overtime work by its own maintenance and/or custodial employees to keep the premises free from debris, waste and rubbish by authorizing regular and/or overtime work for its maintenance and/or custodial employees. This work time shall be charged back to the Contractor and deducted from the Contractor's progress payments and/or final payment at the rate of **\$22.00 per hour for regular time and \$33.00 per hour for overtime**. The Contractor will not be notified in advance of any such cleanup of the premises to be performed by the District's employees unless the number of hours required in any work week for such cleanup of the premises by District employees is both anticipated and estimated by the District to exceed five (5) total weekly hours of either the regular or overtime rates specified herein or the combined regular and overtime rates specified herein.

- L. **Time of Work Restrictions.** The worksites will be available Monday through Friday from 5 PM to 6 AM and Saturday through Sunday, from 6 AM to 5 PM. This schedule is subject to change as the needs of the District require, and would be scheduled with the District's Director of Maintenance and Operations or his or her designee.

#### **SCOPE OF WORK**

The Mill Valley School District is seeking bids for the Proposition 39 Energy Conservation And Energy Efficiency Services Project. The Scope of Work includes replacing all interior and exterior lighting with high efficient LED lights:

Please refer to the Drawings and Specifications for further details.

#### **PROJECT SCHEDULE**

Anticipated Start Date: **May 21, 2018**

Completion Date: **July 31, 2018**

# **Mill Valley School District**

## **Proposition 39 Energy Conservation And Energy Efficiency Services Project**

**BID #2017/18- EC-02**

**SECTION 9  
BID SPECIFICATIONS**

The Drawings and Specifications prepared by the Director of Maintenance and Operations are attached below.

**Mill Valley School District**  
**PROP. 39 ENERGY CONSERVATION AND ENERGY EFFICIENCY SERVICES**  
*Lighting Retrofits*

**BID SPECIFICATIONS**

**PROJECT**

Mill Valley School District (District) is requesting proposals from qualified lighting contractors, herein referred to as 'Contractor' with experience working in K-12 educational settings. The Client has received funding from Proposition 39. A previous energy audit has identified several lighting retrofit opportunities that exist within the District. The scope of this lighting project includes the **Mill Valley Middle School** interior and exterior lighting.

The selected Contractor will work with the assigned project manager, make presentations as required to the Board, prepare final documents, gather and submit verification data consistent with Prop 39 and PG&E rebate requirements, complete construction and installation, obtain required permits, register project with CA Department of Industrial Relations, and project close out.

**PROCUREMENT**

The project must conform to all requirements of California Government Code 4217, Title 24, California Division of State Architect (DSA) and all the parameters laid out in the Proposition 39 guidelines. In addition, the District will utilize the best value criteria as defined in Public Contract Code section 20133(c) (1). Best value criteria, as set forth in the law, includes objective criteria related to price, features, functions and life-cycle costs.

**SCOPE OF WORK**

The scope of the project will include the following:

1. Provide all necessary equipment, hardware, adapters, and any other materials necessary for a quality installation. Ensure installation quality, compliance with project schedule and proper disposal and/or recycling of old luminaires, ballasts and equipment.
  - a. Equipment must be listed on the California IOU Qualified Products List (QPL) found at <http://caioulightingqpl.com> and must meet DesignLights Consortium (DLC) Technical Requirements Version 4.0 or higher at the time of the purchase of the equipment in order to qualify for PG&E incentives.
  - b. The installation will include all materials, labor, equipment, services, and incidentals necessary to install a complete lighting system including, but not limited to, the work included in this specification.
  - c. Title 24 reports
2. Installation Submittals:
  - a. A detailed inventory of replacement equipment with equipment data sheets for approval by the District.
  - b. Wiring diagrams

- c. DSA Approvals as needed
  - d. Permits
  - e. Waste Disposal and recycling certifications
3. Contractor shall warrant all labor and replace all parts thereof for a period of one year from the date of project acceptance. The warranty for the luminaires and ballasts shall be no less than five (5) years.
4. Train District personnel in all aspects of routine operation, maintenance, and safety of the LED lighting luminaires, ballasts and equipment installed.
5. Lighting equipment installed must meet, or exceed current Title 24 lighting code requirements.
6. All existing lights fixtures are to be replaced with LED products.
7. All installations are required to meet IES illumination standards for the application.
8. Color rendering index of all equipment will be at least 80.
9. Lenses and fixtures shall be clean and free of dirt and fingerprints.
10. Ensuring the fit of all lighting replacement kits and reflectors.
11. Removal and proper disposal of all waste.
12. Prices are to include installation.
13. Costs of building permits to be borne by the Contractor.
14. All products must be DLC or energy star approved.
15. Confirmation that equipment meets PG&E's rebate requirements including meeting DesignLights Consortium (DLC) Technical Requirements Version 4.0 or higher and listing on the California IOU Qualified Products list (QPL). Must meet both requirements. See Appendix B for instructions.
16. Contractor shall work directly with Smartlights program staff to ensure client accesses all applicable rebates. Smartlights is the PG&E/CPUC-funded local direct install implementer for Marin County. ([www.smartlights.org](http://www.smartlights.org))
17. Be available for the following rebate inspections:
  - a. Pre-construction rebate inspection with Smartlights or other third party engineering firm
  - b. Post-construction rebate inspection with Smartlights or other third party engineering firm
18. Immediately inform client of any potential scope changes that take place during the project.
19. Furnish adequate invoices that detail material and project costs. These invoices will be submitted to the CA Energy Commission for reporting purposes and to Smartlights for rebate processing which will be paid directly to the Mill Valley School District.

### **EXISTING CONDITIONS**

The contractor has had sufficient access to the facility and the facility electrical system to verify that the proposal includes all materials and labor for all replacements specified in the attached Lighting specification and count, and to verify the existing conditions to ensure the proper installation of the system. No additional payment will be made due to site conditions (excluding quantities) that were

not accounted for by the Contractor, per the General Conditions.

### **CONTRACTOR USE OF PREMISES**

1. The District will provide the Contractor with space for one 40' storage container in which the Contractor shall stage all work and store all materials.
2. The facility must remain open and operational during normal business hours through June 18, 2018, Monday through Friday, 6:00 a.m. to 5:00 p.m. All access to and from the facility must be maintained during these hours.
3. All work before June 18, 2018 shall be completed after hours, between 5:00 p.m. and 6:00 a.m., Monday through Friday, and on weekends. All work after June 18 shall be completed between the hours of 6:30 a.m. and 3:00 p.m., Monday through Friday, and on the weekends. Any work being conducted in classrooms which have already been cleaned by the summer custodial staff must be cleaned again by the contractor to meet District standards. The District will accommodate work in unoccupied areas during operational hours.
4. Any utility shut-offs shall be scheduled through the Project Manager at least 72 hours ahead of time. Any shut-off that will impact the standard operation of the facility shall happen during off hours.

### **SCHEDULE**

| <b>Date</b> | <b>Event</b>                             |
|-------------|------------------------------------------|
| 3/19/2018   | RFP Issue                                |
| 4/04/2018   | Job walk                                 |
| 4/06/2018   | Questions and information request period |
| 4/20/2018   | RFP Due                                  |
| 5/18/2018   | Announcement of Award                    |

### **SPECIAL PROCEDURES**

1. Emergency Evacuation: Review and coordinate emergency response procedures with the facility staff. Become familiar with evacuation procedures and coordinate response of workers in an emergency.
2. Contractor Superintendent: Contractor's superintendent shall have experience supervising projects of similar size and type. The superintendent must be qualified to supervise all phases of this project. The superintendent's resume must be submitted to the District prior to beginning the construction.
3. Project Safety
  - a. Contractor shall comply with all applicable safety standards from the California Code of Regulations, Title 8, including but not limited to the Construction Safety orders. For the duration of the Contract work the contractor must have on-site and available for review a copy of their injury and Illness Prevention Program. In addition, the contractor will be required to have the following documents at the job-site per Cal OSHA, Title 8 Regulations:
    - i. Code of Safety Practices
    - ii. Cal-OSHA required permits
    - iii. All Cal-OSHA required training certifications

- iv. Respiratory Protection Program for all work sited where respirators are mandatory.
    - v. Fall protection.
    - vi. Material Safety Data Sheets
  - b. The contractor will be required to post all required Cal-OSHA documents.
  - c. The contractor must designate a superintendent as the Competent Person per Title 8.
  - d. The contractor must take appropriate measures to ensure the security and safety of the work site, and materials and tools stored on premises. No tools are to be left unsecured after hours for any reason, within the secure areas around or in the building. Employees shall be directed to diligently police the construction areas for removal of debris, as well as tools and materials. Notify employees that inappropriate behavior or language will be grounds for removal of that employee from the job site.
  - e. Comply with all safety recommendations of the Material Safety Data Sheets and ensure that workers, staff, and public are not exposed to hazardous fumes or materials as a result of this work.
  - f. Appropriate protective clothing shall be worn when handling the products. Clothing shall include hard hats, steel toe boots, and insulated gloves when working on an active system.
4. Project Meetings
- a. *Pre-construction Meeting:* The District will schedule a pre-construction meeting with the Contractor, the contractor's Project Superintendent and affected District department representatives and consultants, at District facilities.
  - b. *Project Progress Meetings:* The contractor will make arrangements for Project Progress Meetings every two weeks. The Contractor will be responsible for scheduling, administering, preparing the agenda, and recording and distributing meeting minutes. Attendees shall include the Contractor's superintendent and the District project manager. The agenda shall include, but not be limited to:
    - a. Review of work progress
    - b. Identification of problems that impede planned progress.
    - c. Maintenance of the Construction Schedule.
    - d. Corrective measures to maintain the Construction Schedule.
    - e. Planned progress in the succeeding work period.
    - f. Maintenance of quality of work standards.
    - g. Proposed changes to the schedule and project coordination, and the effect on the project.
  - c. *Punch List Inspection:* The contractor will schedule a punch list inspection with the District Project Manager. The inspection will allow the District to identify problems that may impact the performance of the lighting system.
  - d. *Final Inspection Meeting:* The Contractor will schedule a meeting that includes the District Project Manager to walk-through and inspect the installation to insure that all punch-list items have been addressed.

#### **GENERAL MATERIAL AND INSTALLATION REQUIREMENTS**

1. Materials shall be designed to withstand the temperatures to which they are exposed.

2. Dissimilar materials should be isolated from one another using non-conductive shims, washers, or other methods. Stainless Steel to aluminum connections are excluded.
3. All electrical conduits shall be galvanized and unpainted.
4. All electrical equipment shall be rated for the current and voltage ratings necessary for the application.
5. All electrical connections and terminations shall be fully tightened, secured, and strain relieved as appropriate.
6. All mounting equipment shall be installed to the manufacturer's specifications.
7. All cables, conduit, exposed conductors, and electrical boxes should be secured and supported according to code requirements.
8. All national and local electric and building code requirements shall be met.
9. System Installation shall conform to Manufacturers Installation Manual and approved project drawings and specifications.
10. Installation crews shall minimize disturbance (due to noise, dust, odors, moving of furniture and equipment) of building occupants and activities.
11. Sites shall be maintained and kept secure, free of excessive debris, and in safe condition during the construction period. Site should be left "broom clean" after work is complete at the end of each work day. All work should comply with the National Electrical Code, the National Fire Code, and the Uniform Building Code, and shall be inspected by MCOE inspectors at each appropriate phase.

### **TEMPORARY FACILITIES**

*Telephone:* The Contractor or supervisor on the job site must be able to be reached by phone at all times that work is in progress. Use of the District's phone system by the Contractor's personnel will not be allowed. If the Contractor's cell phone does not operate in the project area, he/she will have to establish a landline at the work site.

### **ADDITIONAL INSTRUCTIONS TO BIDDERS**

1. Contractor is responsible for providing all materials, labor and necessary equipment to complete the work according to the specifications provided and best practices. Finally, payment will be available after a walk-through ensures completeness and functionality to the District satisfaction and all requirements for rebate processing and Prop 39 reporting has been met.
2. Upon award of contract, Contractor shall submit appropriate documents of insurance (certificates of accord); General Liability \$2,000,000 per occurrence, workers compensation \$1,000,000, liability \$1,000,000 coverage pertaining to vehicles, property damage and public liabilities, personal injury, etc., and shall hold the school district blameless in any incident involving the contractor, his employees, his/her equipment, and vehicles.
3. Bidders shall visit the site areas and familiarize themselves with the scope of the project. A pre-bid meeting and project walk-through will be held on (April 4, 2018 at 1:00pm.).
4. Following award of the contract, work may commence on or after (May 21, 2018). All work must be completed on or before July 31, 2018.
5. The contractor shall clean their job area daily and dispose of all trash and debris leaving the area broom clean. The District dumpster is not to be used for contractor's trash.
6. It is the responsibility of the contractor / bidders to field verify all existing conditions.

### **PROJECT CLOSEOUT**



1. Clean all work areas, removing any debris.
2. Prepare three (3) copies of operating and maintenance manuals in hard cover binders and deliver to the District. As a minimum the binders shall include:
  - i. A complete set of all approved submittals including shop drawings and product literature.
  - ii. Copies of all testing data and reports.

**SITE**

| <b>SITE</b>               | <b>ADDRESS</b>                            | <b>SQUARE FOOTAGE</b> |
|---------------------------|-------------------------------------------|-----------------------|
| Mill Valley Middle Scholl | 425 Sycamore Ave<br>Mill Valley, CA 94941 | 121,510               |

**APPENDIX A: LIGHT FIXTURE SPECIFICATION SHEET**

**MILL VALLEY MIDDLE SCHOOL**

All proposed fixtures must be LED

| Location                      | Existing Fixtures | Existing Equipment Description | Existing Fixture Wattage | Proposed Quantity | Proposed Equipment Description | Proposed Fixture Wattage | Notes |
|-------------------------------|-------------------|--------------------------------|--------------------------|-------------------|--------------------------------|--------------------------|-------|
| District Office               | 165               | T8 4' 32E2E2-2L-NPO            | 59                       | 165               | Led 4' 12E2-2L-4000<br>K LAMP  | 30                       |       |
| Restroom                      | 11                | T8 4' 32E2E2-2L-NPO            | 59                       | 11                | Led 4' 12E2-2L-4000<br>K LAMP  | 30                       |       |
| Office Main                   | 341               | T8 4' 32E2E2-2L-NPO            | 59                       | 341               | Led 4' 12E2-2L-4000<br>K LAMP  | 30                       |       |
| School                        | 29                | T8 4' 32E2E2-2L-NPO            | 59                       | 29                | Led 4' 12E2-2L-4000<br>K LAMP  | 30                       |       |
| Restroom 2                    | 58                | T8 4' 32E2E2-2L-NPO            | 59                       | 58                | Led 4' 12E2-2L-4000<br>K LAMP  | 30                       |       |
| Breakroom                     | 26                | T8 4' 32E2E2-2L-NPO            | 59                       | 26                | Led 4' 12E2-2L-4000<br>K LAMP  | 30                       |       |
| Assistant Room                | 38                | T8 4' 32E2E2-2L-NPO            | 59                       | 38                | Led 4' 12E2-2L-4000<br>K LAMP  | 30                       |       |
| Stage                         | 28                | T8 4' 32E2E2-2L-NPO            | 59                       | 28                | Led 4' 12E2-2L-4000<br>K LAMP  | 30                       |       |
| Upstairs Main                 | 183               | T8 4' 32E2E2-2L-NPO            | 59                       | 183               | Led 4' 12E2-2L-4000<br>K LAMP  | 30                       |       |
| Classrooms 1-6 & Common area  | 197               | T8 4' 32E2E2-2L-NPO            | 59                       | 197               | Led 4' 12E2-2L-4000<br>K LAMP  | 30                       |       |
| Classrooms 7-12 & Common area | 197               | T8 4' 32E2E2-2L-NPO            | 59                       | 197               | Led 4' 12E2-2L-4000<br>K LAMP  | 30                       |       |
| Classrooms 19-24 &            | 197               | T8 4' 32E2E2-2L-NPO            | 59                       | 197               | Led 4' 12E2-2L-4000<br>K LAMP  | 30                       |       |

|                                |     |                     |    |     |                                    |    |  |
|--------------------------------|-----|---------------------|----|-----|------------------------------------|----|--|
| Common area                    |     |                     |    |     |                                    |    |  |
| Classrooms 7-12 & Common area  | 197 | T8 4' 32E2E2-2L-NPO | 59 | 197 | Led 4' 12E2-2L-4000 K LAMP         | 30 |  |
| Classrooms 25-30 & Common area | 197 | T8 4' 32E2E2-2L-NPO | 59 | 197 | Led 4' 12E2-2L-4000 K LAMP         | 30 |  |
| Classrooms 31-36 & Common area | 197 | T8 4' 32E2E2-2L-NPO | 59 | 197 | Led 4' 12E2-2L-4000 K LAMP         | 30 |  |
| Classrooms 37-42 & Common area | 197 | T8 4' 32E2E2-2L-NPO | 59 | 197 | Led 4' 12E2-2L-4000 K LAMP         | 30 |  |
| Classrooms 43-48 & Common area | 197 | T8 4' 32E2E2-2L-NPO | 59 | 197 | Led 4' 12E2-2L-4000 K LAMP         | 30 |  |
| Custodian Closet               | 9   | T8 4' 32E2E2-2L-NPO | 59 | 9   | Led 4' 12E2-2L-4000 K LAMP         | 30 |  |
| Gym                            | 59  | T8 4' 32E2E2-2L-NPO | 59 | 59  | Led 4' 12E2-2L-4000 K LAMP         | 30 |  |
| Art Room                       | 36  | T8 4' 32E2E2-2L-NPO | 59 | 36  | Led 4' 12E2-2L-4000 K LAMP         | 30 |  |
| Restroom 3                     | 5   | T8 4' 32E2E2-2L-NPO | 59 | 5   | Led 4' 12E2-2L-4000 K LAMP         | 30 |  |
| School                         | 5   | HAL PAR83 90-1L     | 90 | 5   | LED UNT 18E1-1L-PAR39-FLOOD-3000 K | 18 |  |
| Restroom 2                     | 4   | CFL QD 13E2-2L      | 28 | 4   | LED INT 18E1-1L-FIXT-DRUM-4000 K   | 26 |  |
| Restroom 3                     | 4   | CFL QD 13E2-2L      | 28 |     | LED INT 18E1-1L-FIXT-DRUM-4000 K   | 26 |  |

|                      |    |                     |     |    |                                            |     |          |
|----------------------|----|---------------------|-----|----|--------------------------------------------|-----|----------|
| Restroom 2           | 1  | CFL QD 13E2-2L      | 28  | 1  | LED INT 13E2-2L-4<br>PIN-4000 K            | 26  |          |
| MS 19-24             | 2  | T12 4' 39M2-2L      | 74  | 2  | LED 4' 12E2-2L-4000<br>K LAMP ONLY         | 30  |          |
| Café-Portable<br>79  | 18 | T8 4' 32E2E2-3L-NPO | 118 | 18 | Led 4' 12E2-2L-4000<br>K LAMP              | 60  |          |
| Portable 83-86       | 64 | T8 4' 32E2E2-3L-NPO | 118 | 64 | LED 4' 12E3-3L-4000<br>K LAMP ONLY         | 60  |          |
| Portable 78-82       | 80 | T8 4' 32E2E2-3L-NPO | 118 | 80 | Led 4' 12E2-2L-4000<br>K LAMP              | 60  |          |
| Choir &<br>Orchestra | 27 | T8 4' 32E2E2-3L-NPO | 89  | 27 | Led 4' 12E2-2L-4000<br>K LAMP              | 45  |          |
| Gym Stage            | 35 | T8 4' 32E2E2-3L-NPO | 89  | 35 | Led 4' 12E2-2L-4000<br>K LAMP              | 45  |          |
| Portable 90-94       | 50 | T8 4' 32E2E2-4L-HPO | 118 | 50 | Led 4' 12E2-2L-4000<br>K LAMP              | 60  |          |
| Gym                  | 24 | T8 4' 32E2E2-4L-HPO | 151 | 24 | LED INT 100E1-1L-<br>FIXT-HIGH BAY-5000    | 101 |          |
| Gym Stage            | 6  | CFL QD 13E2-2L      | 28  | 6  | LED INT 13E2-2L-<br>4PIN-4000 K            | 26  |          |
| Art                  | 1  | T12 4' 39M2-2L      | 74  | 1  | LED 4' 12E2-2L-4000<br>K LAMP ONLY         | 30  |          |
| Art                  | 1  | CFL INT 18E1-1L     | 18  | 1  | LED INT 9.5E-1L-A19-<br>3000 K             | 9.5 |          |
| MS 19-24             | 98 | T8 4' 32E2E2-3L-NPO | 89  | 98 | LED INT 39E1-1L-<br>RETROFIT KIT-4000<br>K | 39  |          |
| Walpac               | 9  | CFL QD 13E2-2L      | 28  | 9  | LED INT 18E1-1L-<br>FIXT-DRUM-4000K        | 18  | Exterior |

|            |    |                |     |    |                                    |     |          |
|------------|----|----------------|-----|----|------------------------------------|-----|----------|
| Roofline   | 6  | MH-400M1-1L    | 458 | 6  | LED INT 144E1-1L-FIXT-FLOOD-5000 K | 144 | Exterior |
| Walpac     | 15 | CFL QD 13E2-2L | 28  | 15 | LED INT 13E2-2L-4PIN-4000K         | 26  | Exterior |
| Exterior   | 6  | MH 400M1-1L    | 458 | 6  | LED INT 144E1-1L-FIXT-FLOOD-5000K  | 144 | Exterior |
| Walpac     | 40 | HPS 70M1-1L    | 95  | 40 | LED INT 46E1-1L-WALLPACK-5000K     | 46  | Exterior |
| Ext Canopy | 7  | HPS 70M1-1L    | 95  | 7  | LED INT 44E1-1L-FIXT-CANOPY-5000K  | 44  | Exterior |
| Ext Canopy | 10 | INC A19 100-1L | 100 | 10 | LED INT 16E1-1L-A19-2700 K         | 16  | Exterior |

**Mill Valley School District**

**Proposition 39 Energy Conservation And Energy  
Efficiency Services Project**

**BID #2016/17- EC-01**

**SECTION 10  
CERTIFICATIONS**

## WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

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

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

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

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Name

---

Title

---

Company

(In accordance with article 5 (commencing at section 1860), chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this contract.)

## DRUG-FREE WORKPLACE CERTIFICATION

This Drug-Free Workplace Certification form is part of the Contract made by and between the **Mill Valley School District** (hereinafter referred to as the "District" and \_\_\_\_\_ (hereinafter referred to as the "Contractor") for the Proposition 39 Energy Conservation And Energy Efficiency Services Project, **BID #2017/18- EC-02** (hereinafter referred to as the "Project." This form is required from all successful bidders pursuant to the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for procurement of any property or service from any State agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Act provides that each contract or grant awarded by a State agency may be subject to suspension of payments or termination, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency under California law and requires all contractors on public works projects to comply with the provisions and requirements of Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990.

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

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

I, the undersigned, agree to fulfill the terms and requirements of the Drug-Free Workplace Act as it now exists or may hereinafter be amended. Particularly, I shall abide by Government Code Section 8355 when performing the Contract for the Project by:

- A. Publishing a statement notifying employees concerning the prohibition of controlled substance at my workplace;
- B. Establishing a drug-free awareness program; and



- C. Requiring that each employee engaged in the performance of the contract be given a copy of the statement required by Section 8355(a) and agree to abide by the terms of that statement.

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

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

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_.

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

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

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

\_\_\_\_\_  
Title

Subscribed and sworn before me  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public in and for  
the State of California

(Seal)

My Commission Expires: \_\_\_\_\_

**ASBESTOS-FREE MATERIALS CERTIFICATION**

The undersigned declares that he or she is the person who executed the bid for the Proposition 39 Energy Conservation And Energy Efficiency Services Project (the "Project"), and submitted it to the **Mill Valley School District** (the "District" on behalf of \_\_\_\_\_ (the "Contractor").

To the best of my knowledge, information and belief, in completing the Contractor's Work for the Project, no material furnished, installed or incorporated into the Project will contain, or in itself be composed of, any materials listed by the federal or state EPA or federal or state health agencies as a hazardous material.

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

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_.

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

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

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

\_\_\_\_\_  
Title

Subscribed and sworn before me

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public in and for  
the State of California

(Seal)

My Commission Expires: \_\_\_\_\_

### CONTRACTOR FINGERPRINTING CERTIFICATION

The undersigned does hereby certify to the governing board of the Mill Valley School District ("District") as follows:

That I am a representative of the Contractor currently under contract ("Contract") with the District; that I am familiar with the facts herein certified, and am authorized and qualified to execute this certificate on behalf of Contractor.

Contractor certifies that it has taken at least one of the following actions with respect to the construction project that is the subject of the Contract (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 its subcontractors' employees who may have contact with \_\_\_\_\_ pupils in the course of providing services pursuant to the Contract, and the California Department of Justice has determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its 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, Contractor has installed or will install, prior to commencement of Work, a physical barrier at the Work Site, that will limit contact between Contractor's employees and District pupils at all times; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, 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 its subcontractors' employees is

Name: \_\_\_\_\_

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

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

Contractor's responsibility for background clearance extends to all of its 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: \_\_\_\_\_

**BIDDER'S ACKNOWLEDGEMENT OF PROJECT SCHEDULE**

The undersigned acknowledges that he/she has carefully and thoroughly reviewed the Project Schedule, included herein and made a part of the Contract Documents.

The undersigned fully understands the manpower requirements necessary to complete the project in accordance with the Project Schedule and agrees to furnish all labor, materials and equipment necessary, upon District acceptance of bidder's proposal, to fully comply with this schedule. The undersigned agrees to comply with any and all adjustments to the schedule, as may be directed by the District or its representative, and which may be required to ensure project completion as stipulated in the Contract Documents.

The undersigned acknowledges that failure to comply with the above could result in delays to other contractors, whose bona fide and substantiated cost impacts due to said delays may be borne by the undersigned.

ACKNOWLEDGED AND AGREED:

DATE: \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR

BY: \_\_\_\_\_  
Signature

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

I am aware of and hereby certify that neither \_\_\_\_\_ nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. I further agree that I will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower participant is unable to certify this statement, it shall attach an explanation to this solicitation proposal.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal of the above named bidder on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ for the purposes of submission of this bid.

(Corporate Seal)

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

As the awardee under this Bid, I hereby certify that the above certification remains valid as of the date of contract award, specifically, as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the purposes of award of this contract.

(Corporate Seal)

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date